

13529

No. _____

Supreme Court of Illinois

Wilson, et al.

vs.

Knight.

71641  7

The People of the State of Illinois .

To all whom these presents shall come greeting:

Know ye that we having caused to be inspected the Records and proceedings of our Circuit Court in and for the County of Sangamon do find certain Records and proceedings in the words and figures following To Wit:

State of Illinois

Sangamon County ss.

Whereas the special term of the Sangamon County Circuit Court was not holden on the first day of December as heretofore appointed by reason of the unfinished state of the Court House and Whereas it is considered necessary for the prompt and efficient administration of justice that a Special Term of the Circuit Court should be holden in said County - Therefore be it remembered that I Charles R. Starr Judge of the 30th Judicial Circuit of the State of Illinois by virtue of the power vested in me by the Laws of the State of Illinois do hereby order and appoint a special term of the ~~Circuit~~ Court to be holden in and for the County of Sangamon in said State of Illinois on the second Monday of January A.D. 1859

Given under my hand at Chambers in Vacation

this 7th day of December 1858

Charles R Starr

Judge of the 20th Judicial
Circuit of the State of Illinois

United States of America

State of Illinois

Weymouth County ss

Plas before the Honorable Charles
R Starr Presiding Judge of the twentieth Judicial
Circuit of the State of Illinois at a Special Term
of the Circuit Court of said Weymouth County begun
and held at the Court House in the Town of Mid-
-deport in said County on Tuesday the eleventh
day of January A.D. 1859

Present Hon Charles R Starr Presiding Judge
of the 20th Judicial Circuit

Theodore Byers Sheriff of Weymouth County

Thomas Hermann Clerk of the Circuit Court

Be it remembered that on the twenty
seventh day of December in the year of our Lord
one thousand eight hundred and fifty eight there
was filed in the office of the clerk of the Weymouth
County Circuit Court a certain Prescipe in the

words and figures following to wit:

State of Illinois

Juguenis County vs of the January Special Term
A D 1859

James B Wilson &
Henry Robinson, doing
business as Wilson and
Robinson - Plaintiffs

vs

Eliphlet R Knight
Surviving partner of the
firm of Knight & Thomas.
defendant

Assumpsit

Damages \$10000

Thomas Bernum

You will please issue a summons in the above
entitled cause directed to the Sheriff of Juguenis
County and make the same returnable to said Court
on the first day of the next term thereof

Dated the 24th day December A D 1858

Yours &c

J. G. Bowie & Solio Lane &
Sheldon Plffs Attys

And afterwards to wit on the twenty seventh
day of December in the year of our Lord one
thousand eight hundred and fifty eight three
was issued out of the office of the clerk of the

of Court aforesaid a certain Writ of Summons in
the words and figures following to Wit:

State of Illinois
Jaguvis County } ss

The People of the State of Illinois
to the Sheriff of said County Greeting:

We command You that You summon
Eliphlet R Knight surviving partner of the firm
of Knight & Thomas, if to be found in your County
personally to be and appear before the Circuit Court
of said County on the first day of the next term there
of to be holden at the Court House in the Town of
Middletown on the second Monday in the month
of January next to answer James B Wilson & Henry
Robinson doing business as Wilson & Robinson in
a plea of Trespass on the case on promises, to the
damage of them the said Plaintiffs in the sum of
one thousand dollars, and have You there and there
this Wit:

Witness Thomas Vermum Clerk of our said
Court and the seal thereof at Middletown this 27th
day of December AD 1858



Thomas Vermum - Clerk
on the back of which summons appe-
ars the following endorsement to Wit:

James B. Wilson &
Henry Robinson
vs

Elephlet R. Knight
Surviving partner &c

Summons

Served the within writ upon E. R. Knight
by reading this 31st day of Dec 1858

Theodore Ayres

Sheriff

Fees

Service 50

16 M Travel 80

Return of this Writ 10

\$ 140

Theodore Ayres Sheriff

And afterwards to wit: on the
twenty seventh day of December in the year of our
Lord one thousand eight hundred and fifty eight
there was filed in the office of the clerk of the court
aforesaid a certain declaration in the words and fig-
ures following to wit:

State of Illinois

Iniquis County &c

James S Wilson and Henry
Robinson doing business
as Wilson & Robinson

vs

Eliphlet R Knight surviving
partner of the firm of Knight & Thomas
Hogewis County to Wit:

James S Wilson and Henry Robinson doing
business as Wilson & Robinson plaintiffs in
this suit by Rorie, Cole, Linn & Sheldon their attor-
neys complains of Eliphlet R Knight surviv-
ing partner of Knight & Thomas who was summa-
oned &c of a plea of trespass on the case on prom-
ises for that whereas the said defendant and one
Joseph Thomas in his lifetime who is now de-
ceased and whom the said defendant hath sur-
vived on the 3^d day of June in the year AD 1857
at Urbana to wit at Hogewis County aforesaid
were indebted to the said plaintiffs in the sum
of one thousand dollars lawful money of the
United States for divers goods wares and mer-
chandise by the said plaintiffs before that time
sold and delivered to the said defendant and
Joseph Thomas at their special instance and
request and being so indebted they the said

defendant and Joseph Thomas in consideration thereof afterwards and in the lifetime of the said Joseph Thomas to wit on the day and year aforesaid at the place aforesaid undertook & there & there promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of one thousand dollars when they should be thereunto afterwards requested

And Whereas also afterwards and in the lifetime of the said Joseph Thomas to wit on the day and year aforesaid at & to wit at Greywits County aforesaid in consideration that the said plaintiffs at the like special instance and request of the said defendant and Joseph Thomas had before that time sold and delivered to the said defendant and Joseph Thomas divers ^{other} goods wares and Merchandise of them the said plaintiffs the said defendant and Joseph Thomas undertook and there & there faithfully promised the said plaintiffs to pay them so much money as the last mentioned goods wares and Merchandise at the time of the said sale and delivery thereof were reasonably worth when the said defendant and the said Joseph Thomas should be thereunto afterwards requested

And the said plaintiffs aver that the said last mentioned goods wares and Merchandise at the time of the sale and delivery thereof were reasonably worth the further sum of one thousand dollars of like lawful money as aforesaid to wit at the place aforesaid where of the said defendant and Joseph Thomas afterwards and in the lifetime of the said Joseph Thomas to wit on the same day and year aforesaid and at the place aforesaid hath there notice

Nevertheless the said defendant and Joseph Thomas in the lifetime of the said Joseph Thomas and the said defendant since the death of the said Joseph Thomas not regarding the said several promises so made by them as aforesaid but contriving to deceive and defraud the said plaintiffs have not nor hath either of them as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiffs (although often requested so to do) but to pay the same or any part thereof to the said plaintiffs the said defendant and Joseph Thomas in the lifetime of the said Joseph Thomas wholly refused and the said defendant hath ever since the death of the

saw Joseph Thomas hitherto wholly refused and
still refuses so to do to the damage of the plain-
=tiffs in the sum of one thousand dollars and
therefore they bring suit

Bowie, Colis, Smith & Sheldon
Plffs atty

Knight & Thomas Dr

To Wilson & Robinson

For goods wares & merchandise
sold and delivered

\$ 10000

In other goods wares & merchandise
sold & delivered

\$ 10000

And afterwards to wit, on the
eighteenth day of January in the year of our
Lord one thousand eight hundred and fifty nine
there was filed in the office of the clerk afore-
said a certain affidavit in the words and fig-
=ures following to wit

James R Wilson &
Henry Robinson
vs

Suqvois Circuit Court
of the Jan Special Term
1859

Elihu A Knight
Surviving partner vs

affidavit for continuance

Charles H Wood Attorney for the defendant
in the above entitled cause deposes and swears
that Eliphaz R Knight the defendant was not
served with process until the last day of service
for the present term to wit the 31st day of December
that soon after and before deponent had oppor-
-tunity to examine the papers the said defendant
was called away to Indiana on business and stated
that he should be back by the end of first week
of the term; that at the beginning of the present
week deponent was at Onarga but defendant
had not returned and deponent was informed
that he would not be back under a week or
ten days deponent further says that it is neces-
-sary to file a plea denying the joint liability
of defendant with one Thomas with reference
to the purchase of ^{the} Machines for the value of
which he is sued in this action and that he
cannot file such sworn plea until he can
see the defendant that deponent also believes
that the said defendant has a just defence to
the action and that it is not his fault that
the issues are not made up

subscribed and sworn to } Charles H Wood
before me this 18th day of } Atty for E R Knight
January 1859
Thomas Bennett clerk

