

No. 13411

Supreme Court of Illinois

Knight

vs.

Parker

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 250.

Parker

vs.

Knight

1861

Prepared

13411

IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

ELIPHALET R. KNIGHT,	}	<i>Appeal from Kankakee.</i>
ads. APPELLANT,		
DANIEL PARKER,		
	APPELLEE.	

ABSTRACT OF RECORD.

Rec. page 2	Placita of June vacation—Term 1859.
	Oct. 12th, 1859—Precipe filed and summons issued.
3	Declaration filed Oct. 22d, 1859.
	1st Special Count—Agreement to sell a stock of goods by appellant, in the town of Onarga, for a farm from appellee.
6	Second Count—A common count for land sold, promise, breach, and
7	damage.
8, 9	Copy of Agreement as in Bill of Exceptions.
	Bill of Particulars.
10	First Plea, general issue—Filed Oct. 22d, 1859.
11	Second Plea—Performance.
12	Petition for a change of venue. Stipulation that the only matter to
13	be tried is the title to a lot of stoves.
14	Venue of this cause changed from Iroquois to Kankakee County.
16	Affidavit to take depositions.
19	Similiter to 1st Plea, replication to 2d Plea.

21 Jury called and sworn, verdict for plaintiff \$146. Motion for a new
trial, overruled; defendant excepts judgment on verdict.

22 Appeal allowed, and appeal duly perfected, October 16th, 1860.
23 Same day, bill of exceptions filed.

EVIDENCE.

24 Stipulation—Nothing but title to stoves to be tried. Written articles
of agreement between Knight, first party, and Parker, second party,
that “the party of the first part has this day sold to the party of the
second part, his stock of goods, in the town of Onarga, for the sum of
thirty-one hundred and fifty dollars.” The first party to comply on his
part within twenty days.

25 Plaintiff then offered deposition of Daniel W. Parker. Defendant
objected, for the reason that it in no way appeared that said deposition
had ever been enclosed, sealed up, and directed to the Clerk of Kankakee
25 Court, nor the names of parties endorsed thereon. Mutual agreement
of counsel that exceptions might be taken to the depositions on the trial,
the same as though there had been made a motion to suppress.

Motion to exclude Parker deposition, overruled; defendant ex-
cepted.

25 Motion to suppress fourth interrogatory, and answer thereto, in
Parker's deposition. Motion overruled; defendant excepted.

26 Deposition of Daniel W. Parker—States what stock consisted.
27 There were stoves at Depot; think there were nine in number—cook
stoves; each stove, pipe and furniture was worth twenty-five to thirty
dollars. At time of trade, defendant pointed out dry goods, groceries
29 and hardware. Got the goods, except the stoves, pipe and furniture.
The contract was a written one.

31 Ezekiel Slieth, sworn, and testified that there were seven stoves
there when he saw them.

32 Motion by plaintiff to suppress the thirteenth interrogatory and
answer in Curtis Knight's deposition. Motion sustained; defendant
excepted.

33 Curtis Z. Knight's deposition—Before the trade, the goods were
kept in the building owned by Wm. P. Pierson, in Onarga, and a few
articles elsewhere.

34 In regard to the stoves, there was a lot of stoves belonging to the
old firm of Knight & Thomas; and when the firm was known as Knight
& Richardson, those stoves were never known as belonging to the stock,
and when it was changed to E. R. & C. L. Knight, the stoves were not
known as a part of the stock, for when a stove was sold, E. R. Knight
received credit for it, or the money for the stove. It was considered as
35 his individual property. I made the trade with Mr. Parker, as to the
goods; I had nothing to do with the land; we lumped the goods off,
called it so many thousand dollars—I do not remember how much. In
making my figures, I do not include the stoves. I think Mr. Parker
understood it so at the time, but I am not positive. There was nothing
said about the stoves till about two weeks after the trade.

36 Int. 13—State if you know whether those stoves were regarded by
those connected with Knight's store as belonging to the stock of said
store.

37 Ans.—I think they were not. I think there were seven or eight
stoves at the time the trade was made. The one I sold was a good
stove; the others were damaged more or less. There might have been
two or three stoves worth ten or twelve dollars each; the balance might
39 average ten dollars. The stoves were broken so they could not be used
till repaired.

45 Deposition of H. J. Skeels—Was clerk for Knight. The stock of
goods sold consisted of dry goods, in the store then occupied by E. R.
& C. L. Knight, and I concluded that it was E. R. & C. L. Knight's
stock of goods. I did not suppose there were any goods embraced in
46 the trade that were not in said store, or did not belong to E. R. & C. L.
Knight. I do not know anything about the stoves, in regard to the
trade. They were not included in the stock of E. R. & C. L. Knight,
47 and were not included in the trade, as I know of. In selling, the stoves
were kept separate. Parker said he was well satisfied with the trade.
Nothing had then been said about the stoves. The goods invoiced at
48 over four thousand dollars. The stoves were not included in the invoice;
think I saw it after it was footed up.

49 John W. Owen's deposition—Am a tinner; I was called to examine
the stoves; was asked what I would give for them, if I wanted to buy
50 them. On examination, I found a good many pieces missing. I would
not have been willing to give over nine dollars a-piece. They were
broken considerably.

INSTRUCTIONS.

51 The jury are instructed that the language in the agreement "that
the party of the first part has this day sold to the party of the second
part his stock of goods in the town of Onarga," means the goods which
52 the defendant owned and kept at his place of business, in said town, and
with which he and his agents were accustomed to traffic from day to
day, and that, consistently with said agreement, the defendant, Knight,
might own other personal property in said town, which ought not to be
included in said agreement, and the title to which would not pass to the
plaintiff thereby.

4th. If the jury further believe, from the evidence, that Knight
sold and delivered "his stock of goods in the town of Onarga," to
Parker—these words to be taken in their plain, ordinary and popular
signification—then the law is for the defendant.

52 The Court refused these instructions on the part of the defendant,
to which he then and there excepted.

²⁵⁰
Eliphalet A. Knight
Appellant
vs

Daniel Parker

Abstract

Filed Apr. 25-1861

L. Leland
Clerk

IN THE SUPREME COURT.

ELIPHALET R. KNIGHT,	}
ads.	
DANIEL PARKER,	
	APPELLANT,
	APPELLEE.

POINTS OF APPELLANT.

The Court erred in refusing to exclude the deposition of Daniel W. Parker. It in no way appeared that it had ever been enclosed, sealed up and directed to the clerk or the names of the parties endorsed thereon. Record page 25.

This was in express violation of the statute. 1 Purple's Statutes—Title, Evidence and Depositions, sec. 12, page 543.

By the agreement in the record we could take advantage of these irregularities upon the trial, or any others.

2d. The Court erred in suppressing the 13th interrogatory and answer thereto, in the deposition of Knight.

What belonged to the stock, those in the employ of the concern of all others knew best, and the question was proper as tending to show what belonged to the stock and what did not.

3d. The verdict is not supported by the evidence.

The verdict is \$146. Only one witness says there were nine stoves, the others seven. Daniel W. Parker swears that such stoves were worth from twenty-five to thirty dollars, but he did not examine them. Whereas Knight, who knew all about them, swears that, excepting one, they would average about ten dollars. Owen, the tinner, who was acquainted with stoves, swears that he examined them, and would not give over nine dollars apiece for them. They were much broken. How the verdict could be what it was from that evidence, it is difficult to say.

4th. The Court erred in refusing the 3d and 4th instructions for the defendant.

5th. The Court erred in overruling the motion for a new trial.

