

12327

No. _____

Supreme Court of Illinois

Pomeroy, et al

vs.

Roberts

71641  7

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James B. ...

George R. ...

Opinion.

1857

157

12327

1857



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State of Illinois
County of Cook } S.S.

Now before the Honorable John W. Wilson Judge of the Cook County Court, of Common Pleas within and for the County of Cook and State of Illinois at a regular term of the Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County & State on the second Monday being the eighth day of September in the year of our Lord One thousand eight Hundred and fifty six and of the Independence of the United States the Eighty first.

Present the Hon John W. Wilson Judge
Daniel M. Shoy Prosecuting Attorney
James S. Beach Coroner and
acting Sheriff of Cook County
Walter Kimball Clerk
Attest

2 Be it remembered that heretofore to wit
on the twenty third day of January in the
year of our Lord one thousand Eight hundred
and fifty six, came George R. Roberts Plaintiff
in this cause by Shumway Waite & Towne
his attorneys and filed in the office of the
Clerk of the Cook County Court of Com-
mon Pleas his Decree for a writ of Sum-
mons against Samuel B. Jomeroys and
Eleazer S. Jomeroys Defendants which
said Decree is in the words and figures as
follows to wit:

George R. Roberts	}	Com Pleas
Samuel B. Jomeroys		
Eleazer S. Jomeroys		
		Dam \$1000

Issue summons in
this cause to Sheriff Cook County trespass
on the case on promises Damages one thou-
sand Dollars -

Shumway Waite & Towne
Plffs attys

And thereupon on the same day
and year last aforesaid there issued out of the

Office of the clerk of said Court the People
 writ of summons, which said summons
 and the endorsements thereon made are in
 the words and figures as follows to wit-

State of Illinois
 County of Cook } vs The People of the State of Illinois

To the sheriff of said County - Greeting

We command you that you summon
 Samuel B. Someroy & Cleazar Someroy if
 they shall be found in your county perso-
 rally to be and appear before the Cook
 County Court of Common Pleas of said
 County on the first day of the next term
 thereof to be holden at the Court House
 in the City of Chicago in said County
 on the first Monday of February next to answer
 unto George A. Roberts in a plea of Trespass
 on the case on promises to the damage of the
 said Plaintiff as he says in the sum of One
 thousand Dollars.

And have you then and there this
 writ with an endorsement thereon in
 what manner you shall have executed the
 same -

Witness Walter Kimball Clerk

L. S.

of our said Court and the
Seal thereof at the City of Chic-
ago in said County this 23rd day
of January A. D. 1856

Walter Kimball Clerk

Endorsement thereon made

Served by reading to the within
named Samuel B. Someroy and Cleazar
S. Someroy this ^{the} 23rd day of January 1856-

James Andrew Sheriff
By John M. Hart Deputy

And afterwards to wit: on the 25th
day of January A. D. 1856, came the
said Plaintiff by his said attorneys and
filed in the office of the Clerk of the said
Court his Declaration and copy of Account
which said Declaration & Account are in
the words and figures as follows to wit:

State of Illinois
County of Cook } ss.

In the Cook County
Court of Common Pleas

Of the term of February in the year of our Lord one thousand eight hundred and fifty six. George R. Roberts Plaintiff in this suit by Shumway Waite & Torne his Attorney complain of Samuel B. Pomeroy and Eleazar S. Pomeroy defendant in this suit to answer the plaintiff of a plea of trespass on the case upon promises

And for that whereas the said defendants, partners in trade under the name and style of S. B. Pomeroy & Co. heretofore to wit on the first day of January in the year of our Lord one thousand eight hundred and fifty six at the County of York aforesaid were indebted to the said plaintiff in the sum of One thousand dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendants, and at the special instance and request of the said defendants -

And also in the like sum for other money by the said plaintiff before that time paid and expended for the said defendant and at the like special instance and request of the said defendants -

And also in the like sum for other money by the said defendant before that time had and received to and for the use of said plaintiff - And also in the like sum for

money found to be due from the said defendants to the said plaintiff upon an account then and there stated between them: and also in the like sum for goods wares lumber and merchandise before that time sold and delivered by said plaintiff to said defendant at the like special instance and request: and also in the like sum for the labor care and dilligence of said plaintiff before that time done and performed by said plaintiff for said defendants and at the like instance and request of said defendants: and being so indebted said defendant in consideration thereof then and there promised to pay said plaintiff said last mentioned sums of money when thereunto afterwards requested.

And also for that whereas heretofore to wit: on the first day of June in the year of our Lord Eighteen Hundred and fifty five, to wit: at Cook County aforesaid the defendants then and there being partners in trade under the name and style of C. S. Parmlee were indebted to the plaintiff in the sum of one thousand Dollars for the price and value of certain other goods then and there bargained and sold by the plaintiff to the defendant at his request. And in the same sum for goods

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then and there sold and delivered by the plaintiff to the defendant at his request -

And in the same sum for work then and there done and materials for the same provided by the plaintiff for the defendant at their request -

And the defendants afterwards to wit on the day & year and at the place last aforesaid in consideration of the premises promised to pay the said several sums of money in this Count mentioned on request -

And also for that whereas heretofore to wit on the first day of June in the year of our Lord Eighteen Hundred and fifty five. to wit at Cook County aforesaid the defendant Samuel A. Pomroy and Eleazar Pomroy were indebted to the plaintiff in the sum of One thousand Dollars for the price and value of certain other goods and chattels then and there bargained and sold by the plaintiff to the defendant at their request -

And in the same sum for certain other goods & chattels then and there sold and delivered by the plaintiff to the defendants at their request -

And in the same sum for work then and there done and materials for the same provided by the plaintiff for the.

Copy of account declared on
J. B. Pomroy }
E. B. Pomroy }

1855	To	George R. Roberts	Dr.
April 21	For 10881 ft Cows Boards	@ 15 1/2	168 66
" "	" 1587 " "	Drip Siding 17	116 57
" "	" 1511 " "	Cull " 14	21 15
" "	" "	Carting	9 62
" "	" "	Loading Cars	3 00
May 5	" 4200 ft Cull Boards	10	42 00
" "	" 1219 " 12 + 16 ft Scantling	16	19 50
" "	" 636 " 18 " "	17	10 81
" "	" "	Carting	2 25
" "	" "	Loading Car	1 50
			\$ 395 06
Goods, Lumber &c			1000 00
Money lent			1000 00
" had & received			1000 00
Work & Labor			1000 00
Money paid			1000 00

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defendants at their request, and the defendants afterwards to wit: on the day & year aforesaid, place last aforesaid in consideration of the premises respectively promised to pay the plaintiff the said several sums of money in this declaration mentioned on request: But the defendants although often requested so to do has not paid said several sums of money in this declaration or any part thereof to the damage of the plaintiff of one thousand dollars and therefore he brings suit &c

Shumway Waite & Son
Plaintiffs Attorneys for Plaintiff

And afterwards to wit: on the fourth day of February in the year of our Lord one thousand eight hundred and fifty six came the defendants by Moyn & Miller their attorneys and filed in the office of the clerk of Cook County Court of Common Pleas their affidavit of Merits, which said affidavit of Merits is in the words and figures as follows to wit:

Samuel B. Pomeroy &	} Cook County Court of Common Pleas
Eliaser S. Pomeroy	
ads	
George R. Roberts	

Of the February Term A.D. 1856

Samuel B. Pomeroy being duly sworn dep-
oses and says that he is one of the defendants
in the above entitled cause and that the
said defendants have a good defence to
the action upon the merits as he is informed
& verily believes.

Subscribed & Sworn to S. B. Pomeroy
before me this 4th day of
February A.D. 1856
Walter Kimball clerk

And afterwards to wit: on the fifth
day of February in the year last aforesaid, came
the defendants by their said attorneys and
filed in the office of the clerk of said Court
their pleas which said pleas are in the words
and figures as follows to wit

Samuel B. Pomeroy &
Eliazer S. Pomeroy } Brook County Court of com-
ads } mon Pleas
George R. Roberts } Of the February Term A.D. 1856

And the said Defendants by
Moyn & Miller their attorneys, come and defe-
nd the wrong and injury when & say
that they did not undertake or promise in

manner and form as the said Plaintiff hath
above thereof complained against them - and
of this they put themselves upon the Country &c.

