1894-048
Nansemond Co. (Suffolk) Chancery Causes: Frederick G. Atkinson vs Robinson Grant

Prentis

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Robinson Grant,

to appear at the Clerk's office of our Circuit Court for the County of Nansemond, on the first Monday in September next, 1878, being rule day, to answer a bill in chancery, exhibited against him by Fred: G. Atkinson!

and unless he shall answer the said bill by the next rule day thereafter, the Court will take said bill for confessed, and decree accordingly. And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court at his office, this 31st day of August 1878, and in the 103rd year of the Commonwealth.

Peter B. Prentis Clerk;

☞ The Sheriff will, in his return, note the day on which this process is executed on each defendant.

Wright & Rawls. 67

Fred: G. Atkinson

" vs " } Sum.s in Chy.

Robinson Grant

To Septr: Rules, 1878

Aug 31st 1878 Executed and a true copy of the within Summons in Chancery delivered to Robinson Grant

E. P. Hunt D.C.

D. C. Tully, Ladies Attorney

Pro: B. No: 1. Page 122
Cir: Co:

Agreed to sell 1/2 int in Lease & Mill & Machine for the Sum of $20m. 5m each - bal in 1 & 2 yrs equal payments. - Heffron was to be sent as a Partner - only Bro - sure Lease me on 1/2 of my int in the Lease. was always ready & willing to buy Lease. Never left me without my Consent. Never refused him a Stick of Lumber -

Y/ot Hebron when he
he see on Lot on for
the not to close when
Lin Lin was for he on no
of the confirmation - Hebron he
backed out & left me in the mind

The glaring inconsistency between the Bill and Schedule

1st account paid $580.00 (479.89)

The bill exactly says $100 payment + $80 for the Concert

Very 1st proof of bill says he was to furnish 1/2 cent in land (XX6t. "A" Stewart

11 Rob-719

Atkinson

v

Grant--

This cause coming on this day to be heard by consent of parties, the Court having overruled the demurrer, is set for hearing in vacation.

Atkinson

vs

Grant –

April term 1879

Order for hearing

in vacation –

To be entered.

Geo. T. Clark,

Entered O.B. No. 1

P. 439

William Mann,
Stationer,
Philadelphia.

The Depositions of Frederick G. Atkinson and others taken before me, Peter B. Prentis, a Commissioner in Chancery, of the Circuit Court of Nansemond County, Virginia, by consent, at the Clerk's Office of Nansemond County Court, in the Town of Suffolk, on Wednesday, the 26th. day of March, A.D. 1879, between the hours of 6 A.M and 6 P.M, to be read as evidence on behalf of Frederick G. Atkinson, in a certain suit in equity, depending in the Circuit Court for the County of Nansemond, wherein Frederick G. Atkinson is Plaintiff, and Robinson Grant, is Defendant.

Present: John H. Wright, Attorney for Plaintiff
Charles H. Causey, Attorney for Defendant.

Frederick G. Atkinson being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

1st Question by Pltff's atty. What is your age, and are you a party to this suit, and where do you reside?

Answer. I am 40 years of age, I am a party to this suit, and I reside in Nansemond County, Va.

2nd. Quest. State what was the agreement entered into between yourself and Robinson Grant, the defendant in this cause, with reference to the business transaction, which is the subject matter of this controversy.

Ans: We had some talk in the matter, during the latter part of 1877, and finally, I agreed to go in partnership with the said defendant, in the Saw Mill business, and to begin operations 1st. Jany. 1878. I agreed to put in $2500 00 The 1st. $3000 00 was the asset for the purchase of the business as it might be agreed — & the balance ($2000) I was to pay out of my share of the profits of the business that was my part of the agreement — The Defendant agreed, in

consideration of the matter to deed me, the said Sibbell, his interest in his tract of timber, saw-mill, yoke of Oxen, Cart, log, blacksmiths tools, mules & Cart and other appliances pertaining to the business, as security, & as collateral for the money which I put in the business — a deed of partnership was to be drawn up & entered into between us, embodying his deed for ½ of the before mentioned property — and stating further that the profits were to be divided equally between us, as I was to furnish the money to carry on the business, as it might be necessary, to the extent of $300.00 & the balance, as before stated, out of my share of the profits of the business —

Q. by Court: Under this agreement between yourself & the defendant, did you furnish the money & how much?

Ans: I furnished in all $479.89 but the whole of said sum ($479.89) was not actually expended on the business — The Defendant had out of that sum, $200.13, which was used on his own private account — I gave him, at one time, a check for $150.00 which money he drawed — My reason for giving him that sum ($150.00) was, because there was several things connected in fixing up the mill & he was going down to Norfolk, & said that he would purchase those articles & pay for them out of said sum ($350.00) He went to Norfolk, purchased the articles, but left the bill unpaid — never having accounted to me for that money, nor any part thereof — the balance of the $200.13, after deducting the $150.00 aforesaid, was spent by him in his private debts, in Suffolk, amounting to $17.40 — the remainder of the balance was cash, handed over to him, at different times.