CHAS. H. WOOD,
For Appellant.

250
Eliphalet R. Knight
Appellant

vs
Daniel Parker
Appellee

Points of
Plff. in Error

Filed Apr. 25 - 1861

G. Leland

Clerk

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goods; I had nothing to do with the land; we lumped the goods off,
called it so many thousand dollars—I do not remember how much. In
making my figures, I do not include the stoves. I think Mr. Parker
understood it so at the time, but I am not positive. There was nothing
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46 the trade that were not in said store, or did not belong to E. R. & C. L.
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the party of the first part has this day sold to the party of the second
part his stock of goods in the town of Onarga," means the goods which
52 the defendant owned and kept at his place of business, in said town, and
with which he and his agents were accustomed to traffic from day to
day, and that, consistently with said agreement, the defendant, Knight,
might own other personal property in said town, which ought not to be
included in said agreement, and the title to which would not pass to the
plaintiff thereby.

4th. If the jury further believe, from the evidence, that Knight
sold and delivered "his stock of goods in the town of Onarga," to
Parker—these words to be taken in their plain, ordinary and popular
signification—then the law is for the defendant.

52 The Court refused these instructions on the part of the defendant,
to which he then and there excepted.

250
Eliphalet R. Knight
Appellant

vs
Daniel Parker
Appellee

Abstracts

Filed Apr. 25 - 1861

L. Leland
Clerk

The People of the State of Illinois

To all to 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 Ingham as find certain Records and proceedings in the words and figures following to wit:

United States of America }
State of Illinois } ss
Ingham County }

Pleas before the Honorable
Charles R Starr Judge of the Twelfth Judicial Circuit
and Presiding Judge of the Ingham County Circuit Court
in the State of Illinois At a Term of said Court begun
and held at the Court House in Middleport in said
County and State aforesaid on the third Tuesday (the same
being the fifteenth day) in the month of November in the year
of our Lord one thousand Eight Hundred and Fifty nine
and of the Independence of the United States of America the
Eighty-Fourth

Present

Hon. Charles R Starr Judge of the Twelfth Judicial Circuit
Charles J Beattie State Atty " "
Theodore Ayres Sheriff of Ingham County
Thomas Verne Clerk of the Circuit Court

State of Illinois Ingham County ss

Ingham County Circuit Court }
of the November Term AD 1859 }

2
Daniel Parker

vs

Eliphalet R Knight

} Assumpsit

Damages \$5100

The Clerk of said Court will please issue a
Summons in the above entitled Suits, against the said
Defendant and in favor of the said Plaintiff in a
Plea of trespass on the case on promises to the damage of the
said Plaintiff of Five Thousand and one Hundred dollars
and make the same Returnable according to law

At Washington

Fletcher & Ray

Proc

Atty for Plff

Filed Oct 12th 1859 Thomas Vennum Clerk

State of Illinois } ss
Ingersoll County }

Circuit Court Summons

The People of the State of Illinois to the Sheriff of said
County Greeting. We command You that you summon
Eliphalet R Knight if to be found in your County per
sonally to be and appear before the Circuit Court of said
County on the first day of the next term thereof to be holden
at the Court House in the town of Middleport on the
15th day of November next to answer Daniel Parker
in a plea of trespass on the case on promises to the
damage of him the said Plaintiff as it is said in the sum
of Five Thousand one Hundred dollars and have you
then and there this writ.

Seal

Witness Thomas Vennum Clerk of our said
Court and the Seal thereof at Middleport

3 this 12th day of October AD 1859

Thomas Penum Clerk

State of Illinois }
Inguis County } ss

Served by reading this writ to the within named
Eliphalet R Knight on the 2^d day of November AD 1859

Theodore Ayres Sheriff

State of Illinois }
Inguis County } ss

Inguis County Circuit Court of
the November Term AD 1859

Inguis County ss writ

Daniel Parker by Washington. Fletcher
& Ray his Attorneys complains of Eliphalet R Knight
being in custody &c of a Plea of trespass on the case on
promises for that whereas heretofore to wit on the twenty fifth
day of April in the year of our Lord one thousand eight hundred
and fifty nine at Onarga & wit at the County of Inguis aforesaid
the said Plaintiff at the special instance and request of
the said defendant bargained with the said defendant
to buy of the said defendant and the said defendant
then and there sold to the said Plaintiff a large quantity
of goods to wit his stock of hogs in the sum of Onarga for
the sum of thirty one hundred and fifty Dollars and the said
defendant further agreed to furnish the said Plaintiff
a good assortment of goods for the further sum of nine
teen hundred and fifty dollars making in all
Five thousand and one hundred Dollars. and the said
plaintiff saith by the said Agreement of the said defen-
dant there was to be in said amount of goods

Three Hundred Dollars in Groceries & said Goods were to be selected out of a stock (meaning a stock of goods) of Five thousand dollars which the said defendant expected to have got at Lafayette or if the said goods should not suit (meaning the said goods which the said defendant expected to have got at Lafayette) the said Plaintiff the said Defendant was to get the above mentioned goods (meaning the said good assortment of goods which the said defendant agreed to furnish the said Plaintiff for the further amount of Nineteen Hundred and Fifty Dollars as aforesaid). at Davis Sawyer & Co Chicago Ills (Illinois meaning) or at some other good House at prices fair or at such prices as other parties purchased such goods for said agreement was to be complied with on the part of the said Defendant within Twenty days from the said 30th day of April A.D. 1859 and for the further performance of the said Agreement of the said Defendant the said Plaintiff did then and there agree to make a good warrantee seed for the east half of the South East quarter of section Thirty Three in Township Twenty Seven North Range Thirteen West and the South West quarter of the South East quarter of section Thirty Three in Township Twenty Seven North Range Thirteen West also the South West quarter of the North West quarter of section Six in Township Twenty Six North Range Twelve West also the South half of the North East quarter of section one Township Twenty Six North Range Thirteen West also the South East quarter of the North West quarter of section Thirteen Township Twenty Six North Range Twelve West

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also twenty acres of timber lying on the north side of the Inguis River opposite Middleport in the north west corner of the east half of the north east quarter of Section Thirty one in Township Twenty Seven Range Twelve west also fifteen acres off of the west side of the north east quarter of Section Twenty one in Township Twenty Seven Range Twelve west also fifteen acres off of the west side of the north east quarter of the north east quarter of Section Twenty five in Township Twenty Seven Range fourteen west for which (to wit the said last mentioned pieces of land) the said Plaintiff agreed to give as title for the same as he had for said lands it being a tax title from the Sheriff of Inguis County and in consideration thereof and that the said Plaintiff at the like special instance and request of the said Defendant had then and there undertaken and faithfully promised the said Defendant to accept and receive the said goods and to convey the said Defendant the said lands in manner and form aforesaid in payment thereof he the said Defendant undertook and then and there faithfully promised the said Plaintiff to deliver said goods & every part thereof to the said Plaintiff as aforesaid and although the said Plaintiff did afterwards to wit on the 9th day of May A.D. 1859 well and truly perform his part of said agreement by executing & delivering to the said Defendant the deeds which he so agreed to execute as aforesaid to the said lands in full payment for said goods and although the time for complying with the said Defendants part of said agreement to wit the furnishing & delivery of the said goods hath long since elapsed and the said Plaintiff hath always been willing to receive and accept said goods and every part thereof at the County of Inguis aforesaid

Yet the said Defendant not regarding his said promise and undertaking but contriving and intending to deceive and defraud the said Plaintiff in this behalf did not nor would within the time aforesaid deliver the said goods or any part thereof to the said Plaintiff at the County of Inyo, or elsewhere but wholly neglected and refused so to do whereby the said Plaintiff hath lost & been deprived of said goods and whereby he has been deprived of divers great gains and profits which might and otherwise would have arisen and accrued to him from the delivery of the of the said goods to him the said Plaintiff to wit at the County of Inyo aforesaid.

