No. 14843

Supreme Court of Illinois

Parsons

vs.

Northern Coal & Iron Co.

71641

129

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 233

J. W. Middleton & Co., Stationers, 196 Lake St.

1865

Supreme Court of Illinois.

April Term, A. D. 1865.

LEVI E. PARSONS, Appellant,

vs.

THE NORTHERN ILLINOIS COAL AND IRON COMPANY, OF LA SALLE, Appellee.

Appeal from La Salle County Court.

ABSTRACT OF RECORD.

This was an action of assumpsit commenced by the Appellee against the Appellant, and tried before the Court, a trial by jury having been waived.

The summons was issued *January* 20, 1864.

Declaration contains common counts for coals, goods, wares, etc., sold, work, labor and services, and the money counts.

Fill of Particulars.

Pleas: 1, General issue; 2, Statute limitations—that causes of action did not occur within five years, etc.; 3, Set off; 4, *Nul tiel* corporation.

Deposition of Edgar Loomis.

Exception by Defendant to the 1st direct interrogatory, and 2d, 3d, 4th, 6th, 8th and 10th interrogatories and answers thereto on the re-examination of Loomis by Plaintiff.

Order sustaining exceptions to said 1st, 2d, 3d, 4th and 8th direct interrogatories on re-examination, and 3d interrogatory on direct examination, of witness Loomis, and overruling the exceptions as to the 6th, 7th, and 10th interrogatories on re-examination of said witness.

Bill exceptions filed by the Defendant to the order overruling exceptions to said 6th; 9th and 10th interrogatories and answers thereto.

Leave to reply double to second plea granted—motion by Plaintiff to strike fourth plea from the files overruled—waiver of jury—submission of case to court for trial—finding and judgment for Plaintiff—appeal allowed on filing bond and bill of exceptions within thirty days.

34 Replications.—1, *Similiter* to general issue; 2, to second plea, that the several
36 causes of action accrued within five years, etc.; 3, to second plea, Defendant promised, etc., within five years, etc.; 4, traverse of third plea of set off; 5, traverse of fourth plea *nul tiel* corporation.

38 Filing of Bill of Exceptions.

38 Bill of Exceptions.

39 Deposition of Edgar Loomis.—In answer to interogotory 2d, as to indebtedness of Defendant to Plaintiff, witness stated: Parsons had coal of Company. He sold some coal on commission for Company, and collected some on coal that had been sold. Account on Ledger, page 406, correct, except some credits to be allowed Parsons. Parsons sold some coal on commission; those commissions not credited. We never had any settlement of the commissions while I was superintendent. Parsons claimed more commissions than I thought were right. I made out about sixty odd dollars commissions' due Parsons. Think $100 would be a liberal credit on the account. Think I made it out between $50 and $60. I was general superintendent of the mines at that time. (See ans. to 4th int.)

Cross Examination.—Entries in ledger in book keeper's hand writing, (see ans. to 4th cross int.).

44 Parsons out about three trips, gone from six to twelve days to a trip, selling coal. (See ans. to 19th cross int.)

44 He sold some coal in Aurora, some in Freeport, and I think some in Dunlieth. We advanced him money, which was charged to him—otherwise he paid his own expenses. Suppose he traveled by railroad. (See ans. to ints. 20 to 23 inclusive.)

In reference to last item charged, $11,50 is for keg of brandy Parsons bought for himself of J. McInhill and shipped by express to me (witness). Suppose it was drank up. Parsons did not get much of it, and ought to be allowed a credit of
45 $11,50 for that, though I told him I would make him pay for it. We settled with McInhill about the 29th of March, '59. He brought in this account of $11,50, which we allowed him. The brandy was sold by McInhill the winter previous, 1857 and 1858. See cross int's and ans., 23 to 25, both inclusive.

46 26th Cross Int. Is it not the fact that in the account against the Defendant there are two separate charges for amounts previously charged to S. G. Smith, these two items being next before item of $11,50? Answer—They were first charged to Smith. Parsons collected the money, I suppose, and ordered us to charge it to him.

46 27th cross int. What recollection have you of this? Answer—Why, when the thing was fresh on my mind, Parsons came up to my office and we looked over the account and it was all right then. He was willing to settle it then, if I would allow him the commissions he claimed, which I would not do, as I thought he claimed too much.

28th Cross Int.—Is it not the fact, when he found you differed with him as to the commissions, he did not propose to examine the account any further? Ans.—We looked over the whole account and the coal he had sold. I made a memorandum of it, and he wanted commissions on coal which I did not think were right or proper. We did not go into an examination of the coal which he claimed commissions for and which I would not allow.

47 Re-examination by Plaintiff.—We (Parsons and witness) examined it (the account) togeher in 1865. Could not say the month. Had been endeavoring to get the thing settled for some time. Threatened to sue him once or twice. Finally

he came up to the office, and we went into an examination of the account, and everything was satisfactory. I believe he objected to the $11,50, but the balance was satisfactory. He claimed more commissions than I was willing to allow. Think he was there twice. He was willing to settle the account if I would allow him commissions on coal which I though he was not entitled to. (See ans. to 5th and 6th cross int's.)

47 7th Cross Int. What was the arrangement between you and him about commissions? Ans.—He came to me to sell coal for me; think he was traveling on some other business. Said he could sell some coal, so I told him what coal he could sell I would allow him a commission—that was all there was about it.

48 9th Cross Int. What commission was agreed upon? Ans.—25 cents a ton.—The commissions amounted, as I understood the arrangement, in the neighborhood of sixty dollars, which I proposed to allow him when he came for a settlement.—Parsons claimed credits and commissions on coal that was ordered by parties that he had previously sold to for twelve months. We claimed that he was only enti-
49 tled to commissions he actually sold. He did not name any amount. (See cross interrogatories, 10 to 12, both inclusive, and answers thereto.

Re-Cross Examination by Defendant.—1st Cross Int. At the time of the attempted settlement, did not Parsons claim that the customers he had procured ordered their coal for the year or season by an arrangement with him when he visited them or secured them as customers? Ans.—He claimed what coal they ordered of us. He went out and sold a car load of coal, and if the same parties ordered more coal during the next twelve months, he claimed a commission. We allowed him a commission for all the coal he actually sold, whether to our old customers or to new ones.

50 Did he not claim, as to new customers, that the orders they gave for the season in which he bargained with them came from his arrangements with them in behalf of the Company? Ans.—Don't know as he claimed to have made any arrangements with them. He claimed commissions on all the coal they ordered during the year.

3d Cross Int. To about how many persons did he sell coal? Ans.—Could not tell to how many new customers he did sell.

4th Int. If you had settled with him on the terms he proposed, would there not have been a balance in his favor? Ans.—I did not go into any investigation of it. My recollection is that the commissions he claimed would not exceed $100.

Think he (Parsons) was traveling on some agricultural implement matter. My recollection is that he had some other business, and some collections to make; I would not be certain (See answer to 5th cross int.)

51 To the best of my memory it was in the winter of 1857-8 and spring of 1858 when Parsons was traveling.

52 The Plaintiff further to maintain the issue on his part, introduced as a witness George H. Locey, who being duly sworn, testified as follows: Reside at La Salle. Am Superintendent of the Northern Illinois Coal and Iron Company of La Salle. The book now shown me is Ledger A, belonging to the Company. The account of the Company against the Defendant is on page 406 of this book I know the Defendant. A paper was then shown witness. I enclosed it to Mr. Parsons, a Peru, on or about Nov. 4th, 1863. He came up shortly after to see about settling the account. He said he supposed he owed the Company something. He looked over the account item by item, and stated that there should be a credit allowed

him for Commissions under an agreement he had made with Mr. Loomis, the former Superintendant of the Company, which had not been given him, and that when the question of commissions was settled, he was ready to pay the account. I had no knowledge of any agreement in regard to commissions, and, of course, could make no settlement with him, except upon the basis of the account as it stood upon the book, and so stated to Mr. Parsons. (It was agreed that this conversation was prior to January 30, when this suit was commenced.) E. D. Taylor is President of the Company. Been acquainted with the Company nearly three years.—The Company have been doing business in La Salle.

53 Question by Plaintiff's counsel.—Detail what improvements the Company have made; what business they are engaged in; what they have done and are doing.—Which question was then and there objected to by Defendant's counsel, because there was no evidence of the incorporation of the Plaintiffs, and that it was incompetent to show acts of user until the legal coporate existence of the Company was first shown, which objection was then and there overruled by the Court, because it was understood that the act of incorporation would be read in evidence subsequently, and to which decision overruling said objection the Defendant by his counsel then and there excepted, and the witness answered as follows: They have sunk a shaft 400 feet or more; commenced mining coal; erected blacksmith and carpenter shops, etc., necessary to the successful operation of the shaft, and have been mining and shipping coal since the shaft was sunk; put in an engine and aparatus for raising coal, and are still engaged in mining and shipping coal.

54 Cross examined.—I was not in La Salle when the Company was organized, nor when the shaft was sunk. Have been there only about three years. Don't know of my own knowledge when the shaft was sunk. I was not in La Salle when the account with Parsons was contracted.

54 E. F. Bull sworn for Plaintiff.

Plaintiff here introduced a volume, purporting to be private laws of the State of Illinois, passed the 20th General Assembly, January 5, 1857. § 1 Provides that E. D. Taylor, A. G. Byrum, E. Loomis, Robert Land, B. F. Strother, Herman Baldwin, John B. Preston, A. Campbell, R. G. Parks and their associates, etc., shall be a body corporate, under the name style of "The Northern Illinois Coal and Iron Company of La Salle," with power to contract, sue and be sued, and to carry on the busines of mining coal, &c., &c.

55 § 2 Contains a detailed statemant of their powers.

§ 3 Provides that the parties named in Section One "shall have power to organize said Company by the appointment of their President, and such other officers as they may deem necessary at such time and place, and in such manner as they may designate by notice previously given. They and their successsors shall have power to employ such agents, define their powers, and to make such by-laws, rules and regulations as they may deem necessary for the government and management of said Company, not inconsistent with the Constitution and Laws of this State, or of the United States.

56 § 4 Prescribes the amount of the Capital Stock, and amount of each Share, &c.

§ 5 Provides for issue of Certificates of Stock, and their assignability.

§ 6. Power to borrow money.

27 § 7 Confers same powers heretofore conferred upon any other Company. Charter for similar purposes. Approved Feb. 18, 1857.