Moyn & Miller
Atty for Defendants

And for a further plea as to the
said second count in said Plaintiffs declar-
ation, the said Defendants say Actio. non, be-
cause they say, that at the time when &c they
were not partners in trade under the name
and style of C. S. Gamble as in said Count
is alleged; nor did they undertake or pro-
mise in manner and form as the said Plain-
tiff hath in said second count declared
against them and of this they put themselves
upon the Country &c

And the Plffs doth the like

Moyn & Miller
Plffs Atty

Samuel B. Pomroy &
Eleazer S. Pomroy
ads
George R. Roberts

Samuel B. Pomroy being
duly sworn deposes and says that he is
one of the Defendants in the above entitled

cases and that the facts set forth in the Pleas last above mentioned are true -

Subscribed & Sworn to before
me this 5. day of February 1856 } Saml. B. Pomeroy
W Kimball CLK }

And afterwards to wit on the 15th day of September in the year last aforesaid came the Plaintiff by his said attorneys and filed in the Office of the Clerk of the Cook County Court of Common Pleas, his Demurrer to said Plea which said Demurrer is in the words and figures as follows to wit:

George R. Roberts

vs
Samuel B. Pomeroy et al }

And now comes the said Plaintiff and to said second Plea of the defendants above pleaded says that said Plea and the matters and things therein contained in manner & form as pleaded is not sufficient in law to bar the plaintiff from his said action and that he is not bound by law to answer the same & that he is ready to verify - Wherefore he prays Judgment &c And he assigns for special cause

of Demurrer.

- 1st Said Plea is bad for duplicity
- 2^d It should end with a verification.
- 3^d It is ~~not~~ otherwise bad.

Shumway Waitt & Towne
Plaintiffs Attys

And thereafter to wit: on the fifteenth day of September in the year of our Lord one thousand Eight Hundred and fifty six: the following proceedings were had in the Cook County Court of Common Pleas: and entered of Record to wit:

George R. Roberts

v

Samuel B. Fomeroy et al

Sept

This day come the said parties by their said Attorneys and the Court after hearing the argument of counsel on the said plaintiffs demurrer to said defendants second plea herein being now fully advised in the premises sustains said demurrer.

And afterwards to wit: on the twentieth day of September in the year last aforesaid the following further proceeding were

Had. in said cause and entered of Record to wit:

George R. Roberts	}	Mpt.
v		
Samuel B. Pomeroy & Eliasis S. Pomeroy		

This day comes the said plaintiff by Shumway Wate & Tame his attorneys, and the said Defendants by Moynet & McGillier their attorneys also come and issue being joined herein it is ordered that a Jury come and thereupon come a Jury of good and lawful men to wit: James Campbell & C. Brown, C. C. Kennedy, S. J. Francis Hugh Smith, M. Everett, John Cairns, Seth Taylor, C. M. Warner, Wm. Higgins, S. J. Putnam & Wm. J. Halton, who being duly elected tried & sworn well and ^{truly} to try the issue joined as aforesaid after hearing the testimony adduced argument of counsel and instructions of the Court retire to consider of their verdict and afterwards come into Court & say in the Jury find the issue for the plaintiff and vest upon his damages to the sum of three Hundred and ninety five dollars and six cents - And thereupon the said defendants enter their motion herein for a new trial in this cause -

And afterwards to wit: on the twenty first day of October, in the year of our Lord one thousand Eight Hundred and fifty six. came the said Defendants, by Moyne Miller their attorneys and file in the office of the clerk of the Cook County Court of Common Pleas their motion for a new Trial, which said motion is in the words and figures as follows to wit:

Samuel B. Pomeroy &	} Cook County Court, of Common Pleas
Cleazer L. Pomeroy	
advs	
George R. Roberts	

And now come the said Defendants by Moyne Miller & Lewis their attorneys and move for a new trial of said cause upon the following grounds to wit:

1st The Court erred in giving the first of Plaintiffs instructions to the Jury -

2^d The Court erred in giving the second of Plaintiffs instructions to the Jury -

3^d The Court erred in giving the third instruction asked for by Plaintiffs counsel to the Jury -

4th The Court erred in giving the fourth

Instruction asked for by Plaintiffs counsel to the Jury.

3rd The Court erred in giving the fifth Instruction asked for by Plaintiffs counsel to the Jury.

6th The Verdict of the Jury was against the Law and Evidence.

Wayne Miller & Son's
Defts Attys

And afterwards to wit on the thirtieth day of October in the year last aforesaid the following further proceedings were had in said cause and entered of Record to wit:

George R. Roberts

Samuel B. Pomroy } Apt
Eliazer S. Pomroy }

This day again come the said parties by their said attorneys and the Court after hearing the argument of counsel on said defendants motion for a new trial herein being now fully advised in the premises overrules said motion.

Therefore it is considered that the said Plaintiff do have and recover of the said defendants

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his damages of three Hundred and ninety five dollars and six cents in firm awarded by the Jury assessed and also his costs and charges by him about his suit on this behalf expended and have execution therefor.

And thereupon the said defendants now enter their Exceptions herein to the opinion of the Court, and prays an appeal to the Supreme Court which is allowed upon filing their appeal bond herein in the sum of Six Hundred Dollars with security to be approved by the clerk of this court within twenty days from this day, and forty days time from this day is given said defendants to prepare & file their Bill of Exceptions in this case.

And afterwards to wit: on the seven-teenth day of November in the year last aforesaid come the said defendants by their said Attorneys, and file in the office of the Clerk of said Court, their appeal Bond which said appeal Bond is in the words and figures as follows to wit:

Know all men by these presents that we Samuel B. Jannoy Eliezer S. Jannoy & John Langlais are held and firmly -

Bound unto George R. Roberts in the personal
sum of Six Hundred dollars for the paymen-
ent of which sum well and truly to be made
to the said George R. Roberts his Executors
administrators and assigns. we do hereby
bind ourselves our heirs Executors and admin-
istrators firmly by these Presents.

Sealed with our seals and dated this
fifteenth day of November A D. 1856.

Whereas the above named George R. Roberts
at the September Term of the Cook County
Court of Common Pleas. recovered a judg-
ment against the above named Samuel B. Pomeroy
and Eliazar S. Pomeroy for the sum of three
Hundred ninety five Dollars six ^{and} Cents dam-
ages and — — — — — costs from
^{which judgment} an appeal to the Supreme Court
of the ~~United~~ State of Illinois was duly
sprayed by the said Samuel B. & Eliazar S. Pom-
eroy.

Now therefore the condition of the above
obligation is such that if the above bounden
Samuel B. & Eliazar S. Pomeroy, shall duly
prosecute their said appeal and shall well
& truly pay the said judgment with all costs
interest & damages together with all the costs
in the supreme court attending the prose-
cution of such appeal in case the Judgment

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appealed from shall be affirmed, ^{then} this obligation
to be void otherwise to remain in full force
& virtue

Assured by me this 17 day of November A.D. 1856
Walter Kimball
Clerk, Cook Co. Ct. of Common Pleas.

Saml B. Pomroy
Eleazer S. Pomroy
John Langton's

seal
seal
seal

And afterwards to wit on the fourteenth day
of February in the year of our Lord one thousand
eight hundred and fifty seven the said Defendants
by their Attorneys aforesaid filed in the office of the
Clerk ^{of said Court} their Bill of Exceptions, which said Bill of
Exceptions is in the words and figures as follows,
to wit.

Cook County Court of Common Pleas.

George R. Roberts

vs
Samuel B. Pomroy &
Eleazer S. Pomroy

Be it remembered that on the
17th day of September A.D. 1856, at the September term
of said Court, the said cause came on for trial upon
the issues aforesaid, and a jury having been duly
called and sworn, the plaintiff called as a witness

A. S. Brayman, who being duly sworn testified
as follows: - I am in the employ of George R. Roberts,

the plaintiff, and was in his employ in 1855, the plaintiff delivered lumber to C. S. Parmelee in the Spring and Summer of 1855. I cannot state the amount except from this memorandum, I did make the memorandum at the time of the delivery.