And whereas the said Defendant afterwards to wit on the 30th day of June A.D. 1859 at Inyo County aforesaid was indebted to the said Plaintiff in the further sum of Five Thousand and one Hundred dollars of like good and money for diverse lands and tenements and appurtenances to wit the East half of the South East quarter of Section Thirty Three Township Twenty Seven Range Thirteen West and the South West quarter of the South East quarter of Section Thirty Three Township Twenty Seven Range Thirteen West. also the South quarter of the North West quarter of Section Six in Township Twenty Six Range Twelve West. also the South half of the North East quarter of Section one Township Twenty Six Range Twelve West. also the South East of the North West quarter of Section Thirteen Township Twenty Six Range Twelve West. also Twenty acres of timber lying on the North side of the Inyo River opposite Middleport in the North

West corner of the East half of the North East quarter of Sec
 tion thirty one in Township Twenty Seven Range Twelve
 West also Fifteen acres of off the West side of the North East
 quarter of the North East quarter of Section Twenty Five in
 Township Twenty Seven Range Fourteen West all situate
 lying and being in said County of Inyo prior before that
 time bargained sold deeded and surrendered by the said
 Plaintiff to the said Defendant and at his special instance
 and request and being so indebted to the said Defendant
 in consideration thereof afterwards to wit on the day and
 year, ^{last} aforesaid at Inyo County aforesaid undertook
 and then and there faithfully promised the said Plaintiff
 to pay him the said last mentioned sum of money when the
 said Defendant should be thereunto afterwards requested

Nevertheless the said Defendant not regarding
 his said several promises and undertakings but contriving
 and fraudulently intending craftily and subtly to deceive
 and defraud the said Plaintiff in this behalf hath
 not as yet paid the said several sums of money or any
 or either of them or any part thereof to the said Plain-
 tiff although often requested so to do but the said Defen-
 dant to pay him the same hath hitherto wholly neg-
 lected and refused and still doth neglect and re-
 fuse. To the damage of the said Plaintiff of Five
 Thousand, One Hundred dollars and therefore he brings
 suit on

J A Washington

Hetcher & Kay

Atty for Plff

Filed October 22^d 1859.

Thomas Remondet
 pr Taylor deputy

Copy of agreement in 1st Count of the declaration
filed in this cause

This article of agreement made and entered into this the twenty fifth day of April A.D. 1859 between E R Knight of Onarga and County of Trogueois & State of Illinois of the party of the first part and Daniel Parker of Middleport and County of Trogueois & State of Illinois of the second part certifieth that the party of the first part has this day sold to the party of the second part his stock of goods in the town of Onarga for the sum of thirty one hundred & fifty Dollars and the party of the first part does further agree to furnish the said party of the second part a good assortment of goods for the amount of nineteen hundred & fifty Dollars ~~there is to be in said amount of goods three hundred~~ making in all Five Thousand & One hundred Dollars There is to be in said amount of goods three hundred Dollars in groceries said goods to be selected out of a stock of Five Thousand Dollars which the said Knight expects to get at Lafayette or if said goods do not suit the said party of the second part the said party of the first part is to get the above mentioned goods at Davis Sawyer & Co Chicago Ills or at some other good House at prices fair or at prices such as other parties purchase such goods for and for the further performance of the above agreement of the party of the first part the party of the

9

Second part does agree to make a good Warranty Deed for the East $\frac{1}{2}$ of the South East $\frac{1}{4}$ of Section 33 Town 27 Range 13 West and the South West $\frac{1}{4}$ of the South East $\frac{1}{4}$ of Section 33 in Town 27 Range 13 West also the South West $\frac{1}{4}$ of North West $\frac{1}{4}$ of Section 6 in Town 26 Range 12 West Also the South $\frac{1}{2}$ of the North East $\frac{1}{4}$ of Section One Town 26 Range ~~thirteen~~ 13 West also the South East of the North West $\frac{1}{4}$ of Section 13 Town 26 Range 12 West

also twenty acres of timber lying on the north side of the Froquois River opo^sit Middleport in the North West corner of the East half of the North East $\frac{1}{4}$ of Section 31 in Town 27 Range 14 West also fifteen acres off of the west side of N E $\frac{1}{4}$ of the N E $\frac{1}{4}$ of Sect 25 in Town 27 Range 14 West for which he agree to give as title for the same as he have for said lands It being a Tax Title from the Sheriff of Froquois Co The said party of the first part to comply on his part of the agreement within twenty days from this date

Witness my hand and seal this 26th day of April 1859 } E R Knight
 Orange April 26th 1859 } Daniel Parker

Copy of account in the Second Count of the declaration filed in this Cause
 To

Eliphalet R Knight Jr
 To Daniel Parker

1839

18

To E 1/4 S E 1/4 Sec 33 T 27 N R 13 W
 also To S W 1/4 S E 1/4 " 33 " 27 " " 13 W
 " To S W 1/4 S W 1/4 " 6 " 26 " 12 W
 " To S 1/2 N E 1/4 " 1 " 26 " 13 W
 " To S E 1/4 N W 1/4 " 13 " 26 " 12 W
 " To 20 acres Timber Lying on the
 North Side of the Troguois River
 opposite to Middleport in the
 N W corner of the E 1/2 S E 1/4
 of Sec 31 T 27 N R 12 W
 " To 15 Acs off of the West Side of
 of N E 1/4 of N E 1/4 Sec 25 Town 27
 N R 14 West all in the Co of
 Troguois & State of Illinois

\$5000.00

State of Illinois } In Troguois Circuit Court
 Troguois County } of the November Term 1854
 Daniel Parker }
 vs }
 Eliphalet R Knight }

And the said Defendant
 by Charles H Wood his Attorney comes and
 defends the wrong and injury when &c
 and saith that he did not undertake or
 promise in manner and form as the said
 plaintiff hath above thereof complained
 against him and of this he puts himself upon

the Country &c And for a further plea in this behalf by leave of the Court &c the said Defendant says actio non because he says he did sell and deliver his stock of goods in the town of Onarga to the said Plaintiff for the sum of thirty one hundred and fifty Dollars and that he did furnish the said Plaintiff a further assortment of goods to the amount of nineteen hundred and fifty Dollars making in all Five Thousand and one hundred Dollars and that he did furnish in said amount of goods three hundred Dollars worth of groceries and that he did furnish the same at fair prices and that he did comply in all things within the twenty days stated in his agreement with the conditions thereof according to the form and effect of the said indenture and of the said agreement of the said defendant by him in that behalf made as aforesaid to wit at Onarga April 26th A.D. 1857 And of this the said defendant puts himself upon the Country &c

Charles H Wood Defts Atty

Filed Nov 22 1859

Thomas Pennum Clerk

And afterward to wit on the 24th day of November A.D. 1859 it being one of the regular days of the November Term of said Court for said year A.D. 1859

and the said court being then duly organized and sitting as a court for the transaction of business the following proceedings were had and entered of record by the said court in the words and figures following to wit:

Daniel Parker

vs

Assumpsit

Elephat R. Knight

This day comes the Plaintiffs into court by Washington, Fletcher & Day his attorneys on whose motion it is ordered by the Court that the cause be postponed until Wednesday of next week.