The remainder of the $479.89 was expended in the following manner: labor on cutting logs, $46.27 — cutting fire wood $2.87, cutting saw logs for mill $25.24 — recharging the boiler (G. W. Branch's acco: $48.00)

moving Mill & selling up it wh again, & sawing Lumber, and
other incidental expenses, attending the business for $156.88
4th Inst After entering into this verbal agreement, did you actually
commence operations, as a partner of the defendant, without
having the written conveyance & terms of Co-partnership?
Ans- I did.
5th Inst Did you, repeatedly, request the defendant to execute, in
writing the terms of Copartnership & conveyance as a new
plan? & what his answer to those demands?
Ans I did, on a number of occasions. And he kept
putting off from time to time — on one occasion he brought
me a paper for my perusal — I read it — He asked me, if
that did or words to that effect — I told him, that, as far as
it went, I suppose it was all right — but, that was no
Deed of Partnership, nor yet, according to our verbal
agreement — He then told me to take that paper to my Lawyer
& have a proper Deed of Partnership drawn up, incorporating
in it, the general ideas, conveyed in that — I did take that
paper to my Attorney, who, according to my instructions drew
up a Deed of Partnership, based on the terms of our mutual
verbal agreement — I took the Deed of Partnership and
handed it to the defendant for his perusal — after a day or two,
when I asked him, whether he was ready to sign this Deed
of Partnership, he raised one objection after another, to its
contents, and declined to sign it — said that he could draw
up a better Deed of Partnership, himself — I told him
that he had better do so, as I was desirous to get the
matter settled up, that is to get some paper from him,
signed, as time was going on & as I was paying out money
all the time & not getting any security for it. I believe he did
draw up, for as far as I remember, some kind of a paper,
but presented it to me, but, as I had no particular confidence

as his legal advisor - I declined to sign it, and suggested that we should both of us, together, go to a Lawyer in Suffolk & get a proper document drawn up, that should be mutually satisfactory - we made an appointment to meet in Suffolk on a particular day, for the before mentioned purpose - I was, unfortunately, unable to keep that appointment - we then made another arrangement together, to meet in Suffolk - I kept that appointment - the defendant, did not - we, afterwards, fixed upon another day, to meet, in Suffolk - I met the defendant on that occasion on board his Sloop, about 3 O'clock, P.M. - He was or pretended to be very busy - working on his Sloop (maybe, talking here) - He kept me waiting there, till between 5 & 6 O'clock, when, we (both of us) got off the boat & walked up town - in passing the Office of my Lawyers, he made the remark, that it was too late, that day to do any business. Consequently, we parted, soon after, without accomplishing any thing, at all - after that, on several occasions, I kept urging upon him the necessity, (to me, at least) of having a proper deed of partnership drawn up & signed - that I was all the time laying out money to the hands we employed & for other other purposes, connected with the business, without the slightest security - he kept on making one excuse after another, but I could never, from first to last, get him to sign any paper. The paper given me for perusal, hereinbefore referred to, which I handed to my Attorneys, with the view of drawing up a deed of Partnership, I for their information, with as to its merits, is herewith attached & is marked (A).

6th Quest: After failing, so often, to secure the execution of the deeds or Conveyance & Partnership, did you require the defendant to refund the several amounts contributed by you, as hereinbefore Designated; If so, what was his reply.

Ans: When I saw, that there was no probability of getting

WILLIAM MANN,
Stationer,
Philadelphia.

The defendant to sign any papers, I withdrew from the
firm with the consent of the defendant – I told him
that I wanted my money back, that I had put into the
business – he then said, if I would advance him
$3000 he would give me a Deed of Trust on the whole
of his Mill property for that $3000 & also for the
money I had put into the concern – to wit $979.89
making $3979.89 He objected to secure me at all,
for the money I had put into the business, unless I would
make a further advancement of $500 – He
defendant not only objected, but refused to do so.

7th Interr: Did you Claim any interest in the Hubs, Sawlogs,
lumber or other material cut while you were working with the
defendant, after you severed your connection with him, by
his consent?

Ans:- No – I have never made any Claim since we
severed.

8th Interr: Was there ever any publish'd notice or otherwise of the Co-
partnership between You & the defendant?

Ans: There never was any Newspaper Notice, but it was
generally understood that we were in Partnership together
under the firm of Grant & Atkinson.

9th Interr: Was there any notice of dissolution published?

Answer: There was no Newspaper Notice, but
it was well known among our Patrons, that we had
dissolved

10th Interr: What has become of the lumber & other material Cut by
you while associated with the defendant?

Ans: The Hub-stuff, I believe is on the premises, now, so
far as I know – The Saw-logs, (a small part of them) we Carried on
together & the hubs ~~were~~ piled up in the Yard – we
sawed together, one bill of lumber for James Phillips say 2000 feet – the

balance of the saw logs, [redacted] were in the woods, when I left the concern

11th Quest: Did you, during your association with the defendant or have you since your severance from your connection, received any money out of the proceeds, to contested by, you?

Ans: No.

12th Quest: Has the defendant either before or since the institution of this Suit, made any proposition for a Settlement of the matter in controversy?

Ans: Before the Suit, he made a proposition, as before stated of advancing the additional $500.00 Since the Commencement of the Suit, he has made a proposition, that if I would advance him $300.00, he would give me a Deed of Trust on the whole of his Saw-mill property for the amount of the debt ($777.89) & this $300.00 & my advance making $777.89 — This $300.00 that he wanted me to advance him was to be for the purpose of carrying on his Saw mill business, in the manufacture of my "Patent Ventilated Barrell" — I did not advance the money ($300.00)

13th Quest: Was your dissatisfaction with the Copartnership brought by a mis-application of the money advanced by you as well as by the defendant's failure to execute the papers agreed upon? & did you make Complaint to the defendant that he was applying the money which you paid in to his private use & not to the business of the firm, or your agreement required?