The further examination of said witness was then suspended, and the plaintiff by his counsel here read in evidence the following depositions

The depositions of Cyrus G. Blood and William Hall of the County of Scott, and State of Iowa, witnesses of lawful age produced, sworn and examined on their respective Corporal oaths, on the nineteenth day of March in the year of our Lord One thousand eight hundred and fifty six at the Office of Whitaker & Grant in the City of Savenport in the County of Scott and State aforesaid, by one James Grant a Commissioner duly appointed by a *Verdunus* *Protostatum* or Commission issued out of the Office of the Clerk of the Cook County Court of Common Pleas of Cook County in the State of Illinois, bearing teste in the name of Walter Kimball Esq Clerk of the said Cook County Court of Common Pleas, with the seal of said Court affixed thereto, and to me directed as such Commissioner for the examination of the said Cyrus G. Blood and William Hall witnesses in a certain suit and matter in controversy now pending and undetermined in said

Cook County Court of Common Pleas, wherein Benjamin W. Thomas et al are plaintiffs and Samuel B. Pomerooy et al are defendants in behalf of the said Plaintiffs, as well upon the Cross interrogatories of the defendants as on the interrogatories of the plaintiffs which were attached to or enclosed with the said Commission, and upon none others:

The said Cyrus G. Blood and William Hall being first duly sworn by me ^{as witness} in the said Cause previous to the commencement of their examination, to testify the truth as well on the part of the plaintiffs as the defendants, in relation to the matter in controversy between the said plaintiffs and defendants so far as they should be interrogated, testified and deposed as follows,

Interrogatories propounded to the said William Hall a witness produced and sworn as aforesaid on the part of the said plaintiffs and his answers thereto, as follows.

Interrogatory first, State your residence and occupation, and are you acquainted with the defendants or either of them? Have you seen the defendants or either of them at any time, if so when, and where?

Answer to first Interrogatory. I reside in the City of Liverpool, Am an Attorney, and saw Eleason L. Pomerooy in this City at the Office of

22 Cyrus G. Blood Esq on the 15th day of August A.D. 1855. I am not personally acquainted with either of said defendants, but have seen said E. S. Pomerooy in this City and at Henry County, Ills.

Interrogatory Second. State whether or not you were present at a trial before any Justice of the Peace wherein the People of the State of Iowa were plaintiffs and Charles S. Parmelee was defendant, if so when and where was it: before what Justice of the Peace, and in what capacity were you present: and were the defendants or either of them a witness on said trial, if so which of them: on which side, and state whether they were sworn or not:.

Answer to second Interrogatory. I was present at the Office of Cyrus G. Blood Esq. a Justice of the Peace in & for the County of Scott & State of Iowa, on the 15th day of August A.D. 1855 in the Capacity of Clerk of the firm of Whitaker & Grant Attorneys, during a trial wherein the People of the State of Iowa were plaintiffs and Charles S. Parmelee was defendant, and took notes of the evidence, Eleazer E. Pomerooy was sworn and examined on the part of the State.

Interrogatory Third. If in answer to the last interrogatory you say the defendants or either of them testified in any suit, state whether

or not you heard them or him give this testimony if so state the same fully and at large, state fully and at large all his or their testimony.

Answer to third Interrogatory. - I heard said E. L. Pomroy give his testimony on said trial, and it was as follows " I reside in Chicago, Am a member of the firm of S. B. Pomroy & Co. in the business of forwarding & commission, I know Chas B. Parmelee, he has been in our employ since the Spring of 1853 buying grain &c. He went to Geneseo in December 1853 or in January 1854, he went there as an Agent of S. B. Pomroy & Co. to buy grain, He was to do business in our name, We furnished him during the Summer of 1854 with 4 Cargoes of lumber and some salt from time to time as he ordered, We did a business during the 1st year of from \$80,000, 00 to \$100,000, 00, Parmelee's statements were deferred from time to time, no account was rendered until he had been at Geneseo a year, We urged it strongly after he had been there six months. His excuses were a large amount of business &c, and we were satisfied. At the end of a year an account was made up showing a deficit of about \$3000. 00. He acknowledged that there was a deficit by his accounts of about \$3000. 00. Up to this time our confidence was the same as at first. After that we made and

Agreement with him to return to Genesee and give an account current monthly, and he promised that he would keep his accounts correctly. We employed Mr. Dreper as his book keeper in March 1855, from January 1855 to March 1855 our operations were more in pork than in grain. We sent him money at different times from \$12 to \$15,000.00 may be \$20,000.00. He rendered no account from January to March. The accounts were examined by my brother in July, don't know situation of accounts in July no farther than they showed a deficit on his part of about 2 or \$3,000.00, from January to July there was a further deficit of from 2 to \$3,000.00 - I went to Genesee a week ago last Monday, it was the first time I went to Genesee - The business was to be done in the name of C. G. Parmelee from the 1st of March 1855 - This arrangement was made more for a matter of convenience, and in order to keep correct accounts - It was done to simplify. - He agreed to act as our agent. - His salary was left for future consideration. - Parmelee was in Genesee when I came down. - I saw Parmelee and conversed with him. - He promised to continue and to assist Dreper in settling up accounts for Rawley was to go in with him. - The partnership with Rawley was made about the 15th of July - Parmelee's deficit from January to that

time was \$2,000.00, making altogether \$5,000.00 - He gave no explanation of his deficit; he told us that he could not account for it. - But thought he might reduce the amount when all was settled up. - I went with the Sheriff in pursuit of Parmelee; We arrested him in Towshuck Co in this State. - I asked him if he had any money with him, - he said he had only \$30. in his pocket and that was all. - I came to Geneseo on account of a letter I received from the book-keeper. - Patterson gave notes to Parmelee for Real Estate. - These notes were in our safe. - Patterson held a draft of Parmelee on us with which he offered to pay his notes. -

Patterson held Parmelee's bond for Real Estate and had given Parmelee his notes which were in Sheriff's possession in our safe. - I told Sheriff to give the \$250.00 note to Patterson and let him pay it, and also requested him to get Parmelee to endorse ^{the note} the note to us. - Parmelee refused to endorse ^{the note} to us. - I instructed Sheriff to give all the notes up to Parmelee. - These were notes where he had sold Real Estate and taken notes to himself. - When Parmelee left Chicago to go to Geneseo his means were limited. - He often told me the amount would not exceed \$500.00, He had no money that I know of. - He bought other Real Estate, the lot he built his house on, - We first knew he had bought it in the Summer of 1854. -

He was married in Geneseo, his family are in Geneseo. - The house and the lot is worth \$1800.00 - ^{it sold for \$1800.00} I first knew he had left Geneseo on Thursday morning. - I left Chicago, stopped at Geneseo, and followed him here. - After his arrest he gave no reason for his deficit. - He only said he could not live in Geneseo on account of his creditors.

I told him if he would go to Geneseo and settle up matters and turn over the Horses & Wagon we would not prosecute him. - I had means of knowing that he was handling a great amount of grain which was very profitable to us. - He never pretended that he had sold lumber or salt at a loss. - He is unable to account for some 80,000 feet of lumber which is included in the \$3000.00 deficit. - Patterson gave Parmelee 4 notes, I told Aresper to give up all the notes to Parmelee except the one of \$250.00

Crop Examination

After March 1855 Parmelee, although doing business in his own name, was our Agent. - He was our agent during all the time he was at Geneseo. - The deficit of 1854 was ascertained from our accounts and his books were always open to us. -

He came to Chicago, we compared accounts. - We kept a cash account, our Cash account and Parmelee's cash account corresponded. In settlement his account fails to account for \$3000.00 -

His accounts were not kept so as to show a balance of deficit of \$3000.00.- His accounts were not so kept as to show a balance of deficit of \$3000.00.- Could understand his accounts as far as they went.- Our account and Parmelee's account both show a deficit of \$3,000.00 at the end of the year.- We could have told every month how Parmelee's account stood, both by our books and Parmelee's.- Parmelee's books were always open to us.- After Jan'y to July 1855 his books were open to us always.- We both kept accounts.- His books ought to show the amount of grain he had bought.- He used to ship Car-loads of wheat at Geneseo to us.- We have no means of knowing that all the grain shipped by Parmelee at Geneseo reached Chicago.- We sent him during 1854 from \$80,000.00 to \$100,000.00.- I could not say how much grain he has sent.- I proposed to him if he would give up what money & property he had I would stop this prosecution, and if he would go back to Geneseo and make a satisfactory explanation.- A satisfactory explanation would have been that he left to come back & only went to settle business in Iowa.- We advised him to associate himself with Rawley and was to furnish him money to buy grain and charge us a commission.- Rawley was a man of means.- Up to Monday our confidence in Parmelee was unshaken.- All books of

Parmelee were turned over to Dreper for our benefit, in July. - At that time we ascertained the deficit of \$2000.00. - Our letter stated he was making preparations to leave on Thursday.