Said volume also contained what purported to be General Laws of this State, passed at the same session.

58 To the reading of which Defendant objected. Objection overruled and Defendant excepted.

The witness Bull then testified: Resided in La Salle when this act was passed. Next spring or summer the Company commenced sinking a shaft. Think it was completed and they commenced raising coal in fall of 1857. Since then been mining and shipping coal. Parties engaged were Taylor, Baldwin, Loomis, Parks, Campbell, and others. I only knew this from conversations with the parties. A man by the name of Byram claimed to own considerable stock. Parties in La Salle, including Loomis, were active in the matter. Number of suits have been prosecuted under the supervision of Taylor as President and Loomis as Superintendent. Company been sued and commenced suits in that name. I took this book (Ledger A) up with me on examination of Loomis, with two other books. It is the book Loomis refers to. Account referred to is on page 406, of Ledger A.

59 To the reception of all of which evidence of the witness last named the Defendant, by his counsel, objected to, on the following grounds:

1 That there was no legal evidence on the passage of an act incorporating the Plaintiff.

2 That there was no legal evidence of any organization of the Company in pursuance of this act of incorporation, if incorporated, which could only be shown by the records and books of the Company.

3 That the acts and declarations of persons appearing to act as an incorporate body could not be received as evidence *of the organization* of the Company, and that the evidence was wholly incompetent.

Which objections were overruled and the witness permitted to testify as above set forth, which ruling of the Court was duly excepted to.

60 The Plaintiff's counsel then read in evidence from said Ledger A the account on page 406, as follows:

MR. L. E. PARSONS,

1857,		Dr.	Cr.
Dec 31,	To 1 car load for J. H. Lowry, 10 tons,	$27 50	
"	" Cash,	32 00	
Jan 31,'58	" 3 cars of coal,	81 00	
" 4	" Cash kept from amount paid by C. P. & Co,	27 75	
" 30	" 21 7-10 tons of coal@$2	42 70	
" "	" 1 ton of coal at office,	3 00	
Feb 18,	" 10 3-10 tons of coal@$2,	20 30	
"	" 1 ton of coal,	2 50	
March 19	" 10 9-10 tons of coal@$2	20 90	
April	" 1 ton of coal,	3 00	
June	" 11 3-10 tons of coal for Lowry@$2,	22 30	
Jan 6	" 9 12-10 tons of coal for Smith@$2,	20 40	
Nov 15	" S. G. Smith for car coal 641,	26 47	
Mar 22,'59	" J. McInhill & Co 1 keg brandy	11 50	
Jan 30,'58	By deduction of 25 cts. per ton on first 2 cars sent Lowry,		$5 72
July 31	" Hauling,		3 50
Nov 18	" Cash,		40 00
	Balance,		298 10
		347 32	347 32
March '50	To balance,	$298 10.	

60 This was all the evidence.

Finding and assessment of damages by the Court at $186,60.

Motion for new trial overruled, and exception.

61 Assignment of Errors.

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Supreme Court

Levi E. Parsons

vs

The Northern Ills. Coal & Iron Co of LaSalle

Abstract

Filed A/L 17. 1865

S Leland Clk

Supreme Court —
Levi E Parsons
vs
The Northern Illinois
Coal & Iron Co of LaSalle

Argument on part of Appellant

The only question proposed to be discussed further than is already done in the Printed points on file, is whether the account sued on ~~is~~ is barred by the Statute of limitations, I insist that it is, and that the Evidence wholly fails to show a cause of action based upon a new promise.

The first item of the account accrued ~~which~~ Dec 31. 1857. and the last item which was properly the subject of a charge against the appellant was Nov 15. ~~1858~~ 1858 (+ the summons issued June 20/64) See Record p 60, The is an item charged March 22. 1859. which was not the subject of a proper charge against the Deft at all. The Witness Loomis swears that Parsons the appellant bought of Mc Inhill & Co a Keg of Brandy which was shipped by Express to Witness in the Winter of 1857 & 1858 & when the Co. settled with Mc Inhill about the 29th of March 1859. Mc Inhill

brought in this account which
the appellee allowed him
See Rec p 39. abst p 21. Witness further
says the Brandy was drank up by
Parsons, to use his (Witnesses) language
ought to be allowed a credit for
the item $11.50. or, in other words,
the Brandy which does not appear
to have been brought on the credit of
the appellee, & which the appellant
never got ought not to have been
charged to him. & though the Witness
told Parsons he should make him
pay for it. it seems to have been
charged by way of a joke. This I
believe is conceded. Now was there
a new promise? The debt was barred
by the Statute - no attempt was made
to collect it within the five years. Yet,
it is insisted by the appellee Counsel,
that the Evidence of a new promise
is sufficient to sustain the judg
ment - I respectfully submit that
this is not the case - It seems
that a Controversy had arisen
between the appellant & the Witness
as to the Commissions to which the
former was entitled for selling
Coal for the appellee. appellant

but, where, as in the case at bar, the creditor says he would pay if certain commissions were allowed which were not allowed, & which proposition was not acceded to, there can be no promise. The elements of a promise in such case are entirely wanting. The authorities cited, it is submitted, fully sustain this view of the case. The bare admission of the correctness of an account or that it is unpaid, is no more than the ~~law implies~~ testimony of a witness to the same purpose.

In case of an unqualified admission such as suggested by this Court in the two cases before cited, where a present willingness & intention to pay is manifest, will sustain an action, but when conditions are imposed, & the party says I will pay if you will do so & so, & this is not acceded to, it cannot be said that an unconditional promise can be implied, when the very language of the party repels the ideal of an intention to pay otherwise than in accordance with his proposition.

Parsons made no promises

such as the law recognizes, but, simply a proposition as a basis of settlement of a disputed claim

If A says the account is correct & ought to be paid, & nothing upon his part in intention & willingness to pay, the law perhaps would imply a promise: but, if he says the account is correct, but, I will only pay it on condition that you will take a certain amount or days, I intend to avail myself of the statute of limitations, no new promise exists which will take the case out of the statute.

It is true, that when an unconditional admission of a present indebtedness is made, & the amount is uncertain the subject matter of the admission may be shown aliunde. as if the party admits that he owes for a horse or wagon or other article the value - the amount of the indebtedness may be shown by Evidence - but, that is not this case, & the citation of authorities on this point by Counsel, is a most ingenious attempt to divert the attention of the Court from the true point presented by the Record - The attention

of those Decisions to the former decisions
of this Court & other Courts in
harmony with them ~~—~~ cited in support of, and Dec
respectfully called. The other questions
as to the sufficiency of the proof of
the Corporate existence of the Co.
& their becoming a Corporation de
facto, are submitted upon the points
solely. If it is insisted by Appellant
that the decision of the Court below
is Contrary to the law & the Evidence
& the Judge should be reversed,

H. A. Eldredge
for Appellants.

claiming, that he was entitled to
~~all~~ Commissions on all the Coal
Ordered by ~~Parties~~ Parties through his
Solicitation, & Loomis claiming,
that he was only entitled to Commissions
upon the amount actually sold at
the time the Order was taken.

The Witness Loomis states in
answer to the 27th Cross Int. that
Parsons came up "and looked over
" the account it was all right then
" he was willing to settle it then, if
" I would allow him the Commissions
" he claimed - and this is stated on as
a new promise, which should take
the Case out of the Statute. Insists
that this answer had reference
solely to the two items embraced in the
26th Int., and cannot be fairly
construed as an unqualified admission
of the account Even if no Commissions
had been claimed; 2d Even if it
can be justly, said that it referred
to the whole account. Yet it
was coupled with a condition
that he would settle the account
only in case his claim for Commissions
was allowed. & this same thing
was reiterated at another and

subsequent attempt to settle
(see Reed v 47. abst p 2 & 3)
& then the matter seems to have decided
this proposition ~~was not~~ of Parsons
to pay if the Claim for Commissions
was allowed, was not an uncon
ditional promise - & was not
acceded to by the appellee or any
one in their behalf - hence, as this
Court has twice expressly said
in Ayres v Richards 12 Ill 196. & Hines
v Crull 19. Ills 189. there was no
promise which could sustain
an action - To constitute a promise
which the law will regard, there
must be an assent by the promisor
- he must accede to it - when
there is an unconditional admission
of the correctness of the Claim &
"Nothing being said or done rebutting
" the presumption of a promise to pay"
(see 12 Ill p 148 per Caton Ch J.) & the facts
" show "a consent unqualified willing
" ness & intention to pay it. at the
" time acted upon and acceded to by
the Creditor" (see 19 Ills 191 p Skinner J)
the promissor" an action may be
sustained upon such new promise

Supreme Court

Levi E Parsons

v

The Northern Ills

Coal & Iron Co

of Ladue

Argument on

part of Appellant

Friday May 9. 1865

L Leland Clk

Supreme Court of the State of Illinois
Third Grand Division

Leon E Parsons appellant
v
The Northern Illinois
Coal and Iron Company
of LaSalle appellee

April Term
A.D. 1865

It is hereby
Stipulated that the appellant may
have until Tuesday of the second week
of this Term
in which to file the Record in this
case - and that this cause shall
proceed to a hearing at the present
Term with the like effect in all
respects as if said Record had been
duly filed within the time prescribed
by the rules of the court -
Dated April 4th 1865.

Bull & Manierre
Attys for Appellee
L. S. Eldredge
Appellant.

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Supreme Court

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Levi E. Parsons

vs

The Northern Ills Coal & Iron Company of Lasalle

—

Stipulation

—

allowed - arguments to be in writing

Filed April 11. 1865.
L. Leland
Clk.

State of Illinois } ss. Third Grand Division
Supreme Court } April Term A.D. 1865

No. 233 - Levi Parsons
vs.
The Northern Illinois Coal & Iron Co. of LaSalle } Appeal from LaSalle Co. Court -

Motion by appellee to place cause on the hearing docket at this term -

- Suggestions -

1 The court will see by stipulation on file that the parties have agreed that this cause shall be ~~filed~~ heard at this term of court -

2 - The Appellant by agreement was allowed until the 2nd Tuesday to file transcript of record the ~~verbal~~ agreement was however that the cause should be docketed ~~at~~ on or before the first Thursday morning in which event it would have been on the hearing docket -

3 - The appellee would undoubtedly have the right to ask that the appeal be dismissed but he has no claim to

do he is only anxious that the cause be disposed of at this term – We are satisfied the mistake ~~was~~ was made by inadvertence on part of Appts. Counsel. We desire to take no advantage of it, but are anxious that our rights shall not be prejudiced thereby –

Respectfully submitted

Bull & Rawle

Apltes. Counsel –

No 233 – 129

Lois Parsons.

vs.

