

No. 12896

Supreme Court of Illinois

Smith

vs.

Parmelee et al

71641  7

IN THE SUPREME COURT.

FRANK PARMELEE ET AL.,
Appellant,
vs.
ELVIRA SMITH,
Appellee.

POINTS FOR APPELLEE.

I.

The action is properly brought in assumpsit. It may be either assumpsit or case.
Angel on Carriers, Sec. 422—462.

II.

The action is properly brought by the mother. The action may be brought in the name of the person for whose benefit the contract was made. 1 Chitty's Pleadings, 5; Angel on Carriers, Sec. 499; 21 Wend. R. 142.

E., A. & J. VAN BUREN,

Attorneys for Appellee.

III The Judgment should not be reversed on account of the irregularity of the verdict. The verdict is based upon the facts found. The claim might have entered it in form. No objection was ever taken to it. No objection was any taken on the point now for reversal. There is no exception to it. This Court will not review a matter not excepted to. It is a mere technical irregularity or rather informality, of which no advantage can be taken. 1 Wall 458. 2 Whitt 44. 4 Sam 202. 3 Sam 848. 1 Gil 4.

Baldwin in Libby's Minor 180-

(See 3 vol at Dept. of the Interior)

112 Manual 76 8

19 Ju 47

1 Manning 14

16 Atlas 319

2157 = 102
Sup. Court,

Frank Pannell & al
Appellant

vs

Elvira Smith
Appellee

Points for Appellee
Filed May 4, 1859
A. Leland
Clerk

E. A. Van Buren
Atty for Appellee

Prepared

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United States of America }
State of Illinois, County of Cook } ss.

Pleas before the Honorable George Manierre, Judge of the seventh judicial circuit of the State of Illinois, and sole presiding judge of the Circuit Court of Cook County, in the State aforesaid, at a special term thereof, begun and held at the Court House in the City of Chicago, in said county, on the fourth Monday being the twenty-eighth day of June, in the year of our Lord, one thousand, eight hundred and fifty-eight, and of the Independence of the United States, the eighty second, in pursuance of an order made, and entered of record, at a former term of said Court, which order, is in the words and figures following, to wit:— "Ordered that a special term of the Circuit Court, in and for said county, be, and the same, ^{hereby} appointed to be held at the Court House, in the City of Chicago, on the fourth Monday of June, in the year one thousand, eight hundred and fifty-eight, for the trial of civil and criminal cases, and for the disposal of all business properly cognizable at such time— Whether of a civil or criminal nature, and that the clerk of this Court, give notice of the appointment of said term, to the supervisors of said county, with a request that said supervisors select and cause to be summoned a Grand and Petit jury, to attend

to the term so appointed

Present—Honorable George Maniame, Judge of
the 7th Judicial Circuit, Illinois—

Carlos Haven— States Attorney.

John L. Wilson— Sheriff of Cook County.

Attest—William L. Church— Clerk.

Be it remembered that heretofore, to wit, on the twenty
second day of June, in the year of our Lord, one thousand,
eight hundred, and fifty-seven, Elvira F. Smith, by
~~Smith~~, Esq. & A. Van Buren, her attorneys, sued out of
the Office of the Clerk of the Court aforesaid, and
under the seal thereof, the Peoples writ of Summons,
directed to the Sheriff of Cook County, to execute, and
clothed in the words and figures following, to wit—

State of Illinois }
County of Cook }.

The People of the State of Illinois,
to the Sheriff of said County—Greeting—

We command you, that you summon Frank
Parmlee, Liberty Bigelow, Walter S. Johnston, and Dan-
iel H. Gage, if he shall be found in your county, person-
ally to be and appear before the Circuit Court of Cook
County, on the first day of the next term thereof, to be
holden at the Court House in Chicago, in said County,
on the Second Monday of ^{October} ~~December~~ next, to answer
unto Elvira F. Smith, in a plea of Trespas on the case
on promises, to the damage of the said Plaintiff, as

Went

is said, in the sum of Five hundred Dollars—

And have you then and there, this writ, with an endowment thereon, in what manner, you shall have executed the same—

Witness, William L. Church, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this twenty-second day of June A. D. 1857.



Wm. L. Church, Clerk—

And afterwards, to wit, on the 23rd day of June, in the year last aforesaid, said writ was returned into the Court aforesaid, by said Sheriff, endorsed as follows, to wit— Served by reading to the within named, Frank Parmelee Liberty Bigelow, Walter S. Johnston, and David W. Gage, the 23rd day of June, 1857. Fees— 4 Service, 2, 00. 4 miles, 20, 1 Return 10.— \$ 2, 30— John L. Wilson, Sheriff, by George Anderson Deputy—

And afterwards, to wit, on the 30th day of June, in the year last aforesaid, the said Plaintiff, by her said Attorneys, filed in said Court, her certain Declaration in said suit, which is in the words and figures following, to wit—

Circuit Court of Cook County
of the term of January A. D. 1857.