Dreper resumed.

Parmelee was first in our employ in Chicago as a grain buyer, We sent - to Geneseo in same capacity leaving his salary open to be fixed by profits of the business: Chicago books would show Amount advanced and Amount received, Our books showed a deficit of \$3000.00, from Parmelee's accounts he could not account for it. - He made no objections to our account. - We could not tell the precise amount, we knew from his letters what he was paying for grain, and averaged the market price for a week & gave him credit for it. - When he sent his grain, we received no account from him what he paid, every Monday he would write what he was paying for grain, and when we received a Car load of wheat we would credit him according to his letter. - The debts due and amounts in his hands we arrived at as near as we could" this testimony is taken from the notes I made at said trial.

Interrogatory Fourth. Do you know of

any other matter or thing of importance to the plaintiffs, if so state the same fully and at large.

Answer to Fourth Interrogatory. I know of nothing of importance to the plaintiffs.
J. M. Hall.

Interrogatories propounded to the said Cyrus G. Blood, a witness produced and sworn as aforesaid, on the part of the said Plaintiffs and his answers thereto as follows.

Interrogatory First,

Where do you reside, what is and what was your business in the fall & summer Eighteen hundred & fifty five, and what office if any did you hold at that time, are you acquainted with the defendants or either of them, if so which of them?

Answer to Interrogatory first,

I reside in Davenport, Scott County, State of Iowa, I am and was during the fall & summer of A.D. 1855 a Justice of the Peace in & for the Township of Davenport County of Scott & State of Iowa.

I have seen Eleason G. Pomroy.

Interrogatory Second.

If in answer to the last interrogatory you say you were a Justice of the

Place, for what County, Township & State were you a Justice of the Peace, and was there a trial of any kind before you in the year aforesaid, wherein the People of the State of Iowa were plaintiffs and Charles S. Parmelee was defendant, if so, did you keep a record of said case, where is it, and will you produce a copy of it, and how do you know it is a copy?

Answer to the Second Interrogatory.

I was a Justice of the Peace in & for the Township of Davenport & County of Scott & State of Iowa, and during the year A.D. 1855, about the 15th day of August 1855, there was a trial before me in which the State of Iowa was plaintiff and Charles S. Parmelee was defendant, I kept a record of said case, it is recorded in my docket, I hereto attach a transcript of the record of said trial marked exhibit "A." I know it is a copy of said record because I copied it from my docket.

Interrogatory third.

Do you know any other matter or thing of importance to the plaintiffs, if so state the same fully and at large.

Answer to Interrogatory third.

I don't know that I do.

C. G. Blood.

I James Grant of the County of Scott and State of Iowa, a Commissioner duly appointed to take the depositions of the said Cyrus G. Blood and William Hall witnesses whose names are respectively subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said Cyrus G. Blood and William Hall as witnesses in the suit between the said Benjamin W. Thomas et. al. plaintiffs and the said Samuel B. Pomeroy et. al. defendants, they were duly sworn by me as such Commissioner, to testify the truth in relation to the matters in controversy between the said Benjamin W. Thomas et. al. plaintiffs and the said Samuel B. Pomeroy et. al. defendants so far as they should be interrogated concerning the same; that the said deposition was taken at my office in the City of Davenport in the County of Scott and State of Iowa on the nineteenth day of March A.D. 1856; And that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down were read over to the said witnesses; And that thereupon the same were signed and sworn to respectively by the said deponents Cyrus G. Blood and William Hall before me, the oath being administered by me as such Commissioner

32 at the place and on the day and year last
aforesaid.

James Grant, Commissioner

State of Iowa

Exhibit "A"

Charles S. Parmelee }

Information on oath of E. B. Pomroy having been filed with me August 10th 1855 that the crime of taking the property of E. B. Pomroy & Co. with intent to steal the same had been committed and accusing Charles S. Parmelee thereof. A warrant was issued and given to Sheriff Leonard, who returned the same served on the 11th August 1855 by arresting the said Charles S. Parmelee &c. August 14th / 55 brought him before me August 15th 1855, at 9 o'clock A.M. set for examination. August 15th 1855 deft. appeared and after hearing the testimony and argument of counsel it is considered by me that there is probable cause to believe the defendant guilty of the offence charged and that he may be lawfully demanded by the Governor, it is therefore considered by me and I so order that the defendant give bail in the sum of six hundred dollars for his appearance before me at my Office in Havensport on the 29th day of August 1855 at 10 o'clock A.M. and abide my order in the premises, and in default of such bail that he be committed to prison & there remain until the said day and time above named.

C. G. Blood J.P.

Aug^d 29. N. Leonard Sheriff of Scott County made the following return to me. "I, Harvey Leonard Shff of Scott County State of Iowa, do hereby certify that I did deliver the within named Charles B. Parmele Aug^d 27th 1855 to J. B. Bulkley Esq the Agent named in the requisition of the Governor of this State"

State of Iowa }
Scott County }

J. C. G. Blood a Justice of the Peace in and for Navanport Township in said County do hereby certify that the within is a true copy of the proceedings had before me in the within case as the same now appears on my docket. Given under my hand March 18th 1856
C. G. Blood J. P.

And thereupon the plaintiff called as a witness
E. W. Patterson who being sworn testified as follows,

I am acquainted with the parties to this suit.
I have been acquainted with them four or five
years - I have known C. B. Parmelee four or five
years. - I was doing business in the Spring and
Summer of 1855 at Geneseo. - I was in the lumber
business. - My place of business was about twelve
rods from Parmelee's place of business. - Our lumber
yards are close together. -

Parmelee was doing a general Commission
business. - He bought grain principally - but he
bought most everything that came into the Mar-
ket for sale. - He bought Hides, Butter & Broom Corn
and Lumber and pork likely also, A considerable
pork - And he sold Water lime & Salt and lum-
ber. - I know about the time he failed. - previous
to that time I purchased lumber of him. - I bought
lumber at various times of him during the Spring
in small amounts. - I also sold him small lots
of lumber. - And finally I bought out all his
stock of lumber, lath & shingles. - I purchased his
entire stock some time in June, - It amounted to
two hundred and fifty or three hundred and fifty
dollars, I cannot now state which sum, I was to
pay for it one half down and the balance in
thirty or forty days, It was a matter of book account

I found it on the general Books of account in Parmelee's Office. - I don't know whose books they were of my own knowledge, they were the general books of the Office & kept by Mr Dreper. I saw the entry of the lumber in my account in the ledger. - When Mr Parmelee failed I was notified by Dreper that the books were in his hands to settle up, the books remained in the Office; - Mr Dreper kept the Key. - After Parmelee failed I went to one of the Depts and enquired of him about the state of my acc. he said he was busy at the time, that the matter was in Dreper's hands. - My general accounts was lumber that I bought of him and sold to him, the balance of the stock of lumber that I bought of him, I had been in the habit of letting Parmelee have currency at Geneseo, and taking sight drafts on Pomeroys and sending them to my creditors in Chicago. - He said he wanted it to buy grain with and that sometimes he was out of funds before packages came on, there was at the time he failed two drafts of one hundred dollars each that I had taken of him in this manner some two or three days previous which had been sent to Pomeroys & dishonored. I afterwards settled with Pomeroys at their Office in Chicago, - there was due from me to them for the lumber purchase, Eighty dollars and they paid the balance of the drafts One hundred and twenty dollars to me after deducting the \$80 dollars.

The lumber I purchased was of various kinds, I recognized some lumber and some Shingles, I recognized some lumber that I knew was from Moline and some Shingles from Thomas & Loyd of Chicago. I was present at Davenport when Eleazer S. Tomeroy was sworn and also at Geneseo when he was sworn, at Geneseo he stated that Parmelee had gone down there as agent of S. B. Tomeroy & Co. and that they had furnished him salt and lumber from time to time to sell, that he was their agent there & doing business for them, and allowed to do business there the buying grain & lumber in the name of C. B. Parmelee for the convenience of book entries, that Charles S. Parmelee was recognized as S. B. Tomeroy & Co for the convenience of book entries.