The North Mo. C. & I. Co.

Suggestion in support of motion to place cause on hearing docket

Filed Sept. 14th 1875

L. Adams Clk

Bull & Rawle

for Apltes

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1865, AT OTTAWA.

LEVI E. PARSONS
vs.
THE NORTHERN ILLINOIS COAL AND IRON CO. OF LA SALLE.

Appeal from La Salle County Court.

I.

There was legal evidence of the incorporation of appellee. A book purporting to be the public and private laws of the State of Illinois for the year 1857, published by authority as required by law, was introduced in evidence, and also acts of user, showing an acceptance of the charter by the company, the prosecution of the work provided for in the charter, suing and being sued by that name, &c., &c.; being all that has ever been required as proof of incorporation.

II.

The judgment is not against the law and evidence. The account was clearly proved by the witness Loomis, and also by the witness Locey, who testified to the admissions of appellant. There is not, nor ever has been, any dispute about the correctness of the charges, except the last item of $11.50, and that was not allowed.

Parsons frequently admitted the correctness of the charges against him, but claimed that he was entitled to more commissions than Loomis was willing to allow him. Loomis was willing (page 2 of abstract) to allow between $50 and $60 commissions, and on page 3 of abstract it appears that all the commissions that Parsons claimed would not exceed $100, and in rendering judgment, the whole of that sum was allowed him; so that the case stands thus: Parsons agreed to pay the account less the $11.50 and his commissions, and the commissions claimed by him did not exceed $100; so that the amount he agreed to pay was $298.10, less $111.50, leaving just $186.60, the amount of the judgment below.

III.

But counsel say the account accrued more than five years before the commencement of the suit, and that the statute of limitations being interposed by plea, it was necessary for us to show a new promise. This is undoubtedly true, but have we not shown it? Loomis testifies, (see page 2 of abstract,) "That he examined that account with Parsons in 1860; could not say the month. Had been endeavoring to get the thing settled for some time. Threatened to sue him once or twice. Finally he came up to the office and went into an examination of the account, and everything was satisfactory. I believe he objected to the $11.50, but the balance was satisfactory. He claimed more commissions than I was willing to allow: think he was there twice. He was willing to settle the account if I would allow him commissions on coal which I thought he was not entitled to;" and in answer to 4th interrogatory on re-cross-examination, (page 3 of abstract,) Loomis stated: "The commissions claimed by Parsons would not exceed $100." So here was a clear and express promise to pay the account after the deduction of the commissions, and proof that the commissions would not exceed $100, whereby the appellant clearly acknowledged that he was indebted to the plaintiff in the full amount of the judgment rendered, from which the law will imply a promise, even in the absence of an expressone. But we have the express promise here. And again, by the testimony of Locey, superintendent of appellee, (bottom of page 3 and top of page 4 of abstract,) it is shown that Parsons said:

"He supposed he owed the company something. He looked over the "account, item by item, and stated there should be a credit allowed him "for commissions under an agreement he made with Loomis, and that, "when the question of commissions was settled, he was ready to pay the "account."

This conversation was had after Nov. 1863, and prior to the next January, and shows on the part of Parsons an express acknowledgment of a present indebtedness on this account, and an express promise to pay the same, and we have already shown by Loomis that the amount of commissions due Parsons from the company was between $50 and $60 and that all that Parsons claimed would not amount to over $100.

From an acknowledgment of indebtedness, the law will imply a promise to pay the same. On this point there is no conflict of authority; but here we have also an express promise to pay.

IV.

Supreme Court of Illinois.

April Term, A. D. 1865.

LEVI E. PARSONS, Appellant,

vs.

THE NORTHERN ILLINOIS COAL AND IRON COMPANY OF LA SALLE, Appellee.

POINTS AND AUTHORITIES ON PART OF APPELLANT.

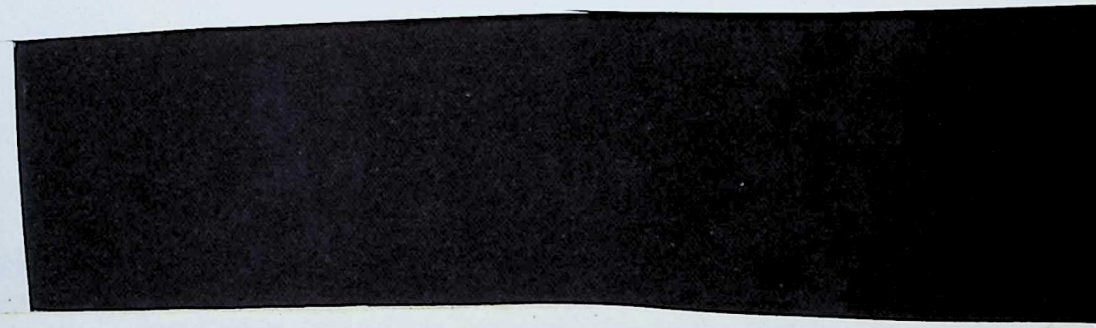
I.

There was no legal evidence of the incorporation of the Plaintiffs, or that they ever became a body corporate in fact.

II.

The judgment is against the law and the evidence.

1. The account accrued more than five years prior to the commencement of the suit, and no such promise to pay was shown to have been made within five years next preceding the commencement of the suit, as would take the case out of the operation of the statute, and the finding of the Court was contrary to the law and unsupported by evidence.



3. In this case there was no new promise, but a simple proposition—not acceded to by either Loomis or Locey, or any one else on behalf of the Appellee—to pay it the Company would allow Appellant's claim for commissions. The rule adopted by the Supreme Court of this State, in *Ayres vs. Richards* and *Keener vs. Crull*, is recognized as the settled law upon this question by the Supreme Court of the United States, and likewise is so held in Maine, Connecticut, Massachusetts, New York and Pennsylvania, and most other States.

See Angell on Limitations § 208 to § 218 inclusive; see *ibid* § 231, and authorities cited.

4 The doctrine, which once prevailed somewhat, that the debt was presumed to have been extinguished after the lapse of five years, and an acknowledgment of its existence repelled this presumption and authorized a recovery, is now exploded, and the limitation acts are now regarded by the Courts (as they were intended to be by the Legislature) as statutes of repose the effects of which can not be obviated except in the manner above suggested.

G. S. ELDREDGE,
For Appellant.

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Lapeer Circuit

Levi C. Parsons

vs

The Northern Ills Coal & Iron Co. of Indiana

Appeal Dismissed

Filed April 20. 1865

L. Leonard Clk

Page 1

La Salle County Court March Term
A.D. 1864

State of Illinois }
La Salle County } ss

Pleas before the Honorable P. Kimball Leland Judge of the County Court of La Salle County, State of Illinois at a Regular Term thereof commenced and held at the Court House in Ottawa in said County on Monday the seventh day of March A.D. 1864.

Present Hon P. Kimball Leland Judge
Samuel W. Raymond Clerk
William R. Milligan Sheriff

Be it remembered that heretofore to wit: on the 20th day of January A.D. 1864. The Northern Illinois Coal & Iron Company of La Salle by Bull & Nash their attorneys file in the office of the Clerk of said County Court a Precipe. which is in the words and figures following. to wit:

"State of Illinois } ss County Court of said County
La Salle County } March Term thereof A.D. 1864

The Northern Illinois Coal & Iron Company of La Salle
vs
Levi E. Parsons

Assumpsit
Damages $ 800.

S. W. Raymond Esq. Clk. Sd Court. Please issue Summons as above to Sheff La Salle

County & Obgr

Bull & Nash
Pffs Attys

Ottawa Jany 20th 1864

And on the same day there issued from the office of the Clerk of said County Court under the seal thereof a summons in the words and figures following, to wit.

"The People of the State of Illinois, To the Sheriff of our County of La Salle, Greeting! We command you, that you summon Levi E. Parsons if he shall be found in your County, personally to be and appear in our La Salle County Court before our Judge thereof, on the first day of the next term of said Court, to be held at the Court House in Ottawa, on the first Monday in March next, at ten O'Clock in the forenoon, then and there to answer unto The Northern Illinois Coal and Iron Co. of La Salle, in a plea of assumpsit to their damages Eight Hundred dollars And have you then and there this writ, and the manner in which you shall have executed the same.

In Witness Whereof, We have caused the Seal of our said Court to be hereunto affixed and attested by Samuel H. Raymond our Clerk thereof at Ottawa this 20th day of Jany 1864. S. H. Raymond Clerk
By W. S. Easton Dept

(Seal)

50¢ Stamp

3. (Endorsed) Served by reading to the within named Levi E. Parsons this 25th day of February 1864. W. R. Milligan Sheriff
M. Arnstadt Deputy

Service 50
Mileage 80
Return 10
140

Filed March 7th 1864. S. M. Raymond Clerk
By W. S. Easton Deputy

Be it further Remembered that heretofore to wit: on the third day of February A.D. 1864. There was filed in said Court in said cause a Declaration. which is in the words and figures following to wit:

" State of Illinois } ss Of the March Term A.D. 1864
La Salle County } and County Court of said County

The Northern Illinois Coal and Iron Company of La Salle Plaintiff in this suit. by Bull & Nash its Attorneys complain of Levi E. Parsons Defendant who was summoned, &c. in a plea of trespass on the case on promises: For that whereas the said Defendant heretofore, to wit: on the 19th day of January in the year of our Lord One thousand eight hundred and sixty four at said County of La Salle became and was indebted to said plaintiff in a large sum of money to wit: the sum of eight hundred dollars for Coals before that time sold and delivered by said plaintiff to said defendant at his special instance and request: and also in like sum for coals before that time sold

by said plaintiff to said defendant at his like special instance and request

And whereas, also; the said Defendant afterwards, to wit, on the said 19th day of January in the year of our Lord One thousand eight Hundred and sixty four to wit, in said County, became and was indebted unto the Plaintiff in a large sum of money to wit, in the sum of eight hundred dollars for money before that time lent and advanced to, and paid, laid out and expended for said Defendant by said Plaintiff at said Defendants request; and for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in like sum for goods, wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendant at his said defendants like special instance and request; and also in like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff; for said Defendant; and at the like instance and request of said Defendant and also in like sum, then and there found due and owing said Plaintiff on an account stated between them, and being so indebted said Defendant, in consideration thereof then and there undertook and promised to pay said Plaintiff said last mentioned sum of money, when thereunto afterwards requested,

Yet the said Defendant, not regarding

his said promises and undertakings, but contriving, &c. although often requested so to do, has not paid said Plaintiff either of said sums of money above mentioned or any part thereof, but so to do hath hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said Plaintiff of Eight hundred dollars and therefore it brings this suit &c

By Bull & Nash
its attorneys

Copy of instrument and account sued upon

Levi E. Parsons

To the Northern Illinois Coal and Iron Company of La Salle Dr

To money lent and advanced	$ 800.
To money laid out and expended	$ 800.
To money had & received for use of said plaintiff	$ 800.
To goods, wares and Merchandize sold and delivered	$ 800.
To labor and services	$ 800.
To balance on account stated	$ 800.
To coals sold and delivered	$ 800.
To coals sold	$ 800.