Ans: I was very much dissatisfied with his using, for his own personal purposes, the money I had given him for the business of the firm, & spoke to him about it, on several occasions. Upon one occasion he asked me for a further sum of money, ($10.00 I believe) I declined to let him have it, & told him

that I did not know, what he had done with the money already given him.

Cross Examined by Defendant's Attorney

Quest: Does your Bill of Complaint, filed in this Suit, contain a full, true & complete statement of your case against the defendant?

Ans: It does — so far as I understand it.

Quest: Under the terms of the agreement referred to, in your examination in Chief, how much money were you to contribute to the Capital of the concern, & how much did you actually contribute?

Ans: I was to contribute $2500.00. I actually contributed $479.89

Quest: As is alleged in your Bill, were you not to pay to the defendant $500.00 on the first instalment of the purchase price (the instalment on the first of June before mentioned) for his interest in the property hereinbefore mentioned & also to put in $500.00 to the working Capital of the Copartnership?

Ans: No. I was not. The agreement on which we started business together was, that I was to put $500.00 into the business for the purpose of paying Rents & other Contingencies connected with the business

Quest: Were you not to make a Cash payment of $500.00 to the said defendant, which, as your Bill alleges, was to be contributed to the working Capital of the Co-partnership & yourself add a like sum in Cash, thus making $1000?

Ans: I was perfectly willing to contribute, or to hand over to the defendant $500.00 & to have put another $500.00 into the concern — but, when I saw, that the defendant, instead of contributing the $150.00, that I handed over to him, I declined to let him have any more. I never did pay

in full the first $500, for the reason already given.

Quest: Do you consider that you ~~have~~ complied with the terms of your Agreement, entered into with the defendant.

Ans: Yes, I did. As long as the defendant fulfilled his part of the agreement.

Quest: What was he to have done, that he failed to do, to give him a legal claim on you, for the cash payment of $500.00, & to compel you to contribute $500.00 in cash to the working Capital of the Concern?

Ans: He failed in the most essential part — failed to execute a Deed of Partnership — failed in giving me, one Single Scrap of Paper with his name attached to it, as Security for the money I was putting in the business.

Quest: Did not the defendant, tender you a paper, signed by his wife, purporting to be a Deed for a 1/2 interest in the business above mentioned, & tell you, that it were acceptable to you, that he, himself would also sign & acknowledge the same, in proper form?

Ans: Yes, he did — but, inasmuch, as I was not buying Real Estate, but, simply, purchasing a 1/2 interest in his Saw Mill business, Stock, & good will of the business, his document failed, in every respect to cover the case — I told so, in words to the effect, at the time, & it was then, that he requested me to go to my Attorneys with that paper, & instruct them to write out a Deed of Partnership, embodying therein the essential points of his paper.

Quest: You say, you were not purchasing Real Estate — were you not, under the terms of the Agreement, when performed, to have a Deed for a 1/2 interest in a large body of timbered, Swamp Land?

1 1

William Mann,
Stationer,
Philadelphia.

Answer. Yes. I read. The Deed of the 1/2 interest in the tract of land, Saw Mill &c, Clark to Lawrence & Security I was to hold for the money I put into the business. And it was never understood by myself, nor yet, set forth by the defendant, that I was to buy outright, 1/2 [illegible] of his Tract of timber, Saw Mill &c — that I should have no use for 1/2 of his timber land, 1/2 of his Saw Mill, 1/2 of his Yoke of Oxen, 1/2 of Mules &c except it was put with the defendants half towards together, under the deed of Partnership, as always intended.

Cross H. Further taking of these depositions is adjourned till Wednesday the 2nd. day of April, 1879.

Peter B. Prendergast, Commr. in Ch.

Wednesday April 2nd 1879

Present: John H. Wright — Attorney for Plaintiff
Charles H. Conway — Attorney for Defendant

Frederick G. Atkinson, recalled

Ques 11 How do you know the Defendant ever used any of the money you say you furnished him for his private account?

Answer I assume that he used it on his own private account because he has never shown to me that he used it in the business.

Ques 12 How do you know he ever misappropriated any money furnished by you as stated in your examination in Chief?

Ans Because he has, in no manner shown wherein he appropriated the money for the purposes for which I gave it to him.

Ques 13 Have you ever been called on to pay any bills which should have been paid out of this money?

Ans Yes, I have. Mr Butt of Norfolk in some time during the latter part of 1878, when I called at his Store on my own private business, spoke to me about the account then owing to him by the firm of Grant & Atkinson, & told me when it would be settled, he did not state the amount of it & I have

for goeeen what it was, and I did not pay the account because I had already given the Defendant the money to pay for the goods at the time he made the purchase of them, as I considered not applying the money to this purpose as intended, was decidedly misapplicating it.

Ques 14 Has any other demand ever been made on you to pay any debt of Grant & Atkinson?

Ans All demands that have been made upon the firm during the time we were together, I paid. I don't know that there were more than these outstanding debts at the time of our separation, Butts account I don't remember, Mr Jones' was $32.28 and D.C. Hanell's a small amount, some three or four dollars. I have settled Hanell's account in some individual transactions between him & myself; the Defendant promised to pay Jones & Co I do not know whether Butt has ever been paid.

Ques 15 Has the Defendant ever called on you to assist in paying any debt owing by Grant & Atkinson since your withdrawal from the firm?

Ans. No, he has not.

Re-examined by Plaintiff's Counsel.

Ques 1 Have you ever requested the Defendant to make a settlement of accounts between you & himself and what has been his reply to such demands?