State of Illinois }
Cook County ss }

Eliza P. Smith, plaintiff in

Officers Return

this suit, by E. & A. Van Buren, her Attorneys, complains of Frank Parmelee, Liberty Bigelow, Walter S. Johnson, and David H. Gage, Defendants, who are summoned to answer the said plaintiff, in a plea of trespass, on the case upon promises— For that whereas the said defendants, who are co-partners doing business at the City of Chicago, County of Cook aforesaid, under the name, firm, and style of F. Parmelee & Co. before, and at the time of the making their said promises and undertakings hereinafter next mentioned, were common carriers of goods and chattels for hire, in and by certain wagons, carriages and omnibuses, from a certain place, to wit the Michigan Southern, and Northern Indiana Rail Road Depot— in the City of Chicago aforesaid— to a certain other place, to wit the Milwaukee boat, (meaning the steam boat going to the City of Milwaukee, in the State of Wisconsin) lying at the dock of said boat, in the port of Chicago aforesaid— and the said defendants, being such carriers as aforesaid, the said plaintiff, heretofore, to wit, on the first day of September, in the year, one thousand, eight hundred and fifty six, at the County of Cook aforesaid, certain goods and chattels, to wit— one silk dress— two colored muslin dresses— two swiss muslin dresses— one large dress— two basques— one white merino cape— one Bonnet— one embroi-

5-

dered handkerchief—one plain handkerchief—one
 Han.—twelve pair of stockings—one lot of under-clothes—
 twelve collars—ten yards of lace—one pair of under-sleeves—
 1 lot of Ribbons—1 Belt—4 Pictures—4 Books—one Trunk—
 one jet bracelet—one gold bracelet—two pair of plain gold
 earrings—one pair of Pearl earrings—one Cameo pin—one
 pair of earrings—one gold pencil—of the said plaintiff
 of great value, to wit, of Five hundred Dollars—lawful
 money—to be taken care of, and safely and securely
 carried and conveyed by the said defendants, as such
 carriers as aforesaid, in, and by the said wagons, carriages
 or omnibuses, to the Milwaukee boat, aforesaid, and
 there, to wit, at the Milwaukee boat aforesaid, to be
 safely and securely delivered by the said defendants,
 for the said defendants, for the said plaintiff, and
 in consideration thereof, and of certain reward to the
 said defendants in that behalf, they, the said defend-
 ants, being such carriers as aforesaid, then and there,
 to wit, on the day and year aforesaid, at the county
 of Cook aforesaid, undertook and faithfully promised
 the said plaintiff, to take care of the said goods and
 chattels, and safely and securely to carry and convey
 the same, in, and by the said wagons, carriages, or om-
 nibuses, from said Michigan Southern, and Northern
 Indiana Rail Road Depot aforesaid, to the Milwaukee
 boat aforesaid, and there, to wit, at the Milwaukee
 boat aforesaid, safely and securely to deliver the same
 for the said plaintiff—and although the said de-

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 defendants as such carriers as aforesaid, then and there
 had and received the said goods and chattels for
 the purpose aforesaid—yet the said defendants, not
 regarding their duty as such carriers, nor their said
 promises and undertaking so made as aforesaid, but
 contriving and fraudulently, intending, craftily and
 subtly, to deceive and injure the said plaintiff in this
 behalf, hath not taken care of the said goods and
 chattels, or safely or securely carried or conveyed the same,
 from the Michigan Southern Rail, and Northern In-
 diana Rail Road, ^{depot} aforesaid—to the Milwaukee boat
 aforesaid—nor hath there, to wit, at the Milwaukee
 boat aforesaid, safely or securely delivered the same,
 for the said plaintiff, but on the contrary thereof, they,
 the said defendants, being such carriers as aforesaid,
 so carelessly and negligently behaved and conducted
 themselves, with respect to the said goods and chat-
 tels aforesaid, that by and through the mere careles-
 ness, negligences, and improper conduct of the said
 defendants and their servants, in this behalf, the
 said goods and chattels being of the value aforesaid,
 afterwards, to wit—the day and year aforesaid, at the
 county of Cook aforesaid, became, and were wholly lost,
 to the said plaintiff, to wit, at the county of Cook aforesaid—
 And whereas also, afterwards to wit, on the day
 and year aforesaid, at the county of Cook aforesaid,
 in consideration that the said plaintiff, at the
 special instances and request of the said defendant,