Be it remembered that on the tenth day of March A.D. 1864, the same being one of the days of the March Term A.D. 1864, of said County Court an order was entered of record in cause, in the words & figures following, to wit:

"The Northern Illinois Coal & Iron & Company of La Salle
vs. Assumpsit
Levi E. Parsons

This day on calling

24

the Docket. It is ordered by the Court that this cause be continued"

On the 16th day of March A.D. 1864. an affidavit was filed in said cause in the words and figures following, to wit:

"State of Illinois } County Court for said County
La Salle County } ss June Term 1864

The Northern Illinois Coal & Iron Company of La Salle
vs
Levi E. Parsons
} Assumpsit

E. F. Bull being first duly sworn on oath says he is of Counsel for said plaintiff. That Edgar Loomis who is, as affiant is informed and believes a material witness for said plaintiff, is not a resident of said County of La Salle but is a resident of the City of Chicago County of Cook in said State

E. F. Bull

Subscribed & Sworn to before me this 14th day of March A.D. 1864

Miles M. Hill
Notary Public

(Rec'd 5¢ Stamp)

Be it remembered that on the sixth day of June A.D. 1864, the same being one of the days of the June Term of said County Court, the following order was entered of Record, to wit:

"This day, it is ordered by the Court

7. That the Clerk of said Court did Deposit in the

Be it remembered that on the 5th day of May A.D. 1864. The following Pleas were filed in this cause, which are in the words and figures following to wit:

"State of Illinois } In the County Court in and for
LaSalle County } ss said County June Term A.D. 1864

Levi E. Parsons
vs
The Northern Illinois Coal and Iron Company of LaSalle

And now comes
1 the said Defendant by G. S. Eldredge his Attorney & defends &c when &c and says that he did not assume and promise in manner &c as the said Plaintiff hath above thereof complained against him and of this he puts himself upon the Country &c

2 And for a further plea in this behalf the said Defendant says actio non, because he says that the said several causes of action in the said Declaration mentioned, did not, nor did either of them accrue to the said Plaintiff within five years next preceding the commencement of this suit; and this the said Defendant is ready to verify, and wherefore he prays Judgment &c

3 And for a further Plea in this behalf

the said Defendant says Actio non, because he says, that prior to the commencement of this suit, to wit on the first day of January A.D. 1864, to wit: at the County aforesaid the said Plaintiff was indebted to him the said Defendant, in the sum of One thousand Dollars for the work labor and services care and diligence of the said Defendant before then done, performed and bestowed in and about the business of the said Plaintiff & at his special instance and request, and in the like sum for commissions due from said Plaintiff to said Defendant upon the sale and procurement of orders for the sale before then of divers large quantities of coal, by the said Defendant, and at said Plaintiffs special instance and request and as said Plaintiffs agent; And in the like sum for divers goods wares and merchandise before then sold and delivered by said Defendant to said Plaintiff & at its like special instance and request; and in the like sum for so much money by the said Defendant before then paid laid out and expended for the said Plaintiff and in and about the ~~business~~ business of the said Plaintiff & at its special instance & request; and in the like sum for so much money by the said Plaintiff before then had and received to the said Defendants use; And also for that whereas

9 the said Defendant and said Plaintiff afterwards to wit on the day & year last aforesaid to wit at the County aforesaid accounted together of and concerning divers sums of money before then due and owing from said Plaintiff to said Defendant and upon such accounting there was found due & owing from said Plaintiff to said Defendant the further sum of one thousand dollars and the said Plaintiff then & there in consideration of the premises faithfully promised the said Defendant well and truly to pay him the said several sums of money above mentioned when it should be thereunto afterwards requested so to do. yet the said Plaintiff (though often requested &c) hath not paid the same or any part thereof to said Defendant but so to do hath hitherto wholly neglected & refused and still neglects & refuses which said several sums of money so due from said Plaintiff to said Defendant exceed the damages sustained by said Plaintiff by reason of the non performance of the said several promises &c in said Pffs Declaration mentioned and which said Defendant hereby offers to set off against the said Damages so claimed by said Plaintiff and this the said Defendant is ready to verify. Wherefore he prays judgment &c

11 And for a further Plea in this behalf

the said Defendant says actio non &c because he says that there is no such Corporation as the Northern Illinois Coal and Iron Company of La Salle, as in and by said Plaintiffs Declaration is supposed & this he is ready to verify wherefore he prays Judgment &c

G. S. Eldredge Defts Atty

Be it remembered that on the sixth day of June A.D. 1864. the same being one of the days of the June Term of said County Court. the following order was entered of Record. to wit:

"This day it is ordered by the Court that the Clerk open all Depositions on file

Be it further remembered that on the 11th day of April A.D. 1864. the Deposition of Edgar Loomis was filed in this Cause. which is in the words and figures following. to wit:

"State of Illinois } In County Court for said County
La Salle County } June Term A.D. 1864

The Northern Illinois Coal & Iron Company of La Salle
vs
Levi E. Parsons
} Assumpsit

To the above named Defendant or to G. S. Eldredge his attorney

11.

Sir.

Take notice that on the 29th day of March A.D. 1864. between the hours of nine o'clock A.M. and six o'clock P.M. of said day and continuing from day to day if necessary between the same hours. at the office of Harvey, Anthony & Gall in the City of Chicago County of Cook and State of Illinois. and before some person authorized by law to take depositions. we shall proceed to take the deposition of Edgar Loomis to be read in Evidence on the trial of said cause on the part of said plaintiff when and where you can attend and cross examine if you see fit. Dated March 14th 1864

Bull & Nash
Pffs Attys

Received Penn March 14th 1864. of Bull & Nash a true copy of the above notice

G. S. Eldredge
Defts Attorney

Chicago Mch 29th 1864

By agreement of parties the time for taking the deposition of the within named witness Edgar Loomis is continued until Wednesday the 30th inst between the same hours named in the within notice.

Bull & Nash
Pffs Attys
G. S. Eldredge
Atty for deft

State of Illinois }
Cook County } ss

The Deposition of Edgar Loomis

of the City of Chicago, in the State of Illinois a witness produced, sworn and examined upon his corporal oath on this thirtieth day of March A.D. 1864. at my office at 10. O'clock in the forenoon before me Azariah T. Galt a Notary Public for the City of Chicago in said State & County, in a certain suit and matter in controversy now pending and undetermined in the County Court of La Salle County, wherein the Northern Illinois Coal and Iron Company of La Salle is Plaintiff and Levi C. Parsons is Defendant in behalf of the Plaintiff.

Said Edgar Loomis, being first duly sworn by me as a witness in said cause previous to the commencement of his examination to testify the truth as well on the part of the Plaintiff as the Defendant in relation to the matters in controversy between the said Plaintiff and the said Defendant, so far as he should be interrogated, testified and deposed as follows

1st Int. What is your name, age, occupation and place of residence?

Ans. My name is Edgar Loomis, my age is fifty two. my occupation is wholesale Grocer & I live in Chicago

2nd Int. State if you please what you know about any transactions between the Plaintiff and Defendant, if the Defendant is indebted

03 to the Plaintiff to your knowledge. State for what said indebtedness accrued. the amount thereof and generally all you know about the same?

Ans - Mr Parsons had coal of the company He sold some coal on commissions for the company and collected some on coal that had been sold - The account on the first ledger of the company at page 406 is a correct account. except some credits to be allowed. Mr Parsons sold some coal on commissions and those commissions have not been credited yet - We never had any settlement of the commissions while I was superintendant - Mr Parsons claimed more commissions than I thought was right - I made out about sixty odd dollars commissions due Mr Parsons - I should think one hundred dollars would be a liberal credit on the account - I think I made it out between fifty five and sixty dollars

3rd Int - Please state the amount of the account as appearing on the ledger and what amount is due the Plaintiff from the Defendant after deducting the commissions referred to?

Ans - The account on the ledger now shows two hundred and ninety eight dollars due the Plaintiff from the Defendants and after deducting the one

hundred dollars for commissions would leave One hundred and nine Eight dollars due the Plaintiff

4th Int. Please state what relations you held to the Plaintiff at the time?

Ans. I was general superintendant of the mines at LaSalle.

Cross examination by Mr Dent

1st x Int. Are the entries in the book referred to in your hand-writing?

Ans. They are in the Book-Keepers hand writing—

2nd x Int. Did you otherwise than by referring to the book re-collect the items charged therein specified?

Ans. I done most of the shipping of the coal myself.

3rd x Int Do you then wish to be understood that you remembered how much coal was so shipped?

Ans. The coal charged on that Book was shipped. I am confident to the best of my belief— I had general supervision of these matters

15 4th x Int. Where was the coal shipped?

Ans. I dont recollect - It was shipped to different points - cant tell without examining the books - I was as well acquainted with that account as any on the books - I examined it frequently in reference to a settlement with Mr Parsons.

5th x Int. Was it shipped under the general order, or if otherwise, how?

Ans. Sometimes by verbal order, and sometimes by letter when he was in the country.

6th x Int. Do you know where the letters are?

Ans. I do not - I have not been connected with the company for over two years

7th x Int. Was he at the time of giving the orders an agent of the company?

Ans. He never was an agent of the Company He made an arrangement with me to sell coal and have a commission -

8th x Int. Was he acting under that arrangement at the time of giving the orders?

Ans. He was when some of the orders were given

9th x Int. As to which of the orders does the last answer apply?

Ans. I could not tell without looking the books through.