Ans. I have often several occasions. I have asked him either to pay the money or to give me some security for it, but he denied in no instance agree to do either, except upon conditions therein before stated of a further advance.

Ques 2 Has the Defendant personally received the benefit of the money paid in by you, either by improvements or additions to his machinery or by his individual use of the same?

Ans. Yes, he has. He has received the benefit of my money which went to pay the Expenses attending the removal of the mill from a position near which all the timber had been cut, to a place where timber was standing all around it. Also in the removal of a house from the old Mill Site to the new location; also in repairs to the boiler, cutting out and putting in new tubes, which was an improvement of great value; also in the addition of other appliances to the mill such as new pipe and new Steam gauge. The mill was removed from what was considered generally an undesirable & inconvenient location to one considerably nearer the main Road and to Suffock. He has had the benefit of all the work done during my connection with him, and has received all the money spent for lumber cut during that time & still has in his possession that which is unsold, with the exception of probably seven or eight hundred feet which he gave me, as a personal favor, just about the time of our separation. As to his individual use of any of the money I can say nothing more than I have heretofore, except that at the time of our separation I gave him a full statement of all money that I had expended during our connection & he did not then say that he had paid out any money, which I should have thought he would have done, had any accounts been paid by him. Having failed to do that, knowing that I had given him money at different times for the purposes of our business, I naturally assumed, that he had applied this money to his own private purposes.

Re-Cross examined by Defendants Counsel

Ques 1 Did you not expect to be equally benefitted by the removal of the mill & other property mentioned by You above?

Ans. Yes. I did, and I would have been had the Defendant fulfilled the arrangements made between us, and I consider on that very particular account, that I am doubly aggrieved, because it was my money that paid for the most valuable improvements to his property, for which I have received no benefit.

Ques 2 How long were you & the Defendant in business together?

Ans Four months.

Ques 3 What were the profits of the business during that time?

Ans. The profits realized were small, but the stock on hand I consider was valuable.

Ques 4 Did you receive your portion of the profits?

Ans. No; because I am not aware of any money being collected prior to the dissolution

Ques 5 How then do you know that there were any profits?

Ans. Because of there being a large & valuable stock on hand which, if it had been realized on, would undoubtedly have produced profits.

Ques 6 Why was it not realized on?

Ans. One portion of the stock (the gum suits) was not realized on by reason of the defendant neglecting to carry the same in the sloop to a Northern market according to the arrangement between us, that he should do, he having prior to our connection, stated to me that he could find a market for almost any quantity of such stuff; and it was that assertion more than any thing else, that induced me in the first instance, to make any business arrangements with him.

Ques 7 Did you ever call upon the Defendant for any division of the stock on hand at the time of your withdrawal or since?

Ans. ~~No. I should consider that a very unbusiness like transaction to ask for a division of the stock when we~~

Ans No. I did not.

William Mann,
Stationer,
Philadelphia.

Ques 8 Did you not consider that one half of all the improvements made, were for your benefit while you were in the business?

Ans Undoubtedly I did.

Ques 9 Did the Defendant ever tell you that he wanted you to withdraw from the Concern or make you any pecuniary offer as an inducement to do so?

Ans. No. I do not remember that he did.

And further this deponent sayeth not.

Fred'k G. Atkinson

Robinson Grant, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith, as follows:

Ques 1 What is your age, occupation & place of residence, and are you a party to this suit?

Ans I am 57 years old, occupation, ship-master & the like, latterly saw-mill, men & lumber-manufacturer; reside in Nansemond County and am the Defendant in this suit.

Ques 2 State the terms of the verbal agreement between yourself and the Plaintiff.

Ans - In the latter part of 1877 (Dec I think) I understood that Mr Atkinson wanted to go into the manufacturing business, and as I owned a large track of timber land & also a Steam Saw mill, I called on him to know if he wished to do so. He said he thought he should; then asked me what I proposed to do. I told him I would sell him one undivided half of my track of timber land; also one undivided half of my Steam Saw mill & all the fixtures then on hand, for the sum of $2000; $500 Cash down the balance in equal payments at one & two years, and he was to put

in $500 additional and I was to put in the same amount if it should be required. Then we talked about the sloop and he thought he would like to have one half interest in that, and I sold him one half of the boat for $500 ⁰⁰/₁₀₀, which was to be in addition to the $2000, making $2500 in all for land, mill & sloop. I went to work & had the deed made out just according to the terms of the agreement and presented the same to Mr Atkinson to see if it was according to agreement. Mr Atkinson found no fault with it & said it was, but wanted to take the deed for inspection. I let him have it & after a number of days, he came & wanted an alteration made in regard to the payments. He said he did not want to give his notes for the deferred payments, but wished to pay it out of his part of the mill proceeds. I told him I did not see how this could be done to make it lawful & have it correct, but at last, after talking it over some time, I told him if it be to make correct & lawful I did not care, that he might have a deed made out, but not to change any part whatever except in the payments. So he went (I think to Wright & Rawls) and made out a writing not according to agreement in any sense or form, which I would not accept on any terms. Then I told him I would make out another deed which I thought would cover the ground. I did so, showed it to him, she found no fault with that either, and I went with it down to his house to have it fixed up & signed. He was not there. The consequence was we did nothing. In the first deed my wife relinquished her dower before Squire Prentis, and after some time Mr Atkinson spoke about having the papers signed. I told him I wished to do so, as I would like to have the balance of first payment of $500 ⁰⁰/₁₀₀. We set the time, on Friday evening to meet here in Town Saturday after dinner, but we were both to go to