And being Cross examined by defendants Counsel he testified as follows.

I heard the defendant Eleazer S. Tomeroy testify at Davenport, his testimony at Davenport was substantially the same as at Geneseo, he testified at Geneseo in July 1855. - He was on the stand an hour, I was not there all the while he was testifying, I was there nearly an hour, he was testifying when I went in, and had just finished when I went out. I was out and in all the time he was testifying. - I believe I did not go out before he finished testifying, I am positive I did not, there were more than a hundred men present. - I am not sure that I heard all that he said while I was in. - I was not in when

he commenced testifying. - Parmelee did not do a lumber business after I bought him out. - I was to pay him the balance of the stock of lumber I bought of him in forty or fifty days. - Parmelee & Crosby were there and doing a lumber business together in the Spring of 1855. - And I sold a bill of lumber to Parmelee & Crosby, and made a charge to them. - they continued for a short time, they might have been there a month together.

Being re-examined by plaintiffs counsel he testified as follows.

I have no knowledge that Parmelee & Crosby was doing business together, they were together in April or May. - Parmelee had some lumber there when Crosby went in with him, remains of the last years business. - He had a little refuse on hand when I went there.

Being again cross-examined by defendants counsel, he testified as follows,

Parmelee and Crosby were then together figuring in the lumber business. - Mr Crosby came and bought a lot of lumber of me, and as they had talked of being in the lumber business together, I charged it to Parmelee & Crosby. Mr Crosby afterwards paid me for the charge. - Parmelee had lumber there after Crosby went out.

And thereupon the plaintiffs recall A. L. Brayman who further testified as follows,

I delivered 11353 feet of common boards worth \$15.⁵⁰ per thousand April 21, 1855. Also on the same day 1511 feet of siding, worth \$14. per thousand, this was put on the Cars here and sent to C. S. Parmelee at Geneseo, the carting and loading was \$3.50, three or four shillings per thousand. On the fifth of May I delivered 4200 feet of Cull boards worth \$10 per thousand, 1219 ft of Scantling worth \$16 per thousand & 8636 feet of Scantling worth \$17 per thousand the carting & loading upon the cars was three or four shillings per thousand, the lumber was marked C. S. Parmelee, Geneseo, that was the day the order was on the book.

Being Cross examined he said,

This is not all the lumber I delivered to Parmelee - I have heard the name of Parmelee & Crosby mentioned and I think we have had transactions with Parmelee & Crosby, I think we let them have lumber, but I think it was previous to this. - I think we let them have a bill of lumber April 7, 1855, this is the bill now shown to me.

And thereupon the plaintiffs called as a witness Mr Seymour who being duly sworn testified as follows -

I was in the employ of George R. Roberts in the Spring of 1855 I knew some drop siding which was sent by the plff. to C. S. Parmelee at Geneseo in the Spring of 1855, there was some 6000 feet, the price

40 was seventeen dollars per thousand.

And being Cross examined he testified as follows,
I was plaintiffs book keeper at the time the bill was entered on the book April 21. And there was another bill the 5th of May, I was book keeper until the 20th of August. I entered the bills from the salesmen's book. I entered the bill of the 5th of May on the day book. - The lumber was charged to Parmelee, he sent bills to him for payment at the time the lumber was shipped - he did not send the bills to the Pomeroys until after Parmelee failed, I don't think the bills were sent to Pomeroys while I was there.

And thereupon the plaintiffs called as a witness Charles S. Parmelee who being duly sworn testified as follows -

I was doing business in the Spring & summer of 1855 as Agent of S. B. Pomeroys & Co at Geneseo under my name of C. S. Parmelee. I was doing a produce and Commission business, buying produce and selling Salt and Lumber &c. - I commenced Jan'y 1. 1854 and commenced doing business for them somewhere from the 16th to the 20th of July 1855, up to the 1st of January 1855 the business was mostly done under the name of S. B. Pomeroys & Co. About the 21 of April I bought a bill of lumber of George R. Roberts. I purchased the lumber as Agent of S. B. Pomeroys & Co. the lumber was shipped from Chicago to Geneseo and sold on a/c of S. B. Pomeroys & Co

of Chicago, the proceeds of the lumber were paid out for produce which was sent to S. B. Pomerooy & Co. - I don't think either of the defendants were at Geneseo during the year 1855 until some time between the 16th & 20th of July of that year, when S. B. Pomerooy came out there. - I don't recollect that I purchased lumber for them during the year previous to 1855, I don't think I did. - In the Spring or Summer of the previous year I went with S. B. Pomerooy to some of the different lumber yards in Chicago to look at some lumber, and I think that S. B. Pomerooy then made a bargain for a Cargo. - during the Spring and Summer of 1855 I purchased lumber at different times. - Some I bought and some I ordered. - All the lumber I sold and charged for went into the common books.

Being cross examined he testified as follows.

I first went to Geneseo in Jan'y 1854 Jan'y 1. I think to purchase grain for S. B. Pomerooy & Co. - they were doing business as Commission Merchants and grain purchasers in Chicago - during the Summer of 1854 they sent three or four Cargoes of lumber to me at Geneseo to sell on their account, the way they happened to send the lumber to me was, when I was in Chicago to see them, I told them the prices for which lumber was selling at Geneseo - and that they might sell lumber there at rates that would pay them well.

I went with S. B. Pomerooy to look at different lots of lumber in Chicago, and to see what lumber was

42 suitable for that market, and they afterwards sent me three or four Cargoes to sell, they also sent me some Salt to sell. - I told them what Salt would bring there, before they sent any, - and this was the way they happened to send me salt. - I did not purchase any lumber for them in the year 1854 and they did not send me any lumber during the year 1855, nor after they sent the three or four Cargoes I have spoken of -

I purchased pork for them at Geneseo during the year 1855 during the winter of that year - after the season for purchasing grain had closed. - I purchased as they directed me to. - They did not direct me to purchase any lumber of the plaintiff - I don't know as anything was said when I purchased the lumber of the plaintiff as to on whose account I was purchasing it. ^{I think there was not} When I say the lumber was sold on the Pomeroys' ac. I mean that the proceeds of the sales of lumber was used in buying grain which was shipped to the Pomeroys at Chicago. - My agency for them in 1855 was the same that it was in 1854. - It was not changed that I know of. - I don't know that they gave me any additional authority. - I purchased pork for them in the winter of 1855 by their directions. - They were not purchasing grain then very much, but were turning their attention to pork more - After that and during the Spring and Summer of 1855, I purchased grain for them. - I did not purchase any lumber previous to March 1855. - I know a man by the name of Crosby at Geneseo, I made an arrangement

to go into partnership with him in the lumber business, but he did not raise the money he said he would, and the arrangement was not perfected. - the arrangement was made or talked of about the first of March 1855, or some time during the fore part of that month. - I suppose we were to share equally in the profits, though I don't know as any thing in particular was said about that. - I told him one evening that I was going into the lumber business, and he said he would like to go into the business with me. - He said he could raise a certain amount of money to put into the business, the next day we went to Moline together to see a lot of lumber there was in a yard there he purchased it. -

After that, shortly after we came to Chicago together, and called at the different yards on the River for the purpose of pricing lumber. - We might have said then we were going into the lumber business together. - I think we called upon the plaintiff Mr Roberts. - Crosby then went to a Hardware Merchant. - Where Crosby had some business to do, and then went back to Geneseo. -

I don't know that we visited any other place in Chicago together. - Crosby did not call upon the defendants either at that time. We afterwards purchased some lumber in Chicago. - We purchased a bill of lumber of Roberts the plaintiff. - either Crosby or I purchased it, I cannot tell which, this is the bill now handed to me, we purchased of Roberts - dated March 18, I think I afterwards paid the amount of the bill. -

I think I paid the amount in money, though I cannot say positively. — We purchased some lumber — J. F. Sutherland in Chicago, I think we purchased a bill on the 19th of April 1855 for 1503 feet of common boards at \$14.⁵⁰ per thousand, — this is the bill for the lumber we purchased of Sutherland now shown to me. — I cannot say whether we purchased it in person or by order. — We may have purchased other lumber in Chicago. — I cannot recollect. We took some ploughs to sell on Commission. — We did not remain together long or great while, some two weeks perhaps, I cannot say exactly how long, I am sure we did not remain together longer than two or three weeks. — Crosby then went out. — He did not raise the money he said he could. — I never told the Pomeroys that I had purchased lumber for them of Roberts. — I sold out what lumber I had on hand to Pattison in June 1855. — I did not purchase any lumber after that. — Drexler was the Book-keeper at Geneseo from March 1855 until I left the employ of the dept.