And afterwards to wit: on the eighteenth day of January in the year of our Lord one thousand eight hundred and fifty nine it being one of the regular days of the January Special term of said Court for said year A.D. 1859 the following proceedings were had and entered of Record by the Court to wit

234 James R. Wilson &
Henry Robinson }
vs } Assumpsit
Elihu R. Knight
surviving partner of the
firm of Knight & Thomas }

And now comes the defendant in person and by Wood his attorney and enters his motion verified by affidavit for a continuance in this cause till next term

And afterwards to wit on the 19th day of January in the year of our Lord one thousand eight hundred and fifty nine there was filed in the office of the Clerk aforesaid a certain plea in abatement in the words and figures following to wit

State of Illinois }
Madison County } ss

James S Wilson &
Henry Robinson
vs

Eliphabet R Knight
surviving partner &c

In Equity his court
Jan Special Term 1859

And the said Eliphabet
R Knight defendant in this suit in his proper
person comes and defends the wrong and injury
when &c and prays judgment of the said writ
and declaration of the said plaintiffs because
he says that the said several supposed promises
and undertakings in the said declaration men-
-tioned if any such were made were and each
of them were made by Joseph Thomas who is
now deceased in his individual capacity and
not by the said defendant & said Thomas in part-
-nership or jointly and were wholly foreign to
and disconnected with the business of the said
partnership and not jointly made and this
he the said defendant is ready to verify where-
-fore he prays judgment of the said writ and
declaration and that the same may be quashed
&c

E R Knight

State of Illinois

Swaguis County, }^{ss}

Eliphahet R Knight the above
named defendant being sworn says the above
plea is true in substance and matter of fact
subscribed and sworn to E R Knight
before me this 19th day of
Jan 1859

Thomas Bennett clk

And afterwards to wit on the 24th day
of January in the year of our Lord one thousand
eight hundred and fifty nine there was filed in
the office of the clerk aforesaid a certain repli-
cation in the words and figures following to wit

State of Illinois

Swaguis County }^{ss}

James A Wilson &
Henry Robinson
vs

Eliphahet R Knight
Surviving partner &c

} January Special term
of the Swaguis County
Court A D 1859

And the said plaintiff
by their attorney say that the said writ
of declaration by reason of any thing by the said
defendant in his said plea alleged ought not

not to ~~have~~ be quashed because they say that
the said several promises and undertakings in
said declaration mentioned at &c to wit at the
County of Inyo wis aforesaid were and each of
them were made by the said defendant and
Joseph Thomas jointly and not by the said
Thomas alone as alleged in said plea of the
said defendant and that said defendant and
Joseph Thomas who is now deceased were at
the time of making said promises and each of
them in said declaration mentioned partners
and made the same jointly and not severally
and that the same was made by them in
their partnership capacity and were connected
the business of said partnership and thus the
said plaintiffs pray may be inquired of by the
Court

S & Bowie

And the said defendant
doth the like

Atty for plaintiffs

And afterwards to wit on the
twenty fourth day of January in the year of
our Lord one thousand eight hundred and fifty
nine it being one of the regular days of the
January special term of said Court for said

Year A D 1859 the Court being then duly organized and sitting for the transaction of business the following proceedings were had and entered of Record by the Court to wit:

James H Wilson and
Henry Robinson

vs

Elihu R Knight surviving
partner of the firm of Knight & Thomas

} accumpit

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And now come the parties by their attorneys and by agreement of counsel this cause is continued till next term at the costs of the defendant

It is therefore considered and ordered by the Court that the plaintiffs have and recover of and from the defendant their costs of this continuance and that they have execution therefor against the defendant