the mill, stay until Saturday noon & come to Town together. I went to the mill, but he did not according to agreement, I worked until noon, then went home. I inquired of my people if they had seen Mr Atkinson & the reply was, they had not. Then I expected he was thinking about his wife being sick & that was probably the reason he did not come, and I waited till about 4 O'clock for him, when he came from Town on his way home, & I said You did not act according to agreement, but do not recollect his reply. Then we set another time to come to Town which was to be a Saturday afternoon. I came at the appointed time, he did not come until between 3 & 4 O'clock & I was waiting for him all the time. Then it was too late to do any business, so it was given up that day. Then the next thing I knew, Mr Atkinson said he was going to step out of the Concern without any cause whatever. I ~~told~~ asked him what cause he had for doing so & he gave me no cause whatever, but he was going to leave. I told him I was very sorry indeed as I was alone and wanted some one to help me along. I tried to persuade him that he had better stay as I thought we would do well. He would not on any consideration. Then he spoke about taking it off his hands, and wanted me to pay him back what money he had paid me for land & what he had put into the Concern, and at last after talking I told him I told him if he would advance me enough money to make up $1000 which we both were to put into the Concern, I would give him a Deed of Trust on the whole property except the stock, the money to be paid in one & two years, he agreed to do it. I went & had the Deed of Trust made out according to agreement, & when I presented it to him he would do nothing as he agreed, but wanted me to secure him on the money that he had paid in town on the land & also what he had paid for the farm. I then

told him I would not do so on any consideration, if he would do nothing as he agreed & would fall back on our original agreement. Several times afterwards he spoke to me about it & told him I was ready to carry out our original agreement at any time. Some time after this he talked to me about going into the Banel business, & then offered, if he would advance me $300 & I would secure this & the amount he claimed to have advanced on the first agreement & take the whole thing on my own shoulders. He would do nothing however & there was no settlement between us.

When our first contract we went to work to repair & move the mill, which we did & put it up, took down the houses moved them & put them up again where they were then. ~~although~~ We put on men to cut mill logs & gum limbs. Mr Atkinson paid the most part for doing that work, out of money that I considered belonged to me, in payment for my land, mill & stock, and part of the logs we sawed. The gum limbs are there now & also most of the logs and are mostly spoiled for the reason that he did not do as he agreed in fencing over the money so that I could manufacture the same, & most of the lumber we did manufacture is at the mill now & that sold has not been paid for. Some of the logs in a damaged state, I have since sawed, spoiled by laying through the summer & being badly worm eaten, all the loss, I consider, was caused by his failure to fulfill his agreement.

Ques 3 Examine Exhibit "A" & say whether that is the paper referred to above as the Deed from yourself & wife to the Plaintiff.

Ans. Yes, that is the paper.

Ques 4 Were you and have you been ready to carry out the terms and provisions therein set forth?

William Mann,
Stationer,
Philadelphia.

Ans I was then & always have been ready to do just as our agreement called for.

Ques 5 The Plaintiff has stated that nearly all of the lumber manufactured remained on hand at the time of his withdrawal; has any part thereof been sold since & if not why not?

Ans A small part of it has been sold, the balance is there with the proceeds of that sold ~~for~~ I have been paying current expenses & the firm is credited with it.

Ques 6 What debts, if any, are now due & owing by the firm of Grant & Atkinson?

Ans Now that I know of, Except Mr Harrell's bill which has not been paid, he was talking to me about it a short time since & said it would be all right, as he and Mr Atkinson had an account together. I have paid the debt to Forbes & Bell, also that to Mr Jones, which I never agreed to do individually.

Ques 7 Were the debts due to Forbes & Bell & Mr Jones & paid while Mr Atkinson was in business with you or since his withdrawal?

Ans Part while he was with me & part since his withdrawal.

Ques 8 The Plaintiff has stated that You misappropriated certain money, belonging to the firm, have you ever used any money for your own private purposes, which should have been applied to the use of the firm?

Ans. No, not one dollar of his money have I applied to my own use whatever. The $150.00 paid me by him which he alleges I used for my private purposes, belonged to me, being a payment on my land, & I had a right to so use it, but I have paid out of that & other money of my own, something over $100.00 for the firm

Ques 9 If the Plaintiff had carried out the terms of the agree-

ment on his part which you were willing to do on yours, do you not believe, from your acquaintance with the lumber business, that the result would have been reasonably profitable & have you not sustained great loss, damage & inconvenience by the failure on his part so to do?

Ans- I think the business would have been profitable, and we were under a good way to make money at the time of his withdrawal, and also by his withdrawing it has damaged me not less than $1000- for we had every thing in a fair way to do business & to make money when he left.

Cross-examined by Plaintiff's Counsel -

Ques 1 Please Explain the basis of the calculation by which you lay your damage at $1000.00 by reason of Mr Atkins's alleged failure to comply with his agreement & his withdrawal from the concern?

Ans- If he had paid me the money agreed upon, we could have been prepared to manufacture not less than 75000 ft per month and what logs we had cut already was something over 100000 ft, the cutting of which was all paid for, it has been 8 or 10 months since he withdrew, and that lumber is not cut & the logs are mostly spoiled in the woods, & the game limbs, for lack of capital to remove them are mostly spoiled, & I consider the calculation of loss a small one.

Ques 2 How long have the logs in the woods been cut, and do green limbs sell better green or seasoned?

Ans The logs have been cut some over a year & some about a year, those cut by me having been cut longest, seasoned limbs sell better than green -

Re-examined by C H Causey

Ques 1 Why were those hubs not sent to market when cut or if not sent protected from the weather?