10th x Int. You have no recollection then on this subject, independently of the books?

Ans. I have a recollection but not dates.

11th x Int. What is your recollection?

Ans. My recollection is that sometimes Mr Parsons would come in the office and I would take down his orders and sometimes when he was in the country he would write to ship coal to certain parties.

12th x Int. Did he give you such orders or directions after he quit selling coal for the company?

Ans. Not after he quit selling coal for the company. He frequently bought coal for himself after he quit travelling.

13th x Int. Were not these orders to send coal to customers of the Company obtained by the Defendant, or to persons to whom he had sold coal for the company?

17 Ans. I understood the orders he obtained while he was travelling, or in any other way he was to have the commission and sell to parties who ordered coal direct from the Company, to whom he had formerly sold –

14th x Int. Does the account to which you referred embrace charges for coal sent to such customers of the Company?

Ans. Sometimes Mr Parsons would order the coal charged to him instead of the parties he sold to. I recollect one charge of about forty dollars to Murry the reaper man – sometimes I think the coal was charged to the parties for whom it was bought and then afterwards Mr Parsons ordered it to be charged to him direct

15th x Int. What particular instances do you remember of the latter kind?

Ans. I cant give any without running through the account.

16th x Int. Are any of the entries in your hand writing?

Ans. I presume some of them are on the Shipping book –

17th x Int. Have you referred to that book to see how this is?

Ans. I have not examined the book for over two years until to day -

18th x Int. What was the character of the orders as to whether they were written or verbal & concerning the charge to Mr Parsons for coal previously charged to other persons?

Ans. Most of the orders to the best of my knowledge were verbal, as he came in from the country, he would read them from his memorandum and I would enter them on my order book -

19th x Int. About how long was Mr Parsons engaged in selling Coal for the Company?

Ans. I should think he was out probably about three trips, and I should think he was gone from six to twelve days a trip -

20th x Int. To what points did he go?

Ans - I think he sold some coal in Aurora some in Freeport, and I think some in Dunleith and some in Lyons and some at other points

21st x Int: Did he or not bear his own Expenses, while making these trips?

Ans. We advanced him some money

19 which we charged to him. otherwise he paid his own expenses.

22nd x Int. By what mode of conveyance did he travel?

Ans. I suppose by Rail Road.

23rd x Int. What if any recollection have you as to the item of $11.50 last specified in book to which you first referred above?

Ans. I have'nt any recollection now without referring to the books - That charge was made for a keg of brandy which Mr Parsons bought of J. McInhill for himself and shipped it by express to me - and I suppose it was drank up and Mr Parsons did not get much of it - I suppose Mr Parsons ought to be allowed a credit of $11.50 for that although I told him I would make him pay for it.

24th x Int. Have you any recollection as to time this charge was made. or as to time of the occurrence to which you referred?

Ans - We settled with Mr McInhill about the 29th of March 1859. and he brought in this account of $11.50 for the keg of brandy he sold to Mr Parsons. which we allowed him

25th x Int. How long before then had McInhill

sold the brandy and in what year s.

Ans. I think it was the winter previous in 1857 and 1858

26th x Int. Is it or not the fact that in the account against the Defendant to which you first referred above. there are ten seperate charges or items included for amounts which had been previously charged to J. G. Smith these two entries being next before said item of $11.50

Ans. They were first charged to J. G. Smith Mr Parsons collected the money I suppose and ordered us to charge it to him

27th x Int. What recollection have you as to this s.

Ans. Why, when the thing was fresh in my mind. Mr Parsons came up to my office and we looked over the account and it was all right then - He was willing to settle it then if I would allow him the commissions he claimed, which I would not do as I thought he claimed too much.

28th x Int. Is it not the fact when he found you differed with him as to the commissions he did not proceed to examine the account any further?

21 Ans. We looked over the whole account and the coal he had sold. I had made a memorandums of it and he wanted commissions on coal which I did not think was right or proper. We did not go into an examination of the coal which he claimed commissions for and which I would not allow.

29th Int. Did you keep a Shipping book for coal shipped by the Illinois Central Rail Road and was all the coal shipped on said Rail Road entered on such book?

Ans. We kept a Shipping book of all the coal shipped on any rail road all the coal shipped on any road was entered on the manifest book —

Re-examination by Mr Bell

(6) 1st Int. Did you not examine the entries made in the book referred to you by you at or about the time the same were made and while the circumstances were fresh in your mind. and did you not then know that the same were correct?
(Question objected to as leading by Mr Dent)

(1) Ans. Yes Sir.

(1) 2nd Int. State whether or not you examined the entries in the book referred to you, by you & while the facts were fresh in your mind?

Ans. Yes, I made it my business to examine the accounts thoroughly - I used to examine them almost daily

3rd Int. State whether you found them correct?

(Question objected to by Mr Dent)

Ans. To the best of my knowledge they are correct

4th Int. State whether or not after looking at the books, and refreshing your memory thereby, you have any recollection of the correctness of the charges?

Ans. I believe they are correct -

5th Int. State whether or not Mr Parsons ever examined that account with you if so, when and how often?

Ans. Yes Sir. we examined it together in 1860, I could not say the month - He had been endeavoring to get this thing settled for sometime. I believe I had threaten to sue him once or twice, and finally he came up to the office and we went into an examination of the account and everything was satisfactory I believe he objected to the $11.50 but the balance was satisfactory. He claimed more commissions than I was willing

23 to allow - I think Mr Parsons was there twice

6th Int: What did he say at that time about settling the account?
(Question objected to by Mr Dent as not calling for the whole of the conversation)

Ans - He was willing to settle the account if I would allow him commission on coal which I thought he was not entitled to -

7th Int, What was the arraingement between you and him about Commission?

Ans - Mr Parsons come to me to sell coal for me - I think, he was travelling on some other business - and he said he could sell some coal - so I told him what coal he could sell I would allow him a commission - that was all there was about it -

8th Int, What amount of commission did you propose to allow him at the time you endeavored to get a settlement?
(Question objected to by Mr Dent)

Ans - Twenty five cents a ton -

9th Int, What commission was agreed upon
(Question objected to by Mr Dent)
Ans. Twenty five cents a ton

10th Int. State, if you recollect, the total amount of the commissions due Mr. Parsons and for which you proposed to give him credit on his account at the time you attempted to settle?

(Question objected to by Mr Dent)

Ans. The commissions amounted, as I understood the arrangement, in the neighborhood of sixty dollars, which I proposed to allow him at the time he came there for a settlement.

11th Int. What was the total amount that Mr Parsons claimed credit for, as commission upon this account, at the time you attempted to settle?

Ans. Mr Parsons claimed commissions on coal that was ordered from parties that he had previously sold to for twelve months We claimed that he was only entitled to commissions on the coal he actually sold.

12th Int. Did he name any amount, and if so, what was it?

Ans. He did not name any amount.

13th Int. State whether or not any arrangement was made, with Mr Parsons

25 by which he was to receive commission upon any coal, except that which was actually sold by him?

~~Ans. Ans Sir.~~

Re-Dirs Examination by Mr Dent

1st x Int. At the time of the attempted settlement to which you have referred did not Mr Parsons claim that the customers he had procured, ordered their coal for the year or season by an arrangement with him, when he visited them or received them as customers?

Ans. He claimed what coal they ordered of us. He went out to the country and sold a car load of coal, and if the same parties ordered more coal during the next twelve months, he claimed a commission. We allowed him a commission for all the coal he actually sold, whether to our old customers or to new ones —

2nd x Int. Did he not claim as to new customers that the orders they gave for the season in which he had bargained with them, came from his arrangement with them in behalf of the company?

Ans. I do not know that he claimed to have made any arrangement with them. He claimed to commission on all

they ordered during the year.

3rd Int. To about how many persons did he sell coal?

Ans. I could not tell to how many new customers he did sell.

4th Int. If you had settled with him on the terms he proposed, would there not have been a balance in his favor? (Question objected to by Mr Bull)

Ans. I did not go into an investigation of it - My recollection is that the commissions he claimed would not exceed one hundred dollars

5th Int. While travelling for the company in what other business, if any was he engaged?

Ans. To the best of my knowledge, I think he was travelling on some agricultural implement matter My recollection is that he had some other business and some collections to make. I would not be certain

6th Int. Are not the following among the new customers, from whom Mr Parsons procured orders for coal, to wit: Butler & Hunt, St Charles & S. G. Goodrich

27 & E. R. Allen. Aurora; Ira Burnes. De Kalb
J. H. Loomis. Fulton City; J. G. Smith. Lyons
Iowa. Petrie & Shutts. Mount Morris; G. W.
Cobb. Mineral Point; Fountain & Co. Rockford
J. G. Klock. Fulton City; Northrop & Watson
Wheaton; Talcott & Emerson. Rockford;
J. & J. Daily. Dixon; Curtis & Glover. Dubuque

Ans. I really could not say. some of
them I presume are. It has been so
long out of my mind I could not say
If I had my order book I could tell

7th & Int. At what date or about what
date was he travelling?

Ans. To the best of my memory it was
in the winter of 1857. and 1858. and in
the Spring of 1858

Edgar Loomis

State of Illinois }
Cook County } ss

I, Azariah S. Galt. a
Notary Public for the City of Chicago in
said County and State do hereby certify
that previous to the commencement
of the examination of the said Edgar
Loomis. as a witness in the suit between
The Northern Illinois Coal and Iron
Company of La Salle. Plaintiff. and the
said Levi C. Parsons. Defendant. he was
duly sworn by me to testify the truth.
the whole truth and nothing but

the truth in relation to the matters in controversy in said suit between the said Plaintiff and the said Defendant that the said deposition was taken at my office in the said City of Chicago in said County and State at ten O'clock in the forenoon on this thirtieth day of March A.D. 1864. and that after said deposition was taken by me as aforesaid and the same by me written down it was read over to the said witness and that thereupon the same was signed and sworn to by the said witness at said time and place,

I further certify that the said deposition was taken in pursuance of the annexed notice and that E. F. Bullock Esqr one of the Attorneys for the Plaintiff appeared and conducted the examination in chief and that Thomas Dent Esqr Attorney, appeared and cross examined the said witness for the Defendant

In witness whereof I have hereunto set my hand and seal Notarial this thirtieth day of March A.D. 1864.

{5¢ Revenue Stamp}

Jeremiah S. Gall
Notary Public

Notary's fee, paid by Plaintiff, atty $10.
Witness one day attendance 1.
$ 11.