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had then and there caused to be delivered to the said defendant, divers other goods and chattels of the like number, quantity, quality, description and value, as those in the said first count mentioned, of the said plaintiff, to be taken care of, and safely and securely carried and conveyed, by the said defendant to the Milwaukee boat, aforesaid, and there, to wit, at the Milwaukee boat, aforesaid, to be delivered by the said defendant, for the said plaintiff, for certain reward to the said defendant, in that behalf, they, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to take care of the said last mentioned goods and chattels, and safely and securely to carry and convey the same, to the Milwaukee boat aforesaid, and there, to wit, at the Milwaukee boat aforesaid, to deliver the same for the said plaintiff, in a reasonable time then next following. And although the said defendant then and there had and received the said last mentioned goods and chattels for the purpose aforesaid, and although a reasonable time for the carriage and conveyance, and delivery thereof, as aforesaid, hath long since elapsed, yet the said defendant, not regarding their said last mentioned promises and undertakings, but contriving, and intending to injure and defraud the said plaintiff in this respect, did not, nor would, within such reasonable time as aforesaid, or at any time afterwards, although often requested so to do,

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Declaration

safely and securely carry and convey the said last mentioned goods and chattels, to the Milwaukee boat aforesaid, nor there, to wit, at the Milwaukee boat aforesaid, deliver the same for the said plaintiff - but hath hitherto wholly neglected and refused so to do, whereby the said last mentioned goods and chattels, being of the value aforesaid, have been, and are, wholly lost to the said plaintiff, to wit, at the County of Cook aforesaid - And, whereas also, heretofore to wit, on the first day of September, A.D. 1856. at the County of Cook aforesaid, in consideration that the said defendants, at their special instance and request, there had the care and custody of divers goods and chattels of the said plaintiff, to wit - goods and chattels of the like number, quantity, quality, description and value of those in said first count mentioned, they, the said Defendants, undertook, and then and there faithfully promised the said plaintiff, to take due and proper care thereof, whilst the said defendants so had the care and custody of the same, yet the said defendants, not regarding their said promise and undertaking, but contriving and intending to injure and defraud the said plaintiff, in this behalf, whilst the said defendant, so had the care and custody of the said goods and chattels, took so little, and such bad and improper care thereof, that the same, afterwards, to wit, on the day and year aforesaid, at the County of Cook aforesaid, became, and were

9 greatly damaged and injured, and were wholly lost
to the said plaintiff -

And whereas, also afterwards, to wit, on the day
and year aforesaid, at the County of Cook aforesaid,
in consideration that the said plaintiff, at the spec-
ial instance and request of the said defendants, had
then and there caused to be delivered to the said De-
fendants, divers other goods and chattels of the like
number, quality, description and value, as those in the
said first count mentioned, of the said plaintiff, to
be taken care of, and safely and securely carried and
conveyed by the defendants, to the Milwaukee boat
aforesaid - and there, to wit, at the Milwaukee boat
aforesaid, to be delivered by the said defendant for
the said plaintiff, for certain reward to the said
defendants, in that behalf, they, the said defendants,
undertook, and then and there faithfully promised
the said plaintiff, to take care of the said last-men-
tioned goods and chattels, and safely and securely to
carry and convey the same, to the Milwaukee Boat
aforesaid, and there, to wit, at the Milwaukee Boat
aforesaid, to deliver the same for the said plaintiff.

And the said defendants, not regarding their ^{said} last-
mentioned promises and undertakings, but contriving
and intending to injure and defraud the said
plaintiff, in this respect, did not, although often ^{requested}
to do, safely and securely carry and convey the said
last mentioned goods and chattels, to the Milwaukee

Declaration

boat aforesaid—nor there, at the Milwaukee boat aforesaid, deliver the same for the said plaintiff, but wholly neglected and refused so to do, whereby the said last mentioned goods and chattels have been, and were, wholly lost to the said plaintiff, to wit, at the County of Cook aforesaid, and the said Defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the County of Cook aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay her so much money as the said last mentioned goods and chattels, at the time they were lost as aforesaid, were reasonably worth—when the said defendants should be thereunto afterwards requested—And the said plaintiff avers that the said last mentioned goods and chattels, at the time they were lost as aforesaid, were reasonably worth the further sum of Five hundred dollars, of like lawful money, to wit, at the County of Cook aforesaid, whereof the said defendants afterwards, to wit, on the day and year last aforesaid, then had notice—