And afterwards to wit on the eleventh day of June in the Year of our Lord one thousand eight hundred and fifty nine it being one of the regular days of the ~~January~~ ^{June} special term of said Court for said Year A D 1859 the Court then being duly organized and sitting as aforesaid the following

proceedings were had and entered of Record by
the Court to wit: —

97 James B Wilson and
Henry Robinson } Assumpsit
vs
Elihu R Knight
Surviving partner of
Knight & Thomas }

This day come the
parties to this cause by their Attorneys the
plaintiffs by Worrie their Attorney and the defend-
-ant by Wood his attorney and by agreement there-
-of it is ordered by the Court that this cause be
set down for hearing on Monday afternoon next

And afterwards to wit: on the
14th day of June in the year of our Lord one
thousand eight hundred and fifty nine there
was filed in the office of the Clerk aforesaid
a certain affidavit in the words and figures
following to wit: —

James B Wilson &
Henry Robinson } In the Supreme Court
vs } of the June term
1859
Elihu R Knight }

Charles H Wood the Attorney of the defendant in the above entitled cause being duly sworn on his oath says that the defendant cannot safely proceed to trial at this term of the Court for that W^m Bernum who has been subpoenaed in this cause is the most material witness he has for that deponent has been informed that defendant can prove by the said Bernum that he (Bernum) purchased one of the Reapers for the value of which the said defendant is now sued of Joseph Thomas and that the said Bernum knows that the Reaper aforesaid was the individual property of Joseph Thomas and did not belong to the firm of Knight & Thomas and never did Deponent also says that he has been informed this 14th day of June by Matthew Pierce that the said W^m Bernum has gone to the State of Indiana and that the said Bernum told said Pierce that he should not be back before the close of the present week Deponent further says that in his judgment it will be unsafe for the defendant to go to trial without the testimony of the said Bernum and that he makes this application not for delay but that justice to his client may be done

Charles H Wood

subscribed and sworn to
before me this 14th day of
June A D 1859

Thomas Bennett Clerk

And afterwards to wit on
the 15th day of June in the year of our Lord one
thousand eight hundred and fifty nine there
was filed in the office of the Clerk aforesaid a
certain agreement in the words and figures
following to wit:

James W Wilson &
Henry Robinson doing business
under the name and style of
Wilson & Robinson

As

Elephlet R Knight surviving
partner of the firm of Knight &
Thomas since deceased

The parties by their
attorneys hereby agree as to the following facts
in this cause that the plaintiffs shipped from
Urbana Illinois 4 Reaping and mowing machines
with their appendages and that the same were
shipped and received in the firm name of the
parties to this suit said machines being directed

to the firm of Knight & Thomas at Oswego
and shipped by the plaintiffs about the time
stated in the declaration in this cause and that
two of said machines were returned to the plain-
-tiffs with the consent of all parties

Dated June 15th 1859

S. G. Bowie

Atty for Plaintiffs
Glad T. Wood

Atty for Defs

And afterwards to wit on the 18th
day of June in the year of our Lord one thou-
-sand ~~and~~ eight hundred and fifty nine it
being one of the regular days of the June term
of said Court for said year A.D. 1859 the Court
then being duly organized and sitting as
aforesaid the following proceedings were had
and entered of Record by the Court to wit

James N. Wilson and

Henry Robinson

vs

Eliphahet R. Knight
Surviving partner of
the firm of Knight & Thomas

} asumpsit

This day come the

plaintiffs by Bowie their Attorney and the
defendant by Wood his Attorney and by agreement
it is ordered that this cause be and it is con-
-tinued

And afterwards to wit on the seven-
-teenth day of November in the year of our Lord
one thousand eight hundred and fifty nine it
being one of the regular days of the November
term of said Court for said year A.D. 1859 the
Court being then duly organized and sitting
as aforesaid the following proceedings were had
and entered of Record by the Court to wit