Ans- The reason they were not sent to market I had a letter from the party for whom they were cut, stating that he was moving and building a new Dwelling-House & at that time had no room to store them. Since Mr Aikins's withdrawal, I did not have the capital to more them in full at liberty to do any thing with them, until something were done satisfactory to him & myself.

2

And further this deponent saith not.

Robinson Grant

Peleg B. Prentis Esq. the Commissioner Taking these depositions being by consent, duly sworn by John N. Wright a Notary Public duly commissioned and qualified, deposes and says as follows.

1st 2. What is your name, age occupation and where do you reside?

Ans Peleg B. Prentis, 59 yrs old. Clerk of Courts of Nansemond County and reside in said county, in the Town of Suffolk.

2nd 2 Examine exhibit "A." and state whether you ever saw the same before; also when and under what circumstances?

Ans I have examined the paper and find it to be the one in which I was called on to take the relinquishment of Mrs. Adaline Grant the wife of the Defendant at her husbands residence. and I thereupon took the relinquishment of Mrs Grant

~~3rd 2~~

3rd 2. why is it that your certificate does not appear

setting forth that fact, or the said paper?

Ans. Because I was waiting for the respective signatures of Robinson Grant and Frederick P. Atkinson to be made thereto, and thus combine in one certificate their acknowledgment together with the relinquishment of Mrs Grant.

4 & 2 Are you a Commissioner in Chancery of the Circuit Court duly authorized to take acknowledgments of deeds by parties and the relinquishments of married women?

Ans I am.

And further this deponent saith not

Peter B. Prentis

State of Virginia } Nansemond County, to wit:
of the Circuit Court

I, Peter B. Prentis, a Commissioner in Chancery for the County aforesaid, in the said State, do hereby certify that the foregoing depositions were duly taken, sworn to and subscribed before me, at the times and place mentioned therein.

Given under my hand this 2nd day of April 1879

Peter B. Prentis Commr in Chy

Frederick G. Atkinson
vs
Robinson Grant

1879 April 2 Filed

This Deed Made this First day of January
One Thousand eight hundred and seventy
eight between Robinson Grant and Adeline H.
his wife of Nansemond County State of Virginia
of the one part and of F. G. Atkinson of Nansemond
County State of Virginia of the other part, Witnesseth
that the said parties of the first part doin consideration
of the sum of twenty five hundred dollars. grant
with General warranty unto the said F. G. Atkin-
-son and to his heirs and assigns forever the
following real estate to wit One undivided half
of a tract of Swamp land in Nansemond County
State of Virginia being a part of a tract deeded
to me by Elisha Norfleet and duly recorded
December 26 1865 and containing six hundred
and fifty acres more or less and bounded as
follows, Commencing at a corner between the
land sold to Jesse Turner and land owned by
James Causey — thence running Southerly by the
said Causey's land until it strikes the Dismal
Swamp Company land — thence Easterly by
the Dismal Swamp Company land to the canal
— thence Northerly by the Dismal Swamp Company
land to a point of land agreed to sell Louis
Reddick — as grave away with the heirs of land
sold Albert Banks — Fanny Eley — Eli Winslow
John Bean — Jesse Turner and others and
running same from, and parallel with the big
ditch — thence running Southerly and joining
the two lines, first sold Louis Reddick — Albert
Banks — Fanny Eley — Eli Winslow John Bean
Daniel Bell — Jesse Turner and others to the
Southern corner of Jesse Turner's land — thence

Westerly by the said Farmer's land to the place of beginning And also one undivided half of a piece of land lying on the West side of the big ditch, being a part of the same tract deeded to me by Elisha Harpleet and bounded as follows

Commencing at the forked Beech tree and running Easterly by a road to the Big Ditch — thence Southerly by the Ditch to land of James Lowry — thence Westerly by the said James Lowry's land to the forked Beech and the place of beginning —

Also one undivided half of a Steam saw mill together with all the saws, Shafting, Planes, Belting, one yoke of oxen — one mule — Carlag wheels One Cart — and all of the Boy a Truck wheels — Also all of the buildings except the little house I have agreed to sell Lewis Reddick together with all the Blacksmith tools — Also one half of the Hoop called the Odell Attinson together with all of his tackle and apparel — the said Attinson is also to have one undivided half of all the timber that is reserved on land that is sold that being a part of the land deeded to me by Elisha Harpleet

And whereas there is remaining unpaid of the purchase money the sum of two thousand dollars payable as follows — One thousand dollars in one twelve months after this date with interest from date — and the further sum of one thousand dollars in two years after this date with interest from date I reserve a lien is hereby retained by the said Grantor on all the said property to secure the said unpaid purchase money which consists of two notes of one thousand dollars each — One payable in one year from date and the other in two years from date

Witness the following signatures and seals

Adeline H. [illegible]

[illegible]

(ä)

Fred G Atkinson

Vs

Robinson Grant

It appearing that there has been no order or proceeding for five years in this cause it is ordered that it be stricken from the docket with leave to reinstate within one year from this date

Fred G. Atkinson

vs

Robinson Grant

Dismissed under
the 5 Years Rule

April 13th 1894

To be entered

C M H

Entered in Chancery
Order Book
No. 2. Page 560

In the Circuit Court of Nansemond County.

Frederick G. Atkinson - - - - Plaintiff

Against & In Chancery

Robinson Grant, ... Defendant.