29. Be it further remembered that on the 7th day of June A.D. 1864 the following proceedings were entered of record in said cause. to wit:

The Northern Ills. Coal & Iron Company of LaSalle
vs.
Levi E. Parsons
} Assumpsit

12. Now comes the defendant by G. S. Eldredge his Attorney and Excepts to the Plaintiff 2d 3d 4th 6th 8th 9th 10th direct Interogatories propounded to the witness Edgar Dennis in the Deposition on file in this cause on the re-examination of said witness by the Plaintiff and on the ground that each and every of said interogatories are leading and irrelevant. And moves to suppress the answers to said Interogatories respectively and particularly the answers to 2d 3d 4th Interogatories above mentioned for the additional reason that they are not responsive to the Interogatories and not competant proof of the matters embraced in said last mentioned Interogatories

The Defendant also moves to suppress the 3d Interogatory on first examination of said witness by Plaintiff. because it was improper to show what the contents of the Ledger by parol

30 Be it further remembered that on the 11th day of June A.D. 1864. the same being one of the days of the June Term of said Court. the following proceedings were had and entered of Record in this cause in the words and figures following to wit:

"The Northern Illinois Coal & Iron Company of La Salle
vs
Levi C. Parsons

12 Assumpsit

This day the exceptions of Defendant to Plaintiff 6th 9th & 10th direct Interogatories on the re-examination and the answers thereto are overruled by the Court. And the exceptions to Plaintiff 1st, 2d, 3d 4th & 8th direct Interogatories on the ~~first direct examination~~ re-examination, and to Plaintiff 5th Interogatory on the first direct examination are sustained by the Court and ordered that the answers thereto be suppressed"

And now on said 11th day of June the defendant filed in this cause a Bill of Exceptions in the words and figures following, to wit:

"La Salle County Court - June Term A.D. 1864
The Northern Illinois Coal & Iron Company of La Salle
vs
Levi C. Parsons

Be it remembered

that on this 7th day of June A.D. 1864 the same being of the days of said Term of said Court. the Defendant filed the following exceptions & motion to suppress portions of the Deposition of the witness Edgar Loomis on file in this cause in the words & figures following viz:

"La Salle Co. Court. June Term A.D. 1864

The Northern Illinois Coal and Iron Company of La Salle

vs.

Levi E. Parsons

June 7. 1864

Affidavit

And now comes the Defts by G. S. Eldredge his atty. exceptions to the 1st 2d 3d 4th 6th 8th 9th 10th direct Interrogatories propounded to the witness Edgar Loomis in his Deposition on file in this cause on the Re-examination of said witness by the Plaintiff & on the ground that each & every of said Interrogatories are leading & irrelevant & moves to suppress the answers to said Interrogatories respectively & particularly the answers to the 2d 3d & 4th Interrogatories above mentioned for the additional reason that they are not responsive to the Interrogatories & not competent proof of the matters embraced in said last mentioned Interrogatories.

The Defts also moves to suppress the 3 Exhibit on first Exn of said witness by Plff - because it was improper to show

32 what the contents of the Ledger by parol

G. S. Eldredge Defts Atty

which exceptions after argument of counsel were taken under advisement by the Court. And on the 10th day of June A.D. 1864. said sixth, ninth & tenth (6th, 9th & 10th) Interrogatories were overruled by the Court & the motion to suppress the answers to said 6th 9th & 10th Interrogatories was also overruled by the Court to which decisions of the Court the said Defendant then & there, to wit on the 10th day of June A.D. 64. (the same being one of the days of said Term of said Court) excepted & requested that this Bill of exceptions might be signed & sealed which is done in open Court this 10th day of June A.D. 1864

P. Kimball Leland (Seal)
Judge of the County Court of La Salle
County in the State of Illinois

Be it further remembered that on the fifth day of September A.D. 1864. The same being one of the days of the September Term of said Court. the following proceedings were had and entered of record in said cause. in the words and figures following. to wit;

"The Northern Ills. Coal &
Iron Company of La Salle
11 vs } In Assumpsit
Levi C. Parsons } This day comes the

33. Plaintiff by Bull & Nash their attorneys and enter their motion for leave to reply double to defendants 2d plea. and also enter their motion to strike the 4th plea of defendant from the files"

Be it further remembered that on the 8th day of September A.D. 1864. the same being one of the days of said September term the following proceedings were had in said cause and entered of record in the words and figures following to wit;

"The Northern Ill. Coal & Iron Company of La Salle
vs
Levi E. Parsons
} Assumpsit

This day come the parties herein by their said attorneys and after hearing the arguments of counsel the court sustained the motion of Plaintiff entered herein for leave to reply double to the 2d plea of defendant and overruled the motion of Plaintiff to strike the 4th plea of Defendant from the files.

When by agreement of said parties the intervention of a jury is waived and this cause is submitted to the court for trial and the court after hearing the evidence and arguments of counsel and being fully advised finds the issues for the Plaintiff and assess their damages at the sum of One hundred Eighty six and 1/100 dollars.

Thereupon the defendant by his Attorney enter a motion for a new trial herein, which motion is overruled by the Court

It is therefore considered by the Court that said Plaintiff have and recover of said defendant said sum of One hundred eighty six dollars and sixty cents for their damages and also their costs and charges by them herein expended and that they have execution therefor

Thereupon the defendant by his said Attorney prays an appeal herein to the Supreme Court which is granted. And by agreement Bill of exceptions and bond in the sum of $500. to be filed within thirty days, with security to be approved by the Clerk of this Court"

On said 8th day of September, Replications were filed in this cause, in the words and figures following, to wit:

"State of Illinois } County Court for said County
La Salle County } ss September Term 1864

The Northern Illinois Coal
& Iron Company of La Salle
vs
Levi C. Parsons

Assumpsit

And now comes said plaintiff by Bull & Nash its Attorney and as to said Defendants said plea by him firstly above pleaded, whereof he puts himself upon the country, doth the like

35 And the said plaintiff as to the said plea by said defendant secondly above pleaded says *precludi non* because he says that the said several causes of action in said several counts mentioned and each of them did accrue to the plaintiff within five years before the commencement of this suit in manner and form as the plaintiff hath thereof above complained against the defendant and this he prays may be enquired of by the country &c & the Deft doth the like

And for further replication to said defendants said second plea by him &c. said defendant says *precludi non* because he says that on to wit: the first day of November A.D. 1860, at to wit: said county of La Salle said defendant promised said plaintiff to pay it the said several sums of money in said declaration mentioned and that after said promise and within five years of the making thereof said plaintiff commenced its action against said defendant in due manner and form aforesaid; and this said plaintiff is ready to verify wherefore it prays judgment &c

And for replication to said defendants said plea by him thirdly above pleaded said plaintiff says *precludi non* because it says that the said plaintiff is so indebted to said defendant in manner

36 form as said defendant has in his said plea alleged against it and this he prays may be enquired of by the country &c

And for replication to said defendants said plea by him fourthly above pleaded said Plaintiff says precludi non because it says that in pursuance of an act of the Legislature of this State entitled "An act to incorporate the Northern Illinois Coal and Iron Company of La Salle. approved February 18th A.D. 1857. it the said plaintiff became and at the time of the commencement of this suit was and still is a body politic and corporate and has a right as such to commence and prosecute this suit — And this it is ready to verify — Wherefore it prays judgment and its damages by it sustained on occasion of the non-performance of the said several promises and undertakings in said declaration mentioned to be adjudged to them &c

Bull & Nash
Plff Attys

Be it further remembered that on the 3d day of October A.D. 1864. an appeal Bond was filed in this cause. which is in the words and figures following. to wit:

"Know all men by these presents. that we Levi C. Parsons and James Cahill of

the County of La Salle in the State of Illinois are held and firmly bound unto The Northern Illinois Coal and Iron Company of La Salle in the penal sum of Three Hundred Dollars lawful money for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated this 29th day of September A.D. 1864

The condition of the obligation is such that whereas, the said The Northern Illinois Coal and Iron Company of La Salle did on the Eighth day of September A.D. 1864, in the County Court of the County of La Salle in the State of Illinois at the September Term thereof A.D. 1864 recover a Judgment against the above bounden Levi E. Parsons for the sum of One Hundred and Eighty six Dollars and sixty cents damages, besides costs of suit, from which Judgment the said Levi E. Parsons has prayed an appeal to the Supreme Court of the State of Illinois now, if the said Levi E. Parsons shall duly prosecute his said appeal and shall pay said Judgment costs, interest and damages in case said Judgment shall be affirmed then the above obligation to be void, otherwise to remain in full force and effect

L. E. Parsons (Seal)

James Lahill (Seal)

Approved Oct. 3d 1864 S. M. Raymond clerk

50¢ Stamp

Be it further remembered that on the third day of October A.D. 1864. a Bill of Exceptions was filed in said cause in the office of the Clerk of said Court which Bill of exceptions is in the words and figures following, to wit:

"La Salle County Court
The Northern Illinois Coal and
Iron Company of La Salle
vs
Levi E. Parsons

Be it remembered that this cause having been submitted to the Court for trial, by agreement of the parties that the same came on to be tried on the eighth day of September A.D. 1864 the same being one of the days of the September Term A.D. 1864 of said Court The Plaintiff, to maintain the issue on his part introduced & offered to read in evidence the Deposition of Edgar Loomis & thereupon did read in evidence from said deposition on the trial of said cause the following Interrogatories and answers thereto viz:

1st Int: What is your name, age, occupation and place of residence?

Ans. My name is Edgar Loomis, my age is fifty two my occupation is Wholesale Grocer & I live in Chicago

39 2nd Int. State if you please what you know about any transactions between the Plaintiff and Defendant, if the Defendant is indebted to the Plaintiff to your knowledge, state for what said indebtedness accrued, the amount thereof and generally all you know about the same?

Ans. Mr Parsons had coal of the company he sold some coal on commission for the company and collected some on coal that had been sold - the account on the first ledger of the company at page 406 is a correct account except some credits to be allowed, Mr Parsons sold some coal on commissions and those commissions have not been credited yet - We never had any settlement of the commissions while I was Superintendant - Mr Parsons claimed more commissions than I thought was right - I made out about sixty odd dollars commissions due Mr Parsons. I should think one hundred dollars would be a liberal credit on the account. I think I made it out between fifty five and sixty dollars.

4th Int. Please state what relations you held to the Plaintiff at the time?