State of Illinois } In Equity Circuit Court
Sangamon County } Of the November Term 1859

Daniel Parker

vs

Petition for change of venue

Elephat R. Knight

Elephat R. Knight the defendant in the above entitled cause comes and prays a change of venue of the said cause because he says on his oath that he believes the inhabitants of this county are so prejudiced against him and that such prejudice has come to his knowledge from the present fact that he can neither expect or obtain a fair trial of the said cause in this county

He therefore prays that the venue of the said cause may be changed to a County where this prejudice does not exist

Subscribed and sworn to before
me this 30th day of November
A.D. 1859

Moses H. Meyer J.C. 

Filed Dec 1, 1859. Thomas Bennett Clerk

Stipulation

State of Illinois } ss
Madison County }
Daniel Parker

vs

Eliphalet R. Knight 

Stipulation

It is mutually stipulated by the parties in the above entitled cause that the only matter to be adjudicated in this cause is the right and title in and to a lot of stores

Wardleport }
Nov 30th 1859 }

S. A. Washington

James Fletcher

Charles B. Wood

Filed December 1st 1859 }
Thomas Bennett Clerk }

And afterwards to wit on the 1st day of December it also being one of the regular days of the November Term of said Court for said year A.D. 1859 and the said Court being then duly organized and sitting as a Court for the transaction of business certain other proceedings

were read and entered of Record by the said
Court in the words and figures following to wit

Daniel Parker

vs

Exhibit

Assumpsit

Elephat R Knight

This day comes the defendant
into Court by Charles H. Howell his Attorney and
files his petition verified by the affidavit of the
said Defendant and enters his motion for a
change of venue in this cause from this Court

Whereupon the Court upon due
consideration ordered that the prayer of the
Petitioner be granted and that the venue of
this cause be and the same is hereby changed
from the Ingwin County Circuit Court to the
Circuit Court of Menkatee County Illinois
by reason of the prejudice existing in the minds
of the Inhabitants of Ingwin County against
as alleged in the said Defendants Petition
and it is further ordered that the Clerk of this
Court do make out certify and transmit to
the Circuit Court of Menkatee County a true
a full true and perfect transcript of the Record
of the Proceedings of this Court in the above
cause together with all the papers filed herein
appertaining to or forming any part of the Record
of this Court in this cause.

State of Illinois

Ingraham County SS I Thomas Hermann Clerk of
the Circuit Court in and
for said County in the State aforesaid do hereby
certify the above and foregoing to be a full true
and complete transcript of the Record of the
proceedings of the Ingraham County Circuit Court
in a certain cause wherein Daniel Parker was
Plaintiff and Elephelt R Knight was Defendant
latey pending in said Court and I do further
certify that the papers herewith transmitted and
numbered from number "1" to Number "10"
inclusive are all the papers filed in said Court
in said cause appertaining to or forming a
part of the Record of said Court in said cause

In attestation of which I have hereunto
set my hand and affixed the Seal
of said Court at office in Middleport
Illinois on said County this 28th day of
December A.D. 1859

Thomas Hermann Clerk

By day of Dec 28

Filed Dec 31, 1859

P Worcester Clerk

By Am. Worley Dep

And afterwards on the 7th day of March A.D. 1860 comes James
Fletcher and files his affidavit in the ~~case~~

office of the Circuit Clerk of Hancock County in the
words and figures following to wit:

State of Illinois 3

Ingraham County 3

Daniel Parker

vs

Applicant

Elephat R Knight 3

Personally appeared before
the undersigned Clerk of the Ingraham County
Circuit Court James Fletcher who after being
duly sworn deposes and says that Daniel Parker
is a Witness for said Plaintiff in the above
entitled cause and he resides in said County
of Ingraham, and said Plaintiff desires to take his
deposition to be used as evidence on the trial of
said cause at Hancock Circuit Court in
charge of venue from said County of Ingraham
Subscribed and sworn to before.

me this 5th day of March 1860

James Fletcher

Attest Seal of Court, Thomas Townsend

Clerk

Filed March 24th 1860

Forcester Clerk

By. R. M. Sholley Dep

~~And afterwards to wit: on the 27th day of
March A.D. 1860. the said Plaintiff did file
in the office of our Clerk of our Circuit Court~~

Kankakee County Circuit Court
 Of the April Term AD 1860
 United States of America
 State of Illinois
 Kankakee County

Now before the
 Honorable Charles R. Starr Judge of the Twentieth
 Judicial Circuit and sole presiding Judge
 of the Kankakee County Circuit Court at a
 Term thereof begun and held at the Court House
 in Kankakee City in the County and State
 aforesaid on the second Monday (the same
 being the ninth day of April in the year of our
 Lord One thousand Eight hundred and sixty
 and of the year of the Independence of the
 United States of America the Eighty third.

Present Now Charles R. Starr Judge of the 20th Judicial Circuit
 Charles J. Beattie State Atty for 20th Judicial Circuit
 Harris A. Durand Sheriff of Kankakee County

And afterwards do sit on the 10th day of
 April AD 1860, it being one of the regular days of the
 said April Term of said Court for the year of our
 Lord One thousand Eight hundred and sixty and
 the said Court being then duly organized and
 sitting in open Court for the transaction of Business
 the following proceedings were had and entered of
 record by the said Court in the words and to the
 following to wit:

Daniel Parker

vs

Eliphabet Knight

Assumpit

And now at this day by consent of the Parties hereto it is ordered by the Court that the trial of this cause be and it is set for Monday Morning

And afterwards do wit on the thirteenth day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty. It being one of the regular days of the April Term of said Court for the said year A.D. 1860 aforesaid. And the said Court being then duly organized and sitting in open Court for the transaction of Business the following proceedings were had and entered of Record by the said Court in the words and to the following to wit

Daniel Parker

vs

Eliphabet Knight

Assumpit

And now at this day comes the parties to this Suit by their respective attorneys and by the argument of the parties hereto it is ordered that this cause be and the same is hereby continued

And afterward do wit on the fifth day of September A.D. 1860 the same being one of the regular days of the September Term of said

Court for the year of our Lord one thousand
eight hundred and Sixty. the said Court being
then duly organized and sitting for the adjudication
of business certain other proceedings were had and
entered of Record by the said Court in the words and
figures following to wit:

Daniel Parker

of

Elihu R. Knight

vs

James Fletcher

Plaintiff

And word at this day the parties
appearing by their respective attorneys Fletcher
for Plaintiff and Wood for defendant it is
ordered by the Court on motion of Deft that
the depositions taken in this cause be opened

And afterward to wit on the 6th day
of September AD 1860 comes James Fletcher the
Plaintiffs Attorney and files his Replication in
the words and figures following to wit

Daniel Parker

vs

Elihu R. Knight

And comes the said Plaintiff
by James Fletcher his attorney and says as to
the Plea of the said Defendant by him first
above pleaded and wherein he has put himself
upon the Country the said Plaintiff with the
file

James Fletcher
att'y for Pegg

And the said Plaintiff saith as to the said plea of the said defendant by him secondly above pleaded says that the said defendant did not deliver the said Stock of Goods to said Plaintiff & did not furnish said Plaintiff a further assortment of goods & groceries and did not comply in all things in this agreement with the conditions thereof according to the form & effect of the said Indenture & of the said agreement of the said defendant by him in that behalf made as claimed by said defendant in his said second plea, and of this he puts himself upon the country

James Fletcher

And the defendant doth the like

Chas. H. Groob Atty for Deft

Filed Sept 6th 1860

2 Worcester Dist
By J B Melchior

And afterwards to wit on the sixth day of September in the year of our Lord one thousand eight hundred and Sixty the same being one of the regular days of the September term of said Court for the year A D 1860 and the said Court being duly organized and sitting for the adjudication of business the following proceedings were had and entered of Record by said Court in the words and figures following to wit.