And being further re-examined he testified as follows,

The plaintiff by his counsel asked the witness the following question, for whom did you make the arrangement with Crosby? to which question the defendant by his counsel then and there objected,

45- the Court over-ruled the objection, and directed the question to be answered, to which ruling & decision of the Court the defendant by his counsel then and there objected. - And the witness being directed to answer the question, testified as follows,

I made it for S. B. Pomroy & Co.

And being further Cross-examined he testified as follows.

I saw S. B. Pomroy at the time Crosby was here in his office in Chicago, I told him that I ~~was~~^{was} going into the lumber business

He asked me if Crosby was a good man, and had any money. - I said he was going to raise some money and put in, - He made no objections. - I don't know that I had any other conversation with him about it.

The plaintiff here rested. And the defendants called as a witness, Drepper who being duly sworn testified as follows,

I know the defendants, I was in their employ in 1855. I had been in their employ some time previous. - They were dealers in grain & produce in Chicago. - They had a grain depot at Geneseo. - they sent me in March 1855 to keep books at Geneseo, Parmelee was then buying grain and produce for them there. - He had been there a little more than a year when I went out. - the 4th of March 1855. - The way the business

was done between the two points when I was there was, the defendants made remittances to Parmelee from time to time, with which they were credited and Parmelee was charged. And Parmelee made shipments of pork & grain to them from time to time with which he was credited and they were charged.

I kept the Books under Parmelee's direction, and I made out monthly statements of the business at Geneseo, and sent them to the defendants each month. On the one side the Pomeroy's were charged with the shipments of grain & produce which Parmelee sent in to them from time to time during the month, & on the other side they were credited with the money they had sent to Parmelee during the same month. The account was entirely made of money sent to Parmelee from time to time, and shipments of grain & produce made by him to them from time to time.

There was nothing said about lumber in these monthly statements. - Nor were the defendants charged or credited with any lumber or the proceeds of any lumber in the monthly statements. - I made up the account between Parmelee and the defendants from Jan'y. 1st 1855 to July 16th of that year, during that time the defendants were in advance to Parmelee \$2220 ²²/₁₀₀ over and above the amount of the shipments made by him to them, - Parmelee was indebted to them in that amount on account of remittances in money made to him from time to time

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over and above the shipments he made to them and with which he was credited.

I know Crosby of Geneseo, - I heard Parmelee and Crosby both say they were going into the lumber business together, this was some two or three days after I went there. - They were both together in the office at Geneseo. - Parmelee said they could get a lease of a lot from the Rail Road to store their lumber. - Lumber was afterwards received by Parmelee & Crosby from Chicago. - I sometimes ordered lumber for them as they directed me. - They said nothing about its being on account of the Pomeroy's, - They had a little book headed Parmelee & Crosby in which was entered the lumber received and sales made from time to time. - They also brought some ploughs and had them for sale. - They remained together some five or six weeks, when Crosby went out of the business. - Parmelee afterwards purchased lumber in his own name. - He continued to use the book of Parmelee & Crosby as he did before until June when he sold out all the lumber he then had on hand to Patterson. - He did not purchase or deal in lumber after that. - He never said anything about purchasing lumber on acc of the Pomeroy's when they talked about going into the lumber business together. - I don't know that any thing in particular was said about the profits. -

I told Parmelee that I thought they ought to have a separate set of books for their lumber business. - He said it would be unnecessary, that they would not want any thing more than the small book, - that they could tell enough about it from that as their sales would be for cash. - Parmelee had two teams at Geneseo while I was there which he owned and used on his own ap. - He sold some Flour at retail. - He bought some Eggs & some Broom Corn at Geneseo.

Being Cross-examined he testified as follows. I am sure I heard both Parmelee & Crosby say they were going into the lumber business together, - persons who purchased lumber and did not pay for it were charged with it, and their accounts went into the ledger of Pomroy & Co. kept by me. - Parmelee's account with the Pomroy also went into the same Ledger & lumber used by him was charged in his account.

Being again re-examined he testified as follows.

I kept the books under Parmelee's direction, and he told me to enter into the ledger his accounts with different persons, which I did, - When S. B. Pomroy came out there in July, Parmelee turned over all his accounts to S. B. Pomroy & Co.

And thereupon the defendants called as a

witness

Thompson, who being sworn testified as follows.

I am in the employ of the defendants S. B. Pomerooy & Co. and have been in their employ some four years. - I was their Book-keeper in Chicago during the years 1854 & 1855. - The defendants were in the grain & produce business in Chicago. - In January 1854 they established a grain depot at Geneseo in this state on the Rock Island Rail-Road, and they then sent out C. S. Parmelee to purchase grain for them at Geneseo. - during the summer of 1854, they also sent to him to sell some three or four cargoes of lumber, they also sent him some salt to sell, during that year they made remittances to him from time to time of money. And we charged him with what lumber we sent to him, and also with the salt and lumber we sent to him; and we credited him with the grain he sent to us as he sent it. - During the winter of 1855 he purchased pork for the defendants, and he was credited with the pork as he shipped it to us. - After Drepper went out there he sent us in Monthly statements of the business done at Geneseo. He Parmelee informed us each week of the prices he was paying for grain, and we credited him with the grain as he sent it to us, at the prices which he said he was paying. - During the years 1855 the accounts between the defendants and

Parmelee was made up entirely of the money we sent to Parmelee from time to time with which he was charged, and the grain & pork he sent to us from time to time with which he was credited. - There was no lumber mentioned in the account, nor was Parmelee charged or credited with any lumber or the proceeds of any lumber. - The defendants did not send any lumber to Geneseo in 1855. - The money was generally sent by Express in packages. - In some few instances we paid drafts. - We paid sight drafts made by him upon us, with which he was charged as we paid them. - We sent him money whenever he desired it. - In July when he stopped purchasing for them, he was indebted to them for money sent to him during that year over and above the shipments he made to us \$2220.²²/₁₀₀. - Sometime in the Spring of 1855, I heard Parmelee say that he had made so much that day, that he had bought a lot of lumber for so much, I forget the amount and that he could sell it so as to make a handsome thing out of it. -

And being Cross examined he testified as follows, It was in the defendants Office in Chicago that Parmelee said he had purchased lumber that day. - I was not aware that he was dealing in lumber at Geneseo on account of the defendants. -

And thereupon the defendants introduced

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I read in evidence the following bills of purchase which were admitted to have been made out by the plaintiff.

Chicago March 28, 1855

Mrs Parmalee Crosby

Bought of Geo R. Roberts

1000 ft Com Boards	@ 14.	14.00
6000 " Cull	" " 10	60.00
Carting	@ 3/	2.43
Loading Car		2.00
Rec ^d payment		\$80.63

Chicago Apr 18/55

Geo R. Roberts

Chicago April 7, 1855

Mrs Parmalee Crosby

Bought of Geo. R. Roberts

6000 feet Cull Boards	@ 10.	60.00
1000 " Com Boards	" 16	16.00
Carting	@ 3/	2.43
Loading Car		2.00
		\$80.63

C. S. Parmalee

Bot of Geo R. Roberts

Apr 21.	10881 feet Com Boards	@ 15 1/2	168.66
"	8368 " Siding	@ 14	117.15
"	Dressing 6857 feet	@ 2 1/2	17.14
"	Carting Siding to Mill & R.R.	25/	5.27
"	" Com Boards	2/	4.56
"	Loading 2 Cars	@ 12/	3.00
			\$315.78

C. G. Parmelee

Bot of Geo R. Roberts

May 5.	4200 ft Cull B.	@ 10.	42.00
	1219 "	12 & 14 ft Scantling 14.	19.51
	636 "	18 ft "	17 10.81
	Cutting @ 31		2.25
	Loading Car		<u>1.50</u> 76.07

And the defendants then read to the jury the following letters which were admitted to be in the hand writing of the plaintiff & of Seymour in his employ.