Ans. I was General Superintendant of the mines at La Salle -

Cross examination by Mr Dent

40

1st x Int. Are the entries in the Book referred to in your hand writing?

Ans. They are in the Bookkeepers hand writing

2nd x Int. Did you otherwise than by referring to the book recollect the items charged therein specified?

Ans. I done most of the Shipping of the Coal myself-

3rd x Int. Do you then wish to be understood that you remembered how much coal was so Shipped?

Ans. The Coal charged on that Book was Shipped I am confident to the best of my belief- I had general supervision of those matters

4th x Int. Where was the Coal Shipped?

Ans. I dont recollect- It was Shipped to different points- cant tell without examining the books- I was as well acquainted with that account as any on the books. I examined it frequently in reference to a settlement with Mr Parsons.

5th x Int. Was it Shipped under the general order. of if otherwise. how?

Ans. Sometimes by verbal order, and sometimes by letter when he was in the country.

6th x Int. Do you know where the letters are?

Ans. I do not - & have not been connected with the company for over two years

7th x Int. Was he at the time of giving the orders an agent of the Company?

Ans. He never was an agent of the Company He made an arrangement with me to sell coal and have a commission —

8th x Int. Was he acting under that arrangement at the time of giving the orders?

Ans. He was when some of the orders were given -

9th x Int. As to which of the orders does the last answer apply?

Ans. I could not tell without looking the books through -

10th x Int. You have no recollection then on this subject independently of the book?

Ans. I have a recollection - but not dates

11th x Int. What is your recollection

42 Ans. My recollection is that sometimes Mr Parsons would come in the office and I would take down his orders and sometimes when he was in the Country he would write to Ship coal to certain parties

12th x Int. Did he give you such orders or directions after after he quit selling coal for the company?

Ans. Not after he quit selling coal for the company - He frequently bought coal for himself after he quit travelling

13th x Int. Were not these orders to send Coal to customers of the Company, obtained by the Defendant or to persons to whom he had sold coal for the company?

Ans. I understood the orders he obtained while he was travelling, or in any other way he was to have the commission, and not to parties who ordered coal direct from the company to whom he had formerly sold -

14th x Int. Does the account to which you referred embrace charges for coal sent to such customers of the company?

Ans. Sometimes Mr Parsons would order the coal charged to him instead of the parties he sold to. I recollect one charge

of about forty dollars to Mumy the reaper man— sometimes I think the Coal was charged to the parties for whom it was bought and then afterwards he Parsons ordered it to be charged to him direct

15th x Int. What particular instances do you remember of the latter kind?

Ans. I cant give any without running through the account.

16th x Int. Are any of the entries in your hand writing?

Ans. I presume some of them are on the shipping book.

17th x Int. Have you referred to that book to see how this is?

Ans. I have not Examined the book for over two years until to day—

18th x Int. What was the character of the orders as to whether they were written or verbal? concerning the charge to Mr Parsons for coal previously charged to other persons?

Ans. Most of the orders to the best of my knowledge were verbal, as he came in from the country, he would read them from his memorandum ~~book~~ and I would enter them on my order book—

44 19th x Int. About how long was Mr. Parsons engaged in selling coal for the company?

Ans. I should think he was out probably about three trips, and I should think he was gone from six to twelve day a trip

20th x Int. To what points did he go?

Ans. I think he sold some coal in Aurora some in Freeport and I think some in Duluth and some in Lyons and some at other points -

21st x Int. Did he or not bear his own expenses while making those trips?

Ans. We advanced him some money which we charged to him, otherwise he paid his own expenses.

22nd x Int. By what mode of conveyance did he travel?

Ans. I suppose by Rail Road -

23rd x Int. What if any recollection have you as to the item of $11.50 last specified in book to which you first referred above?

Ans. I have no recollection now without referring to the books - that charge was made for a keg of brandy which Mr Parsons bought of J. McMichell for himself

45 and shipped it by Express to me - and I
suppose it was drank up. and Mr Parsons
did not get much of it - I suppose Mr
Parsons ought to be allowed a credit of $11.50
for that although I told him I would make
him pay for it -

24th x Int. Have you any recollection as
to time this charge was made, or as to
time of the occurrence to which you
referred?

Ans. We settled with Mr McInhill about the
29th of March 1859. and he brought in this
account of $11.50 for the Keg of Brandy he
sold to Mr Parsons. which we allowed him

25th x Int. How long before then had Mc
Inhill sold the brandy and in what year?

Ans. I think it was the winter previous
in 1857 and 1858

26th x Int. Is it or not the fact that in the
account against the defendant to which
you first referred above there are two
seperate charges or items included for
amounts which had been previously
charged to J. G. Smith these two entries
being next before said item of $11.50

Ans. They were first charged to J. G. Smith
Mr Parsons collected the money I suppose
and ordered us to charge it to Him.

46. 27th x Int. What recollection have you as to the

Ans. Why, when the thing was fresh in my mind Mr Parsons came up to my office and we looked over the account and it was all right then - He was willing to settle it then if I would allow him the commissions he claimed which I would not do as I thought he claimed too much

28th x Int. Is it not the fact when he found you differed with him as to the commissions he did not proceed to examine the account any further?

Ans. We looked over the whole account and the Coal he had sold. I had made a memorandum of it and he wanted commissions on coal which I did not think was right or proper. We did not go into an Examination of the coal which he claimed commissions for and which I would not allow.

29th x Int. Did you keep a Shipping Book for coal shipped by the Illinois Central Rail Road and was all the Coal shipped on said Rail Road entered in such book?

Ans. We kept a Shipping book of all the coal shipped on any Rail Road all the coal shipped on any road was entered on the Manifest book

Re-Examination by Mr Bull

5th Int. State whether or not Mr Parsons ever examined that account with you if so, when and how often?

Ans. Yes sir. we examined it together in 1860. I could not say the month — We had been endeavoring to get this thing settled for sometime. I believe I did threaten to sue him once or twice and finally he came up to the office and we went into an examination of the account and everything was satisfactory I believe. he objected to the £11.50 but the balance was satisfactory He claimed more commissions than I was willing to allow. I think Mr Parsons was there twice —

6th Int. What did he say at that time about settling the account?
(Question objected to by Mr Dent as not calling for the whole of the conversation).

Ans. He was willing to settle the account if I would allow him commissions on Coal which I thought he was not entitled to —

7th Int. What was the arrangement between you and him about commissions?

48 Ans. Mr Parsons come to me to sell coal for me - I think he was travelling on some other business - and he said he could sell some coal - so I told him what coal he could sell I would allow him a commission - that was all there was about it -

9th Int: What commission was agreed upon
(Question objected to by Mr Dent)

Ans. Twenty five cents a ton

10th Int: State, if you recollect the total amount of the commissions due Mr Parsons and for which you proposed to give him credit on his account at the time you attempted to settle?
(Question objected to by Mr Dent)

Ans. The commissions amounted as I understood the arrangement in the neighborhood of sixty dollars, which I proposed to allow him at the time he came there for a settlement.

11th Int: What was the total amount that Mr Parsons claimed credit for, as commissions upon this account at the time you attempted to settle?

Ans. Mr Parsons claimed commission on coal that was ordered from parties that

he had previously sold to for twelve months He claimed that he was only entitled to commissions on the coal he actually sold -

12th Int. Did he name any amount and if so, what was it?

Ans, He did not name any amount

13th Int. State whether or not any arrangement was made, with Mr Parsons? by which he was to receive commission upon any coal, except that which was actually sold by him?

~~Ans. As Sir~~

Re Cross Examination by Mr Dent

1st x Int, At the time of the attempted settlement to which you have refered did not Mr Parsons claim that the customers he had procured, ordered their coal for the year or season by an arrangement with him, when he visited them, or received them as customers?

Ans, He claimed what coal they ordered of us - He went out to the country and sold a car load of coal, and if the same parties ordered more coal during the next twelve months, he claimed a

50 commission for all the coal he actually sold whether to our old customers or to new ones —

2nd x Int. Did he not claim as to new customers that the orders they gave for the season in which he had bargained with them, came from his arrangement with them in behalf of the company?

Ans. I do not know that he claimed to have made any arrangement with them. he claimed commissions on all the coal they ordered during the year

3d x Int. To about how many persons did he sell coal?

Ans. I could not tell to how many new customers he did sell

4th x Int. If you had settled with him on the terms he proposed, would there not have been a balance in his favor? (Question objected to by Mr Bull)

Ans. I did not go into an examination of it — My recollection is that the commissions he claimed would not exceed one hundred dollars —

5th x Int. While travelling for the company in what other business if any was he engaged?

51 Ans. To the best of my knowledge, I think he was travelling on some agricultural implement matter – My recollection is that he had some other business and some collections to make – I would not be certain –

6th Int. Are not the following among the new customers, from whom Mr Parsons procured orders for coal, to wit: Butler & Hunt St. Charles, S. G. Goodrich & E. R. Allen. Aurora Ira Burrows. DeKalb: J. H. Lennie, Fulton City J. S. Smith. Lyons, Iowa. Petrie & Sheets. Mount Morris. G. W. Cobb. Mineral Point. Fountain & Co. Rockford: J. G. Block. Fulton City: Northrop and Watson. Wheaton: Talcott & Emerson. Rockford: J & J. Daly. Dixon: Curtis & Glover. Dubuque: ?

Ans. I really could not say – some of them I presume are – It has been so long out of my mind I could not say – If I had my order book I could tell –

7th Int. At what date or about what date was he travelling?