Daniel Parker

vs

2
3
3
3

Assumpit

Eliphalet A Knight

Charg of Deeds from Inq writ

And now at this day comes the

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Plaintiff by Fletcher his attorney and the defendant
also comes by Wood his attorney and by the agreement
of the Parties it is ordered by the Court that this
cause do now proceed to trial and that a Jury do
now come for that purpose. Thereupon came the Jurors
of a Jury of good and lawful men consist

George C Woodward, Samuel Oak
Merrison Woodward Robert Roney, Harvey Gifford
John Colestock Hardy, Wiley David Evans
Nathaniel Deniel Samuel Beebe, Gurdan Durham
Sejuel Foster. Who being duly empanelled and
sworn well and truly to try the issues herein joined
and a true verdict give according to the evidence
whereupon after hearing the evidence adduced the
arguments of counsel and the instructions of the
Court said Jury for verdict say. That the Jury find
the issues herein joined for the Plaintiff and assess his
damages to the sum of One hundred and Forty Six
Dollars. Whereupon ^{the defendant by C H Wood his Attorney} it is ordered by the Court that the

~~Plaintiff do have Judgment against the said
defendant for a new trial in this cause
and the Court being fully advised in the premises it is ordered
that the said motion for a new trial be and the same is hereby overruled
and it is further ordered by the Court that said Plaintiff do have
damages to the sum of One hundred and Forty Six Dollars together with his costs and charges
by him about his suit in this behalf expended
Whereupon the defendant by Wood his attorney enters his
motion for a new trial in this cause and the
Court being fully advised in the premises it is ordered~~

whelp expended and that he do have execution therefor
~~that the motion for a new trial be and the same is hereby~~
~~granted~~ so much decision of the Court in granting
 said motion defendants counsel excepts and prays an
 appeal from the Judgment of this Court in this cause
 to the Supreme Court of this State Whereupon it is ordered
 by the Court that said appeal be and it is granted
 upon said defendant filing an appeal Bond in
 this cause in the sum of Three Hundred Dollars with
 Jacob Ryner and David Metzger as Sureties in Forty
 days and also the same time is granted for filing a
 Bill of Exceptions

And afterwards is met on the
 16th day of October in the year last aforesaid to wit
 A.D. 1860 comes the defendant and files a Bond
 in the words and figures following to wit:

Know all men by these presents that we E. R. Knight
 Jacob Rines and David Metzger are held and jointly
 bound unto Daniel Parker in the personal sum of Three
 Hundred Dollars lawful money of the United States for
 the payment of which well and truly to be made we
 bind ourselves our heirs and administrators jointly
 severally and firmly by these presents

The condition of the above obligation is such that
 whereas the said Daniel Parker did on the 6th day of
 September A.D. 1860 in the Montpelier Circuit Court
 at a term of said Court then being holden recover
 a Judgment against the above bounden E. R. Knight
 for the sum of One hundred and Forty Dollars and

costs from which said Judgment the said E. R. Knight
 has taken an appeal to the Supreme Court of the
 State of Illinois. And if the said E. R. Knight shall
 prosecute his appeal with effect and shall pay the
 Judgment, Costs, Interest and Damages which shall be
 decreed by said Court against him in case said
 Judgment shall be affirmed, then the above obligation
 to the writ, also to remain in full force and effect
 Witness our Hands and Seals this 13th day of
 October AD 1860

E. R. Knight

Sacred River

A. H. Metzger

Filed October 16th 1860

Worcester Clerk

By J. B. Welch Deputy

And afterward so met on the 16th day of October
 AD 1860 the said defendant by his said Attorney
 did file in the office of our clerk of our circuit court
 his certain Bill of exceptions in this cause in the
 words and figures following so met:

State of Illinois
 Hancock County

Hancock Circuit Court
 Of the September Term 1860

Daniel Parker

vs

Elihu R. Knight

Bill of Exceptions

Be it remembered that on the Trial of the above entitled cause at the September Ad^l 1860 of the Southern Circuit Court it was agreed by the respective parties to the suit that nothing was to be tried but a matter arising out of the title in and to a certain lot of Stones then upon the Plaintiff's premises the issue on this point introduced without objection and agreement in writing between the parties, the parts of which that relate to this case read in the words and figures following to wit:

This article of agreement made and entered into this the Twenty Fifth day of April A^d 1859 between E. R. Knight of Orange and County of Ingham & State of Illinois of the party of the first part and Daniel Parker of Middleport and County of Ingham & State of Illinois of the second part, certifieth that the party of the first part has this day sold to the party of the second, part his stock of goods in the Town of Orange for the sum of Thirty Two Hundred and Fifty dollars" Said agreement after some other extensive and provisions provides that "the said party of the first part is to comply on his part of the agreement within Twenty Days from this date" the agreement being dated Orange April 25th 1859 which is all of said instrument that relates to this suit

The Plaintiff then offered in evidence the Deposition of Daniel M. Parker &c in the reading of which the defendant by his counsel objected for

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the reason that it in no way appeared that said deposition had ever been enclosed sealed up and directed to the clerk of the Milwaukee Circuit Court in which this action was pending nor had it the names of the parties litigant endorsed thereon. But the court overruled said objection and permitted said deposition to be read to the jury to which ruling the defendant by this counsel then and there excepted.

It having been mutually agreed by counsel on both sides that exceptions might be taken to the depositions on the trial, the same as though there had been a motion to suppress. The defendant then moved to suppress the Forest Interrogatory and the answer thereto in the deposition of the said Daniel M. Parker Sr as hereinafter set forth for the reason that the parties had committed their contract to writing and that the language of the parties at the time the contract was made is superseded by their written contract. But the court overruled said objection and permitted the whole of said deposition to be read to the jury to which the defendant excepted. Said deposition reads in the words and figures following to-wit:

Int 1st Are you acquainted with the parties to the above entitled

Ans Yes Sir

Int 2^d Were you acquainted with said parties prior to up to the 20th day of April A.D. 1859 viz so long before that time did you know the said parties

Ans

I merely know Mr Knight by sight before that time. the Plaintiff is my Father

Int 3rd

Did the Plaintiff and defendant have any business transactions about the 26th day of April 1859 & if so what was the nature of the transactions?

Ans

They did about that time Mr Knight came to Father & wanted to trade his stock of merchandise at Oranga for my Father's land situated in the County of Ingham. One and a half or two miles from Widdelport Ill. About that time the trade was made 26th day of April Knight traded his stock of goods at Oranga Ill for Father's land

Int 4th

State whether you are present when the plaintiff and said defendant made that said trade & if so State what said defendant said in relation to his stock of goods & what the same consisted of and how said stock of goods was situated

Ans

Yes Sir I was. Knight said he had a great many goods consisting of dry goods in general hardware, guns & some few groceries. the most of the goods were in the room he occupied some were scattered over the room. Some were at Rumley's pitchforks & sythes & snaths, some at the depot they were, snaths spades, shovels & a lot of stores

Int 5th How many stores were at the Depot referred to by you as above?

