

said cause, and omitting to adduce proof of it, or, in the absence of other proof, to file a bill of discovery as aforesaid, cannot, under complainant's said written agreement, nor will he be permitted by a court of equity to charge complainant with the effects of any judgment recovered against him in consequence of such omission, or otherwise, even had he been damnified thereby; and that the said conduct of the said Lee in the premises is a fraud upon complainant's rights, against the effects of which a court of equity will grant relief.

That it was a part of the agreement between Robinson and Lee, that after the judgment was rendered against the latter, and satisfaction thereof entered, (all of which was done for the sole purpose of forming untrue record testimony against complainant,) he, Lee, should sue complainant on his said written agreement, and the proceeds of the suit go to the benefit of Robinson, and that to sustain the same at the time the said untrue record evidence should be adduced by Lee, to show he had suffered damage within the meaning of complainant's said agreement. That in pursuance of this understanding and agreement, Lee, on the 4th of April, 1835, commenced suit against complainant in said County Court, on said written agreement, setting out in his declaration as a breach thereof the recovery of the judgment against him by Robinson, and most untruly averring that he had paid to the latter the sum of money for which the same was rendered. That this cause so commenced was entered on the docket for the use of Charles F. Mayer, the counsel for Robinson, and came on for trial at the October term, 1837, of said County Court, when Lee adduced as evidence the said written agreement, proved the sum for which the one-third of said crop of tobacco sold, and produced the record of the judgment against him in favor of Robinson, with the entry of satisfaction thereof as the only evidence to show his right of action, and the extent to which he was entitled to recover, and a verdict and judgment was thereupon rendered against complainant for the sum of \$292 09, with interest from the 24th of October, 1837, and costs, in favor of Lee for the use of said Mayer.