The answer of Robinson Grant to the Bill of complaint filed against him by the above named Plaintiff in the Circuit Court of Nansemond County,

The defendant in this cause now and at all times hereafter saving and reserving to himself all benefit and advantage of exceptions which can or may be had or taken to the many errors uncertainties and other imperfections in the said Bill of the said complainant contained, for answer thereto, or unto so much and such part thereof as your defendant is advised is, or are material or necessary for him to make answer unto, answering saith,

1st: - It is true that sometime in the month of January, 1878, this defendant did bargain and agree to and with the said Plaintiff that he would sell and convey unto the said Plaintiff an undivided one half interest in a large body of timbered swamp land, owned by the said Defendant and also a half interest in a certain steam saw

mill and fixtures and machinery, together with a like interest in the teams, harness, camp logs wagons &c. used in and about said saw-mill and a like interest in certain timber trees reserved on several small tracts of land theretofore sold by this Defendant to various parties for the very reasonable, nay low price, of Two Thousand Dollars, of which sum $500. were to be paid in cash and the remainder in two equal annual payments of $750. each; it is likewise true that this Defendant did agree that he would enter into a copartnership with the said Plaintiff to carry on a general lumber business and that the said Plaintiff was to contribute $500. in cash as part of the capital to carry on the said lumber business and your defendant was to contribute a like sum of $500. or if necessary, thus making a cash capital of $1000. (this sum or so much thereof as was necessary to carry on the business was to be contributed equally by each of the parties hereto.)

2.— It is also true that this Defendant was at the same time the owner of a large sloop, newly built, well found in sails, rigging and tackle, anchors, cables &c.

and which had lately cost a very large sum of money, but which the said Defendant agreed to value at $1000.00 and for which the said Pltff. agreed to pay to the Deft. the sum of $300.00 for a half interest therein. thus making the sum of $2500.00 which the said Pltff. was to pay unto this Deft. to make him the said Pltff. a full half owner of the tract of land aforesaid together with a half interest in the Mill and machinery &c and the Sloop aforesaid. and the sum of $2500. was wholly and entirely to be paid as the consideration for the above mentioned property, and in addition the said Pltff. was to contribute in cash as part and parcel of the working capital of the concern. the sum of $300.00 or such part thereof as might be necessary and this Deft. was to put in a like sum

Your Deft. utterly denies that the said Pltff. has ever paid to him the first instalment of $300.00 which was to have been paid in cash as part of the purchase price of the property herein mentioned. and alleges that the said Pltff. has never yet contributed any thing like the sum of $300.00 to the capital of the concern, but your Deft. believes that he, the Pltff., has paid, perhaps, $200. or a few dollars more, which however the books

will show, Your Deft declares that all the money he has received from the said Pltff on account of the purchase price of the above mentioned property will not amount to more than $200.00

Your Deft. further says that in strict compliance with the terms of the contract agreed on between the parties hereto, the Deft. prepared a Deed in the usual form conveying with general warranty unto the said Pltff. one undivided half of the said property real and personal heretofore mentioned, which was signed by your Deft.'s wife and acknowledged by her before, and her relinquishment taken in due form by, Peter B. Prentis Esq, a Commissioner in Chancery for the Circuit Court of this County, duly qualified and authorized under the statute to take and certify the same, and your Deft. says that the said Deed was left at his place of abode he being at the time absent, and on his return showed the Deed to the said Pltff and told him that he was then ready to sign and acknowledge the same and thus complete the contract of sale on his part. The Pltff. took the deed as your Deft. supposed for examination, and shortly after so doing, the Pltff. proposed

certain alterations in the terms of payment to which the Deft assented so far as to make the payments for the property payable out of the profits arising from the business and agreed to receive one half of the net proceeds every Six months until the entire debt was discharged, principal and interest, The Deed however remains unexecuted and incomplete for the reason that the Plff. has wholly failed to return it to your Deft. and still fails so to do. and utterly refuses to carry out and comply with the terms of the agreement had and made by and between the parties, to the great loss, damage and inconvenience of your Deft. who then was, has since ever been and now is, ready, willing and desirous to comply with and carry out the plans actually agreed on.

Your Deft. further says that on the payment to him by the said Plff. of the sum of $500.00 including the sum of $200. already paid and the execution and delivery to him of the proper bonds for the deferred payments, he will be ready to enter into and sign and seal written articles of agreement drawn according to law setting forth the nature of the business to be carried on, the manner in which it shall be conducted and

the amount of capital each shall contribute
Your Deft. denies that the Pltff. has ever had
the least reason to infer that the Deft did
not intend to comply with the terms of
the [redacted] agreement; and your Deft
never at any time consented or agreed
that the Pltff. might withdraw from the
co-partnership, nor does he now exone-
rate and discharge him from the specific
performance of his promise to pur-
chase the said property nor to dissolve
his connexion with the business. ,
From the action of the said Pltff. your Deft.
is forced to the conclusion that the said
Pltff. being of a [redacted] fickle, wavering
and unstable mind merely seeks to
charge him, the said Pltff. with failing
to comply with the terms of this agreement
in order to enable him, the said Pltff. to
withdraw himself from the business
and seek to recover the pittance paid on
account of the purchase price of the said
property. Your Deft. says in conclusion that
he has been at much loss and sustained
great damage by reason of the conduct
of said Pltff. and at least 50,000 feet of
logs were cut to be manufactured into
lumber and have been lost by reason

of the inability of the Deft to carry on his operations because of the failure of the Plff to comply with his agreement and fulfil his promises.