Ans There were three I think

Int 6th What kind of stores were they, cool stores or other stores describe the same fully

Ans They were all cooling stores. do not recollect of their being any other kind

Int 7th Had said stores any pipe or furniture attached thereto if so describe the same

Ans They had. Had some pipes, boilers, skillets and some pots tea kettles & all of the furniture necessary to a store

Int 8th What were said stores, pipe & furniture worth?

Ans Each store pipe and furniture attached was worth from twenty five to thirty dollars

Int 9th At the time said Trade was made between said plaintiff & defendant did said defendant point out or show to said Plaintiff said stock of goods as enumerated by you above

Ans He did the dry goods that were in the store some groceries & hardware

Int 10th How did you find the balance of said goods at Cummings & the depot?

Ans Genl Knight pointed out the goods at the depot

Int 11th What was it Genl Knight showed you at the depot?

Ans Stores, Spades & snaths & the furniture that was with the stores

Int 12th What stores do you mean or refer to at the depot? that Genl Knight pointed out

Ans The same stores which belonged to the stock which I mentioned before

Int 13th Why was it that Genl Knight pointed out said stores furniture & snaths to the said plaintiff?

Ans He was ordered by Eliphalet S. Knight to show Harter the stock at the depot and everything connected with the stock.

Int 14th State who is Genl Knight who you speak of & what relation did he sustain to Eliphalet S. Knight at the time of said Trade?

Ans He was a Broker & a clerk as it appeared

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Oct 15th

Upon said Elephat R. Wright directing the said
Curt Wright to show your father the said stock
of goods please state all of said stock of goods he
showed your father on that occasion

Ans

He showed him the hats & caps boots shoes & all in the
store & all that was at the depot

Oct 16th

State what portion of said stock of goods the said
plaintiff got & what portion he did not get after the said
trade was made

Ans

He got all the goods which were in the woods: got partly
the goods which were at the depot - he did not get the
stores, pipe, nor furniture

Oct 17th

Were there any other goods the said Plaintiff did not get
except said stores pipe & furniture?

Ans

None other that I know of except those

Oct 18th

Did said plaintiff get any of said stores, pipe & furniture
if so how many?

Ans

No Sir

Oct 19th

What was the reason said Plaintiff did not get said
stores, pipe & furniture

Ans I don't know what was the reason.

Sub 20th Please state what relation you are to the said Plaintiff

Ans He is my Harker

And also at the same time & place came the defendant by. Yes B Jones his attorney was present the following were interrogatories which were answered as follows to wit:

Comp Sub 1st State whether the contract you have spoken of was a written or verbal contract?

Ans It was a written contract

Comp Sub 2nd Were you present at the signing of it by the parties?

Ans I do not recollect being there at the time of signing

Comp Sub 3rd State whether or not there was an invoice taken of said goods by said parties

Ans As I said there was no invoice at all

Comp Sub 4th Do you know that the stores which you have spoken of as being at the depot were the defendants stores only upon statements of Capt Knight if so state how you know

Ans

I do not

Q. Sub 5th What kinds of stores or where were they?

Ans

I did not look to see where were they were - they were cooking stores

Q. Sub 6th

State if dependent spoke of stores being at the depot or only a lot of goods at the depot at the time of the trade?

Ans

All I recollect was a lot of goods

which was all the deposition of the said Daniel Parker Jr. The Plaintiff further to maintain the case on his part produced Ezekiel Sleight who testified as follows:

I was employed by Mr. Parker to go over to Omarga after the stores - can't state just what time it was - the stores were demanded of E. R. Knight and he refused to deliver them - This was sometime after the trade and after Mr. Parker had moved to Middleport I saw the stores. they were shown to us by the Irishman who had charge of the Depot - they standing together up in one corner of the depot - there were seven cooking stores when I saw them - I didn't examine the stores particularly - there were also pipes, pots and tea bottles there - the pipe was piled up in the depot a little way from the stores - It looked as though there was a wagon box full - I thought there was enough for all the stores - I was not thoroughly acquainted with the value of stores

But these were such as they sell at hardware stores from
twenty five to thirty dollars each.

Camp Co

I didn't examine them to see whether they were broken
any. They were piled up together. Some of them were rusty.
I think there were as many as four or five kettles there.
I couldn't tell how many joints of pipe there were. We
didn't move the stores.

The Plaintiff upon concluding the above
testimony asked his case whereupon the defendant
proposed to read the deposition of Curtis P. Knight.
The Plaintiff thereupon under the agreement of counsel
that objections might be taken to the deposition on trial
moved to suppress the thirteenth interrogatory and the
answer thereto of Curtis P. Knight as Heretofore set forth.
Which motion the Court sustained and suppressed the
said interrogatory and the answer thereto. To which ruling
the defendant by his counsel then and there excepted.

The defendant thereupon proceeded to read the
deposition of Curtis P. Knight which is in the word
and page following to wit:

Interrogatory First:

State your name, age, residence & occupation

Ans Curtis P. Knight, age Twenty eight years, residence
Owaga Ingham County Mich. Occupation Selling goods

Int 2nd State whether you are acquainted with the parties to this suit & whether you know of any trade having been made between them within the last two or three years and if so when and what the value of that trade was

Ans I am acquainted with the parties to this suit & know of a certain trade made between them within the last two or three years. I think it was a year ago last April or May. The value of the trade was that a certain stock of goods belonging to E. R. Knight & C. L. Knight was traded to Daniel Parker or to D. Parker or I do not know which for a certain lot of land

Int 3^d State if you know of what said stock of goods so belonging to E. R. & C. L. Knight consisted

Ans It consisted of goods such as are generally kept in country stores

Int 4th Where were said stock of goods kept before the trade?

Ans They were kept in a building in Orange belonging to W. P. Pearson. There were some pitch forks kept in a building occupied by Mr. Park some cows & calves & some other little articles kept in the warehouse of the L. & C. R. Co.

Int 5th Did you have any thing to do with said trade or so state what it was

Ans

the fact I knew anything of the trade Brother cannot come from Widdesport. Mr Parker with me or both of this sort came home with him or came over the next day I should to examine the stock of goods. I showed them through the stock with the intention of taking an invoice of the goods

Qut 6th

State whether our invoice was taken?

Ans

There was not

Qut 7th

State whether or not you showed at that time to the Plaintiff or certain lot of stores as being a part of the stock of E R Knight's goods in the town of Onarga?

Ans

In regard to the stores there were a lot of stores belonging to the old firm of Knight & Thomas when the firm was known as Knight & Richardson those stores were never known as belonging to the stock when it was changed to E R Knight the stores were not known as a part of the stock for when a store was sold E R Knight received credit for it or the money for the store. It was considered as his individual property. I went over to the depot with Mr Parker when he talked of taking an inventory of the goods. I showed him the stores, some cows some calves, cultrations, & asked me if the stores were to go in. I told him that if he wanted them I supposed they could

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Int 5th

State whether or not Mr Parker made any reply to the answer last above given to the seventh Interrogatory

Ans

I do not recollect whether he did or not

Int 9th

State if you know whether or not the trade at that time had been made or was to be made

Ans

The trade was not concluded at that time

Int 10th

State if you know where the trade was made whether the stores were included in the trade

Ans

I made the trade with Mr Parker as to the goods - I had nothing to do with the land. We lumped the goods off, called it 10 many thousand Dollars - I do not remember I said much - In making my figures, I did not include the stores. I think Mr Parker understood it so at the time but I am not positive

Int 11th

Now you present where the goods were delivered or any part thereof to the Plaintiffs

Ans

The Key to the store I think I delivered Mr Parker

Int 12th

State whether or not Mr Parker at that time claimed those stores?