And for that, whereas, also the said defendants, afterwards, to wit, on the first day of June, in the year of our Lord, one thousand, eight hundred and fifty seven, at the place aforesaid, were indebted to the said plaintiff, in the sum of five hundred dollars, lawful money of the United States of America, for money before that time, lent and advanced,

Declaration

by the said plaintiff, to the said defendants, and
 14. at the special instance and request of the said
 defendants, and also in the like sum, for other
 money, by the said plaintiff, before that time paid,
 laid out, and expended for the said defendants,
 and at the like special instance and request
 of the said defendants— And also in the like sum,
 for other money, by the said defendants, before that
 time, had and received, to and for the use of the
 said plaintiff— And also, in the like sum, for
 other money, found to be due from the said de-
 fendants, to the said plaintiff, upon an account
 then and there stated between them— and also,
 in the like sum for goods, wares, and merchandises
 before that time sold and delivered by the said
 plaintiff, to the said defendants, at the like
 special instance and request of the said defend-
 ants, and also in the like sum, for the like
 sum, for the labor, care and diligence of said plain-
 tiff, before that time done and performed by
 said plaintiff, for said Defendants, and at the
 like special instance and request of said Defend-
 ants, and being so indebted, they, the said Defend-
 ants, in consideration thereof, afterwards, to wit,
 on the day and year aforesaid, at the County of
 Cook aforesaid, undertook, and then and there
 faithfully promised the said plaintiff, to pay him,
 the said several sums of money in this Count men-

tioned, when they, the said defendants, should be thereunto afterwards requested - Yet the said Defendants, not regarding their said promises and undertakings, but contriving &c. although often requested so to do, have hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff, of five hundred dollars, and therefore she brings this suit, &c.

E. & A. Van Buren,
Attorneys for Plaintiff

Copy of the account on which this action is brought.
J. Parmelee & Co.

To E. L. Smith - Dr.

Copy a/c

1857	June 1 st	1	Silk Dress	\$ 16.
"	" "	2	Colored Muslin Dresses	6.
"	" "	2	Louis " "	10.50
"	" "	1	Barege " "	6.
"	" "	2	Basques -	3.
"	" "		White Merino Cape	4.
"	" "		Bonnet	6.50
"	" "		Embdd. Handkerchief	6.50
"	" "		Plain "	2.50
"	" "		Han	1.25
"	" "		Stockings	2.75
"	" "		Underclothes.	15.
"	" "		Collars	8.25
"	" "		Lace	2.25

tioned, when they, the said defendants, should be thereunto afterwards requested - Yet the said Defendants, not regarding their said promises and undertakings, but contriving &c. although often requested so to do, have hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff, of five hundred dollars, and therefore she brings this suit, &c.

E. & A. Van Buren,
Attorneys for Plaintiff

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"	" "		Plain "	2.50
"	" "		Han	1.25
"	" "		Stockings	2.75
"	" "		Underclothes.	15.
"	" "		Collars	8.25
"	" "		Lace	2.25

13	"	"	"	Undersleeves	1.
	"	"	"	Ribbons	1.66
	"	"	"	Belts	.50
	"	"	"	Pictures	4.25
	"	"	"	Books	3.50
	"	"	"	Trunk	7.00
	"	"	"	Jet Bracelet	1.50
	"	"	"	Gold "	15.00
	"	"	"	Plain gold rings	4.
	"	"	"	Pearl " "	6.
	"	"	"	Cameo Pin	3.50
	"	"	"	Earrings	5.
	"	"	"	Gold pencil	1.50
					<u>\$146.91</u>

And afterwards, to wit, on the 13th day of October, in the year aforesaid, the said Defendants, by Messrs. Seates, McAllister, Jewett and Peabody, their Attorneys, filed in said Court, their certain Plea and affidavit of Merits, in said suit, which are in the words and figures following, to wit—
Cook County Cir. Court.

Frank Carmelee
 Liberty Bigelow & others
 ads
 Alvin F. Smith

And the said depts, by Seates, McAllister, Jewett & Peabody, their Attorneys, come and defend the wrong and injury, when &c. and say that

Plea

they did not undertake a promise in manner and form, as the said plaintiff hath above therein complained against them - and of this, they put themselves upon the country &c.

Seates, Mea. Jewett & Peabody.

Defts attys.

State of Illinois }
County of Cook } ss.