And now having fully answered the Complainants bill your respondent prays hence to be dismissed with his reasonable costs and charges in this behalf expended and he will ever pray &c.

C. H. Beaver Jr. d.

State of Virginia,
Henrico County } To wit:

I, Nathl. G. Norfleet, a Justice of the Peace for the county aforesaid in the State of Virginia do certify that Robinson Grant whose answer is above written, this day personally appeared before me and made oath that the statements contained in the said answer are true to the best of his knowledge and belief

Given under my hand this 9th day of December 1878.

Nathl. G. Norfleet J. P.

C. H. Camp & al

Robinson Grant

Def's Answer to Bill

T. G. Ahrnsen

Filed Dec 9th

Depositions Cancelled 26th

January 1879

1879. Decr. 9th Filed.

Clk.

To the Hon Geo Blow, Judge of the Circuit Court of Nansemond County -

Complaining, showeth to your Hono. Your Orator, Fred G. Atkinson, that some time in the Spring of the year 1878, Your Orator agreed with Robinson Grant, of the County of Nansemond that he would purchase one half interest in a certain tract of land situated in Nansemond County & owned by the said Grant, together with one half interest in a saw-mill and fixtures, teams and certain lumber reserved by said Grant on some tracts of land which he had sold, at the price of Two Thousand Dollars ($2000.00), ~~and with the distinct understanding that~~ Five hundred Dollars of the said sum to be paid in Cash, & the remainder in three equal annual payments of Five hundred Dollars each; but with the distinct understanding that the said Grant & Your Orator were to enter into a Copartnership for the purpose of conducting a general lumber business, and that the Cash payment of Five hundred Dollars made by Your Orator to the said Grant was to be contributed to the working capital of the Copartnership and Your Orator was to add a like sum in cash, the two making One thousand Dollars.

And Your Orator further states that the said Grant owned in addition a large sloop which he was

anxious to sell to the said Copartnership, at the price of $1000 — to be used in finishing the lumber manufactured by them, to which proposition Your Orator consented.

And Your Orator further sheweth that after the terms of the said sale and Copartnership had been agreed upon orally, he did make payments to the said Grant amounting to Five Hundred and Eighty Dollars, and entered upon active work in the manufacture of lumber under the firm name of Grant & Atkinson, with him, intending in good faith to execute the terms of their agreement, and constantly urging the said Grant to sign written articles setting forth the terms of their agreement, which he persistently avoided. That the said Grant brought & delivered to Your Orator what purported to be a deed for the one half interest in the property purchased as aforesaid, which deed was signed only by said Grant's wife & not by himself, & being irregular in execution as well as execution, Your Orator declined to accept the same, and still insisted that they should legally execute to him a valid deed or they both should sign the written terms of their Copartnership. Your Orator finding that said Grant was applying the money which he was paying him to other uses than those of the Copartnership, remonstrated with him and demanded a strict compliance with the terms of their Copartnership, to which rea-

reasonable & just demand the said Grant paid no regard whereupon Your Orator believing that the said Grant did not intend to comply with the terms of the agreement withdrew from the Copartnership by consent of the said Grant and demanded that he should refund to Your Orator the amount of Four Hundred & Eighty Dollars advanced by him as agreed on. But the said Grant claims that Your Orator has forfeited the amount so advanced & refuses to refund the same, or to deliver to Your Orator any portion of the timber cut by them during the Existence of the said Copartnership.

X

Never agreed to sum and observe

In as much therefore as Your Orator is without remedy in the premises save by the intervention of a Court of Equity where such matters are properly cognizable & relievable Your Orator prays that the said Robinson Grant may be made a party defendant to this bill & required to answer the same on his corporal oath, as fully & particularly as if the statements herein made were repeated & the Defendant thereto specially interrogated. That one of the Commissioners of this Court may take an account of the transactions of the said Copartnership & of the amounts paid by the said Grant & Your Orator for the purpose of carrying on the same & report the same to Court, and that an account may also be taken of what may be due to Your Orator, on account of the sum of money advanced by him to the said Grant & that

~~he~~
he may be decreed to pay the same to your Orator; that the said Robertson Grant may be restrained and enjoined from making sale of the ~~lumber~~ lumber manufactured by them as co-partners, and that such other & further relief may be granted to your Orator as his case may require & to Equity seem meet, & your Orator will ever pray &c.

J. G. Atkinson

By Wright & Rawles. attys.

Nansemond County to wit:

I, Jno H. Wright a Notary Public for the County aforesaid in the State of Virginia do certify that J. G. Atkinson, whose Bill of Complaint is above written, this day personally appeared before me in my said County & made oath that the statements contained in the said Bill, so far as made of his own knowledge, are true & so far as made upon knowledge & information derived from others, he believes them to be true.

Given under my hand this 26th day of August 1878.

Jno H. Wright - N.P.

Wright & Rands. f. 9

Fred: G. Atkinson

vs § Bill

Robinson Grant

Fred: G. Atkinson

vs Chy: Rides

Robinson Grant.

1878. Aug: 31st Subpn in Chy: issued to Septr: Rules, 1878

" Septr. 2nd Bill filed — Conditional decree v. deft —

" Octo: 7th: Conditional Decree confirmed & cause set for hearing on mo: of Pltff's Counsel.

" " 15th: Continued

" Decr: 9th: Answer filed

1879. Apl: 2nd: Depositions filed

" " 12th: Order for Cause to be heard on Wednesday

" Octo 16th: Continued (1880. Apl: 14) Continued

Chy: Notes