Ans

There was nothing said about the stores till about

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two weeks after the trade was made and during the time the goods were here I sold one of the stores supposing they belonged to E R Knight. I do not know whether Mr Parker knew it or not it was after it was after the trade was concluded some week or two

Int 13^d

State if you know whether those stores were regarded by those connected with Knight's Store as belonging to the stock of said store?

Ans

I think they were not

Int 14th

State whether or not Mr Knight has any other goods in the town of Orange that were regarded as not belonging to his stock of goods & if so state what they were

Ans

Nothing but farming implements so far as I know

Int 15th

State who owned them where they were kept whether or not Mr Parker claimed them when the other goods were delivered to him

Ans

They belonged to E R Knight or were supposed to. They were kept in the same house with the stores & part of them on the platform of the warehouse. Mr Parker did not as I ever heard claim said farming implements

Q. 16th State whether you ever heard the Hamletts after the trade was made make any statements in regard to it viz or State what they were

Aus I do not know that I ever heard him say any thing about the trade for a week or two after it was made about the time he was moving the goods away he cleaned the stores

Q. 17th State how many stores there were at the time of the trade, if you know what their condition was & how much they were worth?

Aus I think there were seven or eight stores at the time of the trade was made. The one I sold was a good store. The others were damaged more or less. There might have been two or three stores worth ten or twelve each the balance of might average ten dollars

Cross Interrogatories

Q. 18th State what kind of stores the stores you have been speaking about in your direct examination were whether cool stores or others?

Aus They were cool stores

Q. 19th State what you sold the store for which you spoke of having sold in your direct examination

Ans 38

I think I sold Sard Stores of furniture for twenty dollars

Q Int 3^d State whether all of Sard Stores you have been speaking about had the usual amount of furniture of a cooking attached to each of them? if any deficiency wherein was it

Ans They were not furnished the deficiency was in pots frying pans & put in the oven & some of them had no Tea Kettles

Q Int 4th How many pots usually go with a Cooking Store?

Ans One pot I think was what we sold with a Store

Q Int 5th How many pots were lacking to furnish Sard Seven or Eight Stores?

Ans Four or Five pots were lacking or nearly all of them

Q Int 6th What is a pot which usually goes with a Cooking Store worth?

Ans They are worth from one dollar to a dollar and a half according to its size

Q Int 7th You in your direct enumeration spoke of Stores being broken. State wherein they were broken?

Ans

I cannot recollect in what part all the stores were broken. One of them was broken in the back part. They were broken so they could not be sold until repaired.

Q Int 1st What has become of said Stores?

Ans

I think the stores were taken down Owens for repairs.

Q Int 9th

State whether more than one of said Stores has been sold?

Ans

Not to my knowledge. I have been absent & they may all have been sold but not to my knowledge.

Q Int 10th

State whether the Plaintiff ever got any of said Stores.

Ans

I do not think he did - not to my knowledge.

Q Int 11th

State whether the said Plaintiff claimed said Stores whether said defendant did not refuse to deliver them & why?

Ans

When Mr. Parke sent for them I agreed to deliver them.

Q Int 12th

State whether the contract between said Plaintiff & defendant as spoken of by you & your direct examination was in writing or verbal?

Ans

It was no meeting

Q Int 13th State what parties were to said contract if you know them?

Ans

E R Knight party of the first part & R Parker or
D Parker 2nd party of the second part

Q Int 14th State whether said plaintiff ever decided to said
dependent the land spoken of in said contract

Ans

I do not know whether he ever did or not

Q Int 15th State how it was you came to show the Plaintiff
in this case the stock of goods spoken of by you
in your direct examination

Ans

Mr Parker came to look at the Goods. E R Knight
requested me to show them to him

Q Int 16th Were you clerking for him at that time or in
what capacity were you connected with him
if at all?

Ans

The firm at that time was E R & C I Knight

Q Int 17th What composed the Firm of E R & C I Knight

Ans⁴¹

The dependent to this suit and myself

Q Int 18th who wrote the contract spoken of above?

Ans Brother gave me the form and I copied the form each party took a contract I think & one of them & perhaps both were in my Grand meeting

Q Int 19th Has said trade spoken of by in your direct communication made with your consent

Ans Strass

Q Int 20th State what interest you had in said stock of goods at that time?

Ans I had an equal interest

Q Int 21st Have you any interest in the result of this suit

Ans I have not at present

Q Int 22nd Do you expect any from the result of this suit

Ans No Sir

Q Int 23rd How did you get your pay for your part of the goods parted by E R Knight & Mr Parker?

Ans 42

The pay got was one third interest in the firm of Knight & Stetfield & Co

Q Int 24th Did your One third interest in the firm of Knight & Stetfield & Co equal the interest you had in the goods sold Whiteaker?

Ans I considered that it did

Q Int 25th Did you take the one third interest in the firm of Knight & Stetfield & Co in full consideration and discharge of the claim you had against C. R. Knight for the goods he sold to the plaintiff of this Suit?

Ans That was what I considered it

Q Int 26th Did you let the Plaintiff know at the time or before that you had an interest in said goods?

Ans I think that I explained to him that the goods he was trading for belonged to C. R. & C. S. Knight

Q Int 27th Did you tell him at the time that you had an interest in the profit of said goods and not in the goods themselves

Ans Not that I recollect of, do not recollect of telling him so

Q Int 28th Were these said goods purchased in the name of
E R Knight or in the name of E R Knight
+ C L Knight

Ans Our bills from Chicago were in the name of
E R + C L Knight when we received new goods

Q Int 29th State whether Mr Parker did not undertake to
remove some of the cultivators crates spoken of
by you in your direct examination and whether
you or E R Knight did not tell him that they
were on commission + did not belong to the stock
of Goods or goods to that effect?

Ans Mr Parker never attempted to remove them to my
knowledge

Q Int 30th State whether said crates + cultivators were a part of
the goods you showed to Mr Parker at the time of
the trial

Ans I do not know as they were mentioned particularly
or not

Q Int 31st State whether you insured said stock of goods
or whether you leased them called them
sommuch + took the land for sommuch in
payment therefor

Ans 44

He did not receive the goods, called them worth a certain sum, I do not recollect how much, I do not recollect whether the land was called so much per acre or the whole lot called so much

Direct Examination resumed

Ans 1st

State after you had sold the store up to how much store furniture there was in all remaining

Ans

There was not enough to furnish the stores remaining - There was but very little

Ans 2nd

State where you have or ever had any interest in said stores

Ans

As Sir

Cross Examination Resumed

Ans 1st

State whether you have discharged said E R Knight from all liability to you for your share of the goods sold to said plaintiff?

Ans

Yes Sir

The foregoing was all the testimony of the said Curtis E Knight whereupon the defendant proceeded

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to read the deposition of W. D. Skeels which was as follows

Interrogatory First

Ans

State your name, age, occupation & residence

I am 20 years old. Selling dry goods, reside in Orangeburg County S.C.

Int 2d

In whose employ were you in the Spring of 1859?

Ans

I was in the employ of E. R. & C. L. Knight I think

Int 3d

State whether you are acquainted with the parties to this suit viz so whether you know anything concerning a trade made between them in the Spring of 1859?

Ans

I am acquainted with the parties to this suit, E. R. & C. L. Knight sold their stock of goods to Mr. Parker as I understood it & received as pay one hundred

Int 4th

State of what that stock of goods so sold Mr. Parker consisted if you know

Ans

It consisted of the stock of dry goods in the store then occupied by E. R. & C. L. Knight and I concluded that it was E. R. & C. L. Knight's Stock of Goods.