Frank Parmelee, the defendant above named, being duly sworn, deposes and says, that he believes that the said defendants have a good defence to the above entitled cause, on the merits -

Sworn this 13th day
of October, 1857. before me, }

Frank Parmelee

C. D'Wolf. J. P.

And afterwards, to wit, at the June Special Term of said Court, to wit, on the 2nd day of July, A. D. 1858, the following proceedings, among others, were had, and entered of Record therein, in said suit, to wit -

Alvin Smith

vs

Case -

Frank Parmelee, Liberty
Bigelow, Walter S. Johnston,
and Daniel H. Gage

This day comes the said plaintiff by E. A. & J. Van Buren, his Attorneys, and the said Defendants, by Seates, Me. Allister, and Jewett,

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their attorneys, also come, and issue being joined herein, it is ordered that a jury come—Whereupon come the jurors of a jury of good and lawful men to wit—

C. C. Newton	Stephen White.	M. Winch
L. Wilbur.	G. C. Ross.	J. C. Huntington.
H. W. Phillips.	C. W. Boardman,	E. Williston.
John Allen.	Jacob Bochl.	B. Chase.

Who being duly Elected, tried and sworn, "Well and truly to try the issue joined herein aforesaid." And after hearing the evidence, and the arguments of counsel, as well on the part of the said plaintiffs as of the said Defendants, and the instructions of the Court, retire to consider of their verdict, under the Charge of a sworn officer, of the Court,—and afterwards come into Court, and say, "We the jury, find the Defendants guilty, and assess said Plaintiff's damages herein, to the sum of One Hundred and forty six Dollars, and ninety one cents—"

Whereupon the said Defendants Counsel moves the Court for a new trial of this Cause—

And afterwards, to wit, at the same term of said Court last aforesaid, to wit—on 24th day of July, in the year last aforesaid, the following proceedings among others, were had and entered of Record therein, in said suit, to wit—

Alvira Smith

9682

vs

Case

Frank Parmelee, Liberty

Verdict

Bigelow, Walter S. Johnson
and Daniel H. Gage.

This day again come ^{as well} the said plaintiff, by E. A. & J. Van Buren, his attorneys, as the said Defendants, by Leates McAllister, and Jewett, their Attorneys. And the Court having heard Arguments of Counsel, as well on the part of the said plaintiff, as of the said Defendants, on the motion of the said Defendants, heretofore submitted for a new trial of this cause, and being fully advised in the premises, now order that said motion, be, and the same hereby is, overruled, to which the said Defendants, by their Counsel, now here, except—

\$146²¹ Therefore it is considered by the Court, that the said plaintiff do have, and recover of the said Defendants, his damages of One Hundred and forty six Dollars, and Ninety-one cents, in form as aforesaid, by the Jury aforesaid, assessed, together with his costs and charges, by him, about his suit in this behalf, expended, and have Execution therefore—

Whereupon the said Defendants, by their Counsel, except, and pray an appeal to the Supreme Court, of the State of Illinois which is granted by the Court, on condition, that the said Defendants, within twenty days from this date, shall execute, and file with the Clerk of this Court, their Appeal Bond herein, in the Penal sum of Two Hundred and Ninety three Dollars, and Eighty two cents, conditioned according to law,

Judgment

with George Gage as surety thereto

17 And on motion it is ordered that the said Defendants, have twenty days to file their Bill of exceptions herein—

And afterwards, to wit, on the 12th day of August, in the year last aforesaid, the said Defendants, by their said Attorneys, filed in the Court aforesaid, the certain Bill of exceptions, in said suit, which is in the words and figures following, to wit—

Cook County Circuit Court

Frank Parmelee
Liberty Bigelow, et al Case
ads
Alvira F. Smith

Be it remembered that on the 2nd day of July, A.D. 1853. this cause came on to be tried in said Court, holden at the City of Chicago, by and before the Hon. George Maniere, Circuit Judge - That to maintain the issue on her part, the plaintiff read in evidence to the jury, the Depositions of Kate C. Smith, Evelina Smith, and Winifred Smith, which depositions are respectively as follows, viz -

are respectively as follows, viz—

Interrogatory First. — Do you know the parties, plff and defendants, in the title of these interrogatories named, or either, and which of them, and state whether any, and what relationship exists between you, and either of them, and state where you resided in August 1856. and where do you now reside, and with whom?

Full of Exceptions

Answer to the first interrogatory—she says, she knows the plaintiff, and does not know said defendants, or either of them, I ~~am~~ the daughter of the plaintiff, resided latter part of August, 1856. with her brother Winfield Smith, in Milwaukee and fore part, with her mother in Munroe, in the State of Michigan, and now resides with her mother in the City of Monroe, in the State of Michigan—

Second Interrogatory—Did you, on or about the month of August, 1856. travel from your residence to the City of Chicago? if ~~yes~~ ^{yea}, state when you started? where from? how did you travel? and did you take with you any Baggage? if yea, state what Baggage, and describe