Ans. To the best of my memory it was in the winter of 1857 and 1858, and in the Spring of 1858

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The Plaintiff further to maintain the issue on his part introduced as a witness George H. Locey - who being duly sworn testified as follows - I reside at La Salle am Superintendant of the Northern Illinois Coal & Iron Company of La Salle The Book now shown me is Ledger A belonging to the Company. This is the first Ledger of the Company. The account of the Company against the Defendant is on page 406 of this Book. I know the Defendant. A paper was then shown witness - I made the paper now shown me I enclosed it to Mr Parsons at Peru on or about November 4th 1863 He came up shortly after to see about settling the account - He said he supposed he owed the Company something. He looked over the account item by item and stated that there should be a credit allowed him for commissions under an agreement he had made with Mr Loomis the former Superintendant of the Company, which had not been given him. and that when the question of commission was settled, he was ready to pay the account I had no knowledge of any agreement in regard to commissions and of course could make no settlement with him Except upon the basis of the account as it stood upon the book and so stated to Mr Parsons (It was agreed that this Conversation was prior to January 20th

1864. when this suit was commenced)
E.D. Taylor is Prest. of the company -
I have been acquainted with the Company nearly 3 years - the company have been doing business in La Salle
Question by Plff Counsel - Detail what improvements the company have made what business they are engaged in what they have done and are doing?
which question was then & there objected to by Defts counsel because there was no evidence of the incorporation of the Plff & that it was incompetent to show acts of user until the legal corporate existence of the company was first shown which objection was then & there overruled by the Court because it was understood that the act of incorporation would be read in evidence subsequently & to which decision, overruling said objection the deft by his counsel then & there excepted. And the witness answered as follows: They have sunk a shaft 400 ft or more, commenced mining coal - Erected a blacksmith & carpenters shops etc necessary to the successful operation of the shaft & have been mining and shipping coal since the shaft was sunk - built a Tower & cars to run out coal put in an Engine & apparatus for raising coal & are still engaged in mining and shipping coal

54 Cross Examined by Defts counsel
I was not in La Salle when the company was organized nor when the shaft was sunk, have been there only about 3 years - dont know of my own knowledge when the shaft was sunk
I was not in La Salle La Salle when the account with Parsons was contracted
E. F. Bull was then sworn as a witness for the Plaintiff - the Plaintiff here introduced & read in evidence from a printed volume purporting to be "Private Laws of the State of Illinois passed at the twentieth General Assembly begun and held at city of Springfield January 5. 1857" as follows

Feb 18. 1857. An Act to incorporate the Northern Illinois Coal and Iron Company of La Salle.
Section. 1. Be it enacted by the people of the State of Illinois. represented in the General Assembly, That E. D. Taylor. A. G. Byram E. Norris. Robert Law. B. F. Strother. Herman Baldwin. John B. Preston. A. Campbell. R. G. Parks. and their associates. successors and assigns be and are hereby created a body politic and corporate, under the name and style of "The Northern Illinois Coal and Iron Company of La Salle," for the term of One hundred years; with power to contract and be contracted with. sue and be sued. in that name. in all courts and places; to have a common seal. and change the same at pleasure; to engage

in the mining, sale and transportation of coal, iron, salt and other minerals, and in the manufacture of salt, iron lime and other products of lands now owned or hereafter to be owned by them and in the transportation of the same or any of them, and all needful articles to home and foreign markets.

§ 2. The said company may receive, purchase and hold any real estate, mining rights and right of way, for the purpose of mining and preparing for sale and transportation coal, iron, salt, lime, bricks slates, and other articles for home and foreign markets as may be deemed necessary by them to the successful prosecution of their business and the execution of the powers herein granted and may buy, build and own boats and bridges, horses and other personal property, for carrying on their business and may dispose of the same by sale or otherwise; and may receive real estate in payment of stock, and shall have power to construct such wagon ways or railways and appurtenances thereto either above or below ground, to such points as they may deem expedient and for such purpose are hereby invested with all the rights and powers of other corporations in this state.

§ 3. That said E. D. Taylor, N. G. Byram E. Loomis, Robert Law, B. F. Strother Herman Baldwin, John B. Preston

56 A. Campbell and R. G. Parks shall have the power to organize said Company by the appointment of their president and such other officers as they may deem necessary, at such time and place and in such manner as they may designate by notice previously given; and they and their successors shall have power to employ such agents, and define their powers and to make such by laws, rules and regulations as they may deem necessary for the government and management of said company, not inconsistent with the constitution and laws of this State or of the United States.

§ 4. The Capital stock of said Company shall be five hundred thousand dollars with power to increase to any sum not exceeding one million of dollars, divided into shares of one hundred dollars each; and the holder of stock in said Company shall, by himself or by proxy be entitled to cast one vote for each share at all Elections held by the company for president, manager and other officers of said company, or the transaction of any business of the same.

§ 5. The president or other officer employed by the company shall issue certificates of stock to the holders thereof whenever the same shall be paid for; which certificates shall be assignable and transferable only in such manner and at such places as the president

and other officers of said company shall, by their by-laws, prescribe.

§ 6. It shall be lawful for the president and directors of said company to borrow or obtain on loan any sums of money, and on such terms as they may deem expedient for said company and to issue bonds for the same, secured by mortgage on the real estate of said company, or otherwise.

§ 7. This company shall have, possess and enjoy all the powers, rights, privileges and immunities heretofore conferred by law upon any other company in this state, chartered for similar purposes

This act shall not be so construed as to infringe or interfere with any rights or privileges of any other incorporated coal company in this State, and it shall take effect from and after its passage

Approved Feb. 18, 1859.

Said volume also contained what purported to be the public laws of the State of Illinois passed at said twentieth General assembly & resembled other genuine volumes of the laws of State of Illinois printed & published by the proper authorities.

To the reading of which in evidence the Deft, by his Counsel in due term objected on the ground that such book was not legal evidence of a private act of

58 incorporation of the Plffs. which objection was overruled by the Court & the same permitted to be made in evidence - to which ruling of the Court the Deft. by his counsel then & there in due time excepted - The said witness Bull then testified as follows, I resided in La Salle when this act was passed, In the Spring or summer of 1857, the company commenced sinking a shaft in La Salle and I think it was completed so that they commenced raising coal in the fall of 1857, since then they have been mining & shiping coal the parties engaged were E. D. Sayler. Herman Baldwin - Edgar Loomis. R. G. Parks. Alexander Campbell & perhaps others I only know this from conversations with the parties - a man by the name of Byram claimed to own considerable stock - parties in La Salle including Loomis were active in the matter - a number of suit have been prosecuted under the supervision of E. D. Sayler as Prest of Co. & Loomis as Supt. the Co has been sued by & commenced suits in that name - I took this Book (Ledger A) up with me on the examination of Loomis - when his Deposition was taken - together with 2 other books & it is the Book Loomis refers to in his Deposition - I took up the Journal & Shiping Book. the account referred to is on page 406 of Ledger A. - to the reception of all of which evidence of the witness last named the Deft

by his counsel in due time objected, on the following grounds

1. That there was no legal evidence of the passage of an act incorporating the plff

2, That there was no legal evidence of any organization of the company in pursuance of their act of incorporation - if incorporated which could only be shown by the Records & Books of the company.

3, That the acts & declarations of persons appearing to act as an incorporated body could not be received as evidence of the organization of the company & that the evidence was wholly incompetent - which objections were then & there overruled by the Court & to which decision of the Court overruling said objections & permitting said witnes to testify as aforesaid the Deft by his counsel then & there in due time Excepted

The Plff counsel then read in evidence from said Ledger "A" the account on page 406 as follows.

Mr L. E. Parsons

1857 Dec	31	To 1 bar boat for J. H. Avery 10. ton		27	50
"	"	" Cash		32	00
1858 Jan	"	" 3 bars boat		81	00
	4	" cash rcpd from amt pd by B. P. Co		27	75
	30	" 21 1/2 Iron boat	@ 2¢	42	70
	"	1 " " at Office		3	00
Feb	18	" 10 2/3 " boat	2.00	20	30
	"	1 " "		2	50

March 19	"	19[9]	"	"		200	20	90	
April	"	1	"	"			3	00	
June	"	11[3]	"	"	Lowry	"	22	30	
		9[12]	"	"	Smith 6th Jan	"	24	40	
Nov 18th 1859	"	J. B. Smith for bar boat #64				Transfer	26	47	
March 22	"	J. McMahill & Co			1 Keg Brandy		11	50	
1858					Cr.				
Jan 30	By deduction of 25 cts per Ton on first 2 cars sent Lowry								5 72
July	"	Hanley							3 50
Nov 18	"	Cash							40 00
					Balance				298 10
							347 32		347 32

1859 March 22 To Balance $298.10

This was all the evidence given on the trial of said cause - wherefore the court found the issues for the Plff. & assessed its damages at one hundred & eighty six dollars & sixty cents & rendered judgment against the Deft therefor to which finding & rendition of judgment. the Deft by his counsel then & there excepted. & then & there entered a motion to set aside said finding & judgment & for a new trial which motion was then & there overruled by the court & to which decision of the court overruling said motion. the Deft by his counsel then & there excepted & requested this Bill of exceptions to be signed & sealed by the Judge of said court which is done

P. Kimball Leland (Seal)

Judge of the County Court of
La Salle County, State of Illinois

State of Illinois }
LaSalle County } ss

I, Samuel W. Raymond Clerk of the County Court in and for said County and State do hereby certify that the above and foregoing is a true and complete copy of the Records of this Court in a cause wherein the Northern Illinois Coal and Iron Company of La Salle is Plaintiff and Levi E. Parsons is Defendant as appears to us by a diligent Examination thereof

In Witness whereof I have hereunto set my hand and the Seal of said Court at Ottawa this 30th day of March A.D. 1865

S. W. Raymond Clerk
By W. S. Easton Deputy



Supreme Court of the State of Illinois
Third Grand Division
April Term
A.D. 1865

Levi E Parsons appellant
v
The Northern Illinois Coal and Iron Company of La Salle appellee

And now comes the said Levi E Parsons appellee by G S Eldridge his atty, and says that in the Record and proceedings aforesaid

and in the rendition of judgment aforesaid there is manifest error and the said appellee assigns the following Grounds of Error Viz

1. The Court erred in overruling the Exceptions of Defendant below to the Interrogatories (and answers thereto) of the Plaintiff below to the said Witness Edgar Loomis

2. The Court erred in rendering judgment upon the Evidence

3. The finding of the Court is against law & Evidence

4 The Court erred in rendering Judgment for the Plaintiff below upon the issues finding & Evidence as rendered on the trial below

5. The Court erred in overruling the Motion of Defendant below for a New Trial

6. The said Judgment appealed from is in all respects irregular illegal & void, & therefore for the Errors in the Record & proceedings aforesaid & other Errors the said appellant prays that the said Judgment may be reversed &c

G. S. Eldredge
Atty for appellant

And now comes said appellee by Bull & Nash its attys & says there are no such errors in the above & foregoing record as are above set forth & prays that said judgt may be affd with costs

Bull & Nash
for appellee

2[illegible]

Supreme Court

Levi E Parsons

vs

Northern Illinois
Coal, Mining & Co. of Lasalle

Record

Filed Apl. 11. 1865
L. Leland
Clk

$5. pd by E Eldridge