Int 5th

State if you know if any goods were embraced in that trade that were not in said Store or did not belong to E R & C L Knight's stock of goods

Ans

I did not suppose there was any goods embraced in the trade except those of E R & C L Knight

Int 6th

State if you know anything about any stores belonging to either of the parties & if so state what you know about them with reference to the trade of which you have spoken

Ans

I did not know anything about the stores in reference to the trade. I knew that E R Knight had some stores in the warehouse

Int 7th

State if you know whether said stores belonged to the stock of E R & C L Knight whether they were included in the trade to which you have referred

Ans

They were not included in the stock of E R & C L Knight. They were not included in the trade as I know of

Int 8th

State whether in selling goods these stores were identified with the stock of goods or kept separate in all dealings relative to them;

47

Ans

Key one kept separate

Int 9th

State whether you ever heard the plaintiff make any statements after the trade with the dependent relative who being satisfied or dissatisfied about it or so what was it?

Ans

I heard Mr Parker say that he was well satisfied with the trade and that he had done well enough

Int 10th

State whether at the time this statement was made by Mr Parker there had been anything said about the stores?

Ans

At the time I had not heard anything about the stores

Int 11th

State whether Mr Parker told you or whether you know the amount of goods Mr Parker got in the trade

Ans

I think I cannot remember exactly & truly but the amount of the invoice was over Four Thousand Dollars. The invoice was made at the cost price & they said they could sell them at cost & do well

Int 12th

State whether you were present when the invoice was footed up and whether stores were included therein?

Ans

I do not know whether I was present or not

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The Stores were not included

Qut 1st Did you see the invoice after it was footed up?

Ans I think I did but I am not sure

Cross Interrogatories

Qut 1st Was the contract between the Plaintiff & defendant in writing or was it verbal?

Ans I do not know

Qut 2^d How do you know what stock of goods were included in said contract if you do not know what said contract was

Ans I know that was the only stock of goods E & B & L Knight had

Qut 3^d How do you know said stores were not included in said invoice if you did not see said invoice footed up

Ans All I know about the stores not being in the invoice was that I did not hear anything about them at the time of the invoice

Q Int 4th Did you help invoice any goods except the goods in the Store?

Ans Did not unless it was some goods in the grocery store

Q Int 5th Might there not have been goods invoiced after you assisted in invoicing in the Store & the grocery Store without your knowledge?

Ans There may have been goods invoiced

Q Int 6th If there had been any goods invoiced after you assisted as spoken of by you above might not said Stores have been included in said invoice without your knowledge?

Ans There might have been an invoice that I heard nothing about which might have included Stores.

Which was all the testimony of the said Henry. & Skell - whereupon the defendant read in Evidence the deposition of John H. Owen which I in the words and figures following:

Subrogatory Just

State your age, name, occupation & residence?

Ans John H. Owen, age forty seven years, residence Orange, Occupation Farmer

3⁰
Aut 2^d

State whether you were ever called upon to examine
the Stores in controversy at the freight depot in Quazga
if so State how many there were, what their condition
was & how much they were worth

Ans

I was called to examine the Stores was asked
what I would give for them if I wanted to
buy them, on examination I found a good
many pieces rapping & should not have been willing
to give over nine dollars apiece. They were broken
considerably. I do not know whether there was
four or five when I examined them. I could not
State whether it was in the Winter or Summer, Spring
or Fall

Cross Interrogatories

Q Aut 1st What did Knight tell you the reason you were
called upon to examine said Stores was;

Ans

No reason was given

Which was all the testimony
of the said John W. O'Brien whereupon the
defendant retied and the Plaintiff called as
rebutting testimony Daniel Parker Jr who
testified as follows

I was present when the goods
brought by my father were invoiced. I assisted same
not in invoicing all the goods but only the boots & shoes

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I didn't see the invoice after it was posted up
Mr. Steels assisted in taking the invoice

Which was all the testimony in the case
The Court thereupon on its own motion gave the
first instruction below and the second one on the
motion of the defendant

1st If the Jury believe from the evidence that the
parties intended to include the stores in question
in the expression used in the written contract "his
stock of goods in the town of Orono" then the case
is for the Plaintiff. But if it should be the opinion
of the Jury from all the evidence that it was not
the intention of the parties to include those stores in the
language of the contract then the case is for the
defendant

2^d If the Jury believe from the evidence that it was
the intention of the parties that the stores in controversy
should not be included in the stock of goods which
Might sold to Barker then the case is for the defendant

The defendant then asked the Court
to give the following instructions marked three
and four which read in these words 20th?

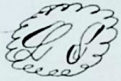
3^d The Jury are instructed that the language in
the agreement "that the party of the first part has
this day sold to the party of the second part his
stock of goods in the town of Orono" means
the goods which the defendant owned & kept

at his place of business in said town and with which he & his agents were accustomed to transact business from day to day, and that consistently with said agreement the defendant might have sold or otherwise disposed of other personal property in said town which might not be included in said agreement and the title to which would not pass to the plaintiff thereby.

4th Of the Jury further believe from the evidence that "Kinslet sold and delivered" his stock of goods in the town of Oswego to Parker there words to be taken in their plain ordinary & popular signification then the law is for the defendant.

But the Court refused to give said instructions and suggested the case to go to the Jury without other and further instructions - to the refusal of which said instructions the defendant then and there excepted. The Jury thereupon brought in a verdict in favor of the Plaintiff for \$40, and the Court rendered judgment thereon. The defendant by his counsel then moved for a new trial which motion the Court overruled and the defendant excepted and prayed an appeal where the Court granted with leave to file a Bill of Exceptions therein in forty days and inasmuch as the matters agreed do not appear of Record in the verdict and judgment of said cause the defendant prays that the Judge

of said Court who their said cause will set his
hand and seal to this Bill of Exceptions contain-
-ing the several matters aforesaid according
to the Statute in such case made and provided

Charles R. Starnes 
Judge of the 20th Judicial Circuit
of the State of Illinois

Filed Oct 16th 1860

Worcester Clerk

By J B Welch Deputy

State of Illinois }
Kankakee County } ss I Elon Curtis Clerk of the Circuit
Court in and for said County in the State aforesaid
do hereby certify that the above and foregoing is a
full true and perfect transcript of the Record of pro-
ceedings of the Circuit Court of said County in a
certain cause lately pending in said Court wherein
Daniel Parker ^{was} Plaintiff and Eliphalet R. Knight ^{was}
defendant as appears from the Records and
files of said Court now on file in my said
office

Witness my hand and the seal of said
Court at Kankakee City this March 16th

A.D. 1861

Elon Curtis Clerk
By J.B. Welch Deputy

And now comes the appellant
by Wood his Attorney and says
there is Manifest error in
this record, to wit

1st The court erred in refusing
to exclude the deposition of
Daniel W. Parker -

2nd The court erred in suppressing
the 13th interrogatory and answer
thereto, in the deposition of Curtis
L. Knight -

3^d The verdict is not supported
by the evidence

4th The court erred in refusing
the 3^d and 4th Instructions
for defendant -

5th The court erred in overruling the
motion for a new trial -

April 10th 1861

Charles H. Wood
for Appellant

Finder in Error

Fletcher & May
for Appellee

350-99
Daniel Parker
~~ato~~
Eliphalet R Knight
Kaukahu

Record &
Errors -

Filed April 17. 1861
L. Keland
Clk.

Checks fee 12.00 -