Chicago Apr 9, 1855

Messrs Parmelee Crosby,

I sent you a bill of lumber March 28, I fear you have not received it as I have not heard from you since sent, if received drop a line, if not drop a line & I will trace it up.

Yours Respectively Geo R. Roberts

Chicago April 23, 1855

C. R. Parmelee Esq

Enclosed you will find a bill of lumber as you directed except the Com boards were 12 & 14 instead of 12 & 16 ft long they did not load in a Car to advantage so I took the responsibility to put in 12 & 14 I could not get a rack Car at

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the time I put on all I could get in I hope
prove satisfactorily, any thing else you want
order & I will put the lumber as low as my neighbors
if not under.

Yours Respectfully

Geo. R. Roberts.

Chicago Apr 27/55.

Mr C. S. Parmelee

Dr. Sir.

Your letter has just come
to hand, You say you wish a Car load of 18 ft
studding, but I think you did not think of the
loss you would sustain by loading that length &
no other, We have not enough of that length on
hand to load a Car fully, but will put on what
we have & fill with any thing else you wish, please
answer by return mail telling us what you wish
if any thing else & we will use every effort to send
you the same as soon as may be

Yours Respectfully, Geo R. Roberts
per Seymour

Chicago May 5, 1855

C. S. Parmelee Esq

Your letter came to hand
last evening I am loading a Car for you today
it has been such awful going it has been impossi-
ble to get any thing to the Cars without two prices

of Cartage, please see Mr. Howell about the bal
due on a bill of Lumber bought a long time since.

Yours Respectively

not signed

Chicago May 6/55.

C. S. Parmelee Esq

Dr Sir, Enclosed please find
bill of Cull Boards & Scantling shipped on Car
105 Plot yesterday which we hope will prove
satisfactory - We should have sent them long
before but had not the 18 ft Scantling or Cull
Boards & even now have been obliged to send you
a small quantity of 18 ft Scantling, But doubtless
we shall be prepared in future to fill any orders
you may favor us with.

Yours Respectfully &c.

Geo. R. Roberts for Seymour.

The defendants here rest. -

And this being all
the evidence upon said trial. - The Court therefore
by the request of the plaintiffs Counsel gave to the
jury the following instructions,

If the jury find from the evidence that
Parmelee was agent for the defendants in purchasing
the lumber sued for in this case the jury will find
for the plaintiff although the plaintiff may not

Groom

have known that he was acting as agent of the defendants at the time he made the sale.

Given
If the jury believe from the evidence that the defendants were doing business at Genesee under the name of C. S. Parmelee and that Parmelee was authorized to buy and sell lumber and grain on defendants account and the lumber sued for in this case was so purchased of the plaintiff they will find a verdict for the plaintiff.

Given
If the jury find from the evidence that the defendants were partners in trade under the name of C. S. Parmelee and that they as such partners by C. S. Parmelee purchased the lumber sued for in this case of the plaintiff the jury will find a verdict for the plaintiff.

Given
If the jury find from the evidence that Parmelee was agent for the defendants in purchasing the lumber sued for in this case the jury will find a verdict for the plaintiff, although the lumber was purchased in Parmelee's name (if the jury believe from the evidence that the defendants authorized Parmelee to transact their business in his name)

Given
That if the jury should find from the evidence that the defendants knew or permitted C. S.

Parmelee to hold himself out to those dealing with him as their Agent in buying and selling grain and lumber they will be bound by his acts in such purchases.

To the giving of each and all of which said instructions the defendant by his counsel then and there duly excepted.

And thereupon the Court gave to the jury the following instructions on the part of the defendants.

1st A Principal is only bound by the acts of an Agent which are done within the scope of his employment as such Agent; and if his agency is limited to the transacting of his principal's business of a particular kind, or of his Principal's business at a particular place, then under such an agency his Principal is not bound for his acts touching a business of a different kind, or done at a different place from that embraced within the scope of his agency. — His authority to bind his Principal under such an agency is limited by the kind of business he is employed to transact, and to the place where he is employed to transact it.

And if the jury shall believe from the evidence in this cause that Charles S. Parmelee at the time of the purchase of the lumber in question was the Agent for the defendants to purchase grain and produce at Genesee, and that he was employed by them for that

57. purpose only, then his Authority to act for them under such an Agency is limited to the purchase of grain and produce at that place and does not extend to the purchase of lumber in Chicago.

Given
2nd If the jury shall believe from the evidence that Charles S. Parmelee purchased the lumber in question on his own account or on account of Parmelee & Crosby, and that the plaintiffs treated with him or with Parmelee & Crosby as Principal or Principals in the sale of the lumber to him or to them, the jury must find for the Defendants, although they may believe from the evidence that the proceeds of the sale of the lumber by Parmelee or some portion of such proceeds went into the hands of the defendants.

Given
3^d If the jury shall believe from the evidence that C. S. Parmelee was indebted to the defendants Pomerooy during the period from January to July 1855, on account of remittances made by them from time to time to him for the purchase of grain & produce, then the receiving of grain by them from Parmelee which may have been purchased by Parmelee with the proceeds of property purchased by him outside of the scope of his Agency (if they shall believe that such purchases were made by him) cannot hold them, the defendants liable as having ratified

and adopted such purchases as their own, nor can they from that circumstance alone be held there for.

Given
4th Before the defendants can be held to have ratified purchases made by Parmelee outside of the scope of his Agency, by receiving the proceeds of such purchases, it must appear that they were informed at the time of receiving the proceeds or prior thereto, not only that such purchases were made but that they were made for them and on their account.

Given
5th If the jury shall believe from the evidence that the plaintiffs traded with Parmelee as Principal in selling the lumber and did sell the same to him as principal & not as the agent of the defendants, then they must find for the defendants, unless they believe that Parmelee was lawfully authorized by them, the defendants to purchase the lumber for them, and did purchase the same for them on their account.

And the said cause having been given to the jury upon the evidence and instructions aforesaid, the jury by their verdict found the issues for the plaintiff and assessed his damages at \$395.06. - And the defendant, by their Counsel

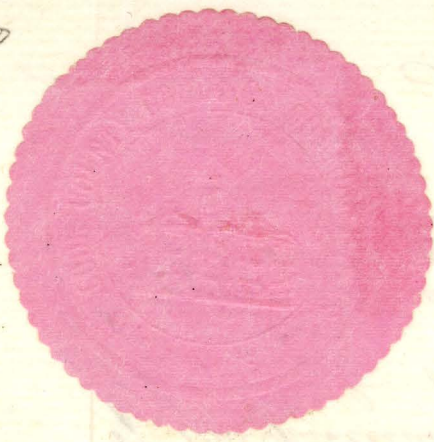
59 thereupon entered their motion for a new trial
of said Cause, And counsel having been had
thereon the Court overruled said motion, And
directed that judgment be entered upon the
verdict aforesaid, - to which ruling and decision
of the Court the defendants by their Counsel there-
+ then duly excepted & prayed an appeal therefrom,
And for as much as the several matters herein-
before stated do not otherwise appear the defen-
dants by their Counsel hereby pray that this their
bill of Exceptions may be duly signed & sealed &
made a part of the record of said Cause.

John W. Wilson 

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk of Cook
County Court of Common Pleas in and for said
County do hereby certify that the foregoing is a
full and true transcript of all the papers as
they now remain on file in my office, and
of the proceedings entered of Record in said
Court in the case in which George R Roberts
is plaintiff and Samuel B Pomeroy and
Eleazer S Pomeroy are defendants. in an action
Assumpsit.

In Witness Whereof I hereunto



Subscribe my name and affix
the Seal of said Court at
the City of Chicago in said
County this 14th day of April
A.D. 1857 Walter Kimball Clerk

State of Illinois
Supreme Court - April term of 1857

Samuel B. Pomeroy &
Elihu L. Pomeroy
appellants

vs
George R. Roberts appellee

And afterwards
to wit on the 22^d day of April A.D. 1857
at this same term of said Court
before the Justices then in Court the
said Samuel B. & Elihu L. Pomeroy
by Henry Miller Lewis his attorney
and say that in the record and
proceedings aforesaid and also
in the rendition of the jury verdict
aforesaid there is manifest
error in this to wit -

1st The Court below erred in giving the first instructions asked on the part of the plaintiff to the jury

2d. The said Court erred in giving to the said jury on the trial of said cause the second instruction asked for on the part of said plaintiff

3 The said Court erred in giving to the jury on the trial of said cause the third of said plaintiffs instructions

4 The said Court in giving to the jury the fourth of said plaintiffs instructions

5. The Court erred in giving to the jury the fifth of said plaintiffs instructions

6. The Court erred in overruling the motion of said defendants to said Samuel B. & Eliza J. Purney. made for a new trial of said cause
There is also error in this to wit that by the said overruling it appears that the judgment above said was given for the said George

R. Roberts against the said Samuel
 B. & George S. Pomroy assigns by
 the said Samuel the said jury
 men ought to have been given
 for the said Samuel B. Henry
 S. Pomroy against the said
 Henry R. Roberts - and
 the said Samuel B. Henry S.
 Pomroy pray that the judgments
 of the said jury be reversed
 and for other errors apparent
 in the record proceedings here
 said may be entered amended
 and corrected and for restoring
 and that they may be restored
 to all things which they have lost
 by occasion of said judgments

Henry Smith Henry
 for appellants.

1857
Supreme Court
of Illinois

Samuel B. Pomeroy &
Charles S. Pomeroy
vs Appellants

George R. Roberts
Appellee

Trans of Record
From Court Book of C. P.

Filed April 23, 1857

L. Leland

Clerk

Hoyou Miller & Son
Atty for Appellants
Murray Waite & Pomeroy
Atty for Appellee

George R Roberts

vs

Samuel B. Pomroy et al

Appeal from
Circuit

The only error assigned is in giving the instructions five in number for the Plaintiff and in refusing a new trial. The action below was to charge them for lumber sold to them through C. S. Parmelee their agent, and the question was whether Parmelee was agent for the defendants below or not.

The first instruction is settled to be law by Doan v Duncan 17 Ill. Rep. 273.

The Court say Scots Chief Justice in speaking of the converse of the proposition laid down in this instruction says -

This does not accord with my understanding of the law of agency. The principal may when discovered be held responsible, though concealed by the agent & he alone trusted.

The second instruction is also clearly within the principle laid down in Doan v Duncan

3^d Instruction

To understand this instruction we will have to refer to the pleadings and proof. The declaration contains three counts. The first charges them as partners as partners in trade under the name & style of S. B. Pomeroy & Co. The second charges them as partners in trade under the name & style of C. S. Parmlee 3^d Common counts.

The defendant pleads first general issue, as to the second plea they were not-partners in trade under the name & style of C. S. Parmlee which plea is sworn to. On the trial among other proof speaking of the matter one of the defendants on another trial says that the business was done under in the name of C. S. Parmlee. This arrangement was made more for a matter of convenience and in order to keep correct accounts Parmlee although doing business in his own name was our agent. It seemed from this and other testimony that the defendants were partners and were doing business at Somerset under the style of C. S. Parmlee. So that this instruction is supported by the proof. What

is the instruction. It is if they were part-
ners in trade under the name & style
of C. S. Parmlee and they as such part-
ners by C. S. Parmlee purchased the
lumber sued for &c. There can be no
error in this. it says that if the lum-
ber was sold to them by C. S. Parmlee
Sold to them. Sold to defendants. not to
Parmlee. I suppose for I have not
seen the plaintiffs argument. that they
say the instruction needed the qualifi-
cation that Parmlee was qualified
&c. This might have some force if
the goods had been sold to Parmlee
but that is not the case. The jury
under the instruction must find that
the defendants. under this instruction
it would not meet the case to find
that Parmlee bought. but they must
find that the defendants bought

The second plea does not deny that the defendants were liable as partners under the name & style of C. S. Parmlee but admits they were partners under the name & style of C. S. Parmlee.

Warren v. Chambers 12 Ill. Rep. 121
The fourth instruction is covered by the decision in Doan v. Duncan Fifth instruction.

It is also within the last cited case. When a party permits another to hold himself out as his agent he will be bound by his acts. Says the court the reasons of the rule is for the protection of the innocent who deals upon the faith of such authority as the principal holds or permits as being authorized and sanctioned by him. If an innocent party is to suffer it shall fall upon him who enables the supposed agent to impose on others. Even admitting that the court erred in giving instructions they will not reverse this judgment because they must see that verdict is right. That defendants (plaintiff above) was clearly and rightly before the jury and passed upon by them.

Greenup vs Storer 3 Gilw R 202

Leigh vs Hodges 3 Scam R 15

Belet vs Sweet 3 Gilw R 6 44

Sean vs Parentif 8 East R 348

Edmonson vs Minchell 2 S R 4

Eastwick vs Garland 5 S R 426

Harris vs Doe 4 Black R 370

We understand from the Atty for the plaintiff that they argued at large the evidence position that the evidence did not support the verdict.

The abstract is a partial presentation of the evidence but enough will be found in it to completely vindicate the finding of the jury on page 3 where the testimony of E. L. Pomeroy one of the defendants is given "Chas S Parmelee has been in our employ since the Spring of 1853 buying grain &c. he went to Genesee in Dec '53 or Jan'y '54 as an agent for S. B. Pomeroy & Co he was to do business in our name we furnished him with four cargos of lumber Page 4 The business was done in the name of C. S. Parmelee from March 1 1855 as this arrangement was made as a matter of convenience and in order to keep

correct accounts, it was done to sim-
-plify. Again page 5. He never preten-
-ded that he had sold lumber or
salt at a loss. He is unable to account
for 80,000 feet of lumber, which is in-
cluded in the \$3000 deficit.

X Et Page 6. Parmlee although doing
business in his own name was our
agent during all the time he was at
Genesee. His books were always open
to us (On these very books were kept
mixed in with the other matters the
lumber acc^t / Could tell from these
books how acc stood every month.

Page 9 E. N. Patterson's testimony.

Parmlee was doing business a general
commission business, he bought grain
principally * * * * He also purchased
out his entire stock of lumber before
he failed. He owed for a part of it
when he failed, after his failure he
found it on the general book accounts
in Parmlee's office. "the general books
of the office." Page 10 This balance
was settled from the books & paid
to the defendants ^{belong} personally. Notice
the testimony of Parmlee above

Parmlee's books were always open to us. from them could tell how accounts stood every month again defendant furnished the book-keeper who kept these very books Pomeroy swore (bottom of Page 10) at Genesee that Parmlee was their agent at Genesee "in buying grain & lumber in the name of C. S. Parmlee for the convenience of book entries. that Charles S. Parmlee was recognized as S. B. Pomeroy & Co.

Page 13 Testimony of C. S. Parmlee About the 21st of April I bought a bill of lumber of George R. Roberts, I purchased the lumber as the agent of S. B. Pomeroy & Co. it was shipped to Genesee and sold on account of S. B. Pomeroy & Co. "all lumber sold and charged for went into the common books. They crop & examine him to show that he undertook to go into a general lumber business with one Crosby on re-examination he says he did this on account of defendants after consultation with them. This is a very brief outline of the Plaintiff below testimony. On the defence in the testimony

of Deeper page 19 occurs in the "Examination" persons who purchased lumber and did not pay for it, were charged with it, and these accounts went into the ledger of Pomeroy & Co. kept by me. Parmelee as with the Pomeroy's (should be individual as) went into the same ledger and lumber used by him was charged to his account. Should be any of the lumber which he took for his individual account was charged to him. Why charged to him? Why charged to him on plaintiff's errors books? Why did he have to pay for the lumber he individually used? It was Pomeroy & Co's matter and theirs alone. They reap the profits, collect the bills, charge their agent with such of the lumber as he individually used & yet say they are not responsible therefor.

The objection is preposterous. We have not examined the testimony for defence for the reason that we have shown enough & more than enough by the rule laid down in the books to support the verdict. We ask of the court if they have any doubt

in regard to ^{the} Carefully read connectively
read all the evidence in the case on both
sides. and They will not fail to con-
cur with us.

Shumway Haite & Fowne
Defendants Attys

Geo R Roberts

at

S. B. Perryman & Co

Prin of

Shumway & Co

Stamper for the

defence