James B. Wilson and

Henry Robinson

vs

Eliphah R. Knight
surviving partner of the
firm of Knight & Thomas

} Assumpsit

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This day came the
plaintiffs by Bowie, Coler, Leir & Sheldon their
Attorneys and the defendant by Wood his Attorney
and thereupon a jury came to wit Asa Williamson
B. P. Williamson James P. Martin Henry Smith
John Atwell George King John Borland John Green
Winslow Wood Frederick Harwood M. G. Potter

and five Lindsey twelve good and lawful men
who were impaneled and sworn to well and
truly try the issue joined between the parties
according to the evidence and after hearing the
evidence adduced the arguments of counsel and
the instructions of the Court retire in charge
of an officer to consider of a verdict and after
ward return into Court with the following
Verdict We the jury find for the plaintiffs and
assess their damages at the sum of hundred
and seventy one dollars against the defendant
and thereupon the defendant by his attorney
enters his motion for a new trial

and afterwards to wit on
the ninth day of December in the year of our
Lord one thousand eight hundred and fifty nine
it being one of the regular days of the November
term of said Court for said year A.D. 1859 the Court
then being duly organized and sitting as afore-
said the following proceedings were had and
entered of Record by the Court to wit.

James H. Wilson and
Henry Robinson

Eliphaz R. Knight

}
} Assumpit

surviving partner of
Knight and Thomas

This day come the plaintiffs into court by Bowie Holter Seim & Sheldon their attorneys and comes also the defendant by Wood his attorney and the court after hearing the arguments of counsel on the defendant's motion for a new trial heretofore entered in this cause ordered that the same be overruled

It is therefore considered and ordered by the court that the said plaintiffs have and recover of ~~and~~ the said defendant the said sum of one hundred and Seventy one dollars being the amount of damages assessed by the jury heretofore empaneled in this cause together with their costs and charges herein expended and that they have execution therefor against the said defendant. Whereupon comes the defendant by his attorney and enters his exceptions and prays an appeal and the court after due consideration orders that an appeal be granted on the defendant filing bond in four hundred dollars within twenty days from this date and that he file his bill of exceptions in forty days from this date And by the agreement of the parties to this suit

it is ordered by the Court that the clerk
of this Court approve the security on bond

And afterwards to wit on the
twenty eight day of December in the year
of our Lord one thousand eight hundred and
fifty nine there was filed in the office of the
clerk aforesaid a certain appeal Bond in the
words and figures following to wit:

Know all men by these presents that We
Eliphahet R Knight and Jacob Rier are held
and firmly bound unto James S Wilson and
Henry Robinson in the penal sum of Four hun-
-dred dollars lawful money of the United States
for the payment of which well and truly to
be made we bind ourselves our heirs and admi-
-nistrators jointly severally and firmly by these
presents

Witness our hands and seals this 24th
day of December A D 1859

The condition of the above
obligation is such that whereas the said James
S Wilson and Henry Robinson did on the
seventeenth day of November A D 1859 at the
November term of the District Circuit Court
then being holden recover a judgment against

the above bounden Eliphulet R Knight for the
sum of one hundred and seventy one dollars
and costs of suit from which judgment the
said Eliphulet R Knight has taken an appeal
to the Supreme Court of the State of Illinois
Now if the said Eliphulet R Knight shall
prosecute his appeal with effect and shall
pay whatever judgment interest costs and
damages shall be rendered by the said Supreme
Court in case the said judgment shall be
affirmed then the above obligation to be void
otherwise to remain in full force and effect
taken and approved by E R Knight
me this 28th day of December Jacob Riner
1859

Thomas Gernum clk

State of Illinois

Stroguois County Jo

I Thomas Beunum clerk of the circuit Court in and for the said County in the State aforesaid do hereby certify that the above and foregoing is a true, complete and perfect transcript of the Record of the proceedings of the Stroguois County Circuit Court in said cause therein entitled wherein James N Wilson and Henry Robinson are Plaintiffs and Elephalest R Knight surviving partner of the firm of Knight and Thomas is defendant, and further that the said transcript contains a true and perfect copy of all papers filed in said cause and of all writs issued pertaining to or forming any part of the Record of said Court in said cause.

In attestation of which I hereunto set my name and the seal of the said Circuit Court at office in Middleport this 22nd day of April AD 1861

Thomas Beunum

Clerk

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James N Wilson and
Henry Robinson

Eliphalet R Knight
Surviving partner

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Transcript of Record

Filed May 3^d 1861
L Leland
Clerk

\$171,00
1,05
85,500

1861

13529

Wilson & Robinson

1/3

Knight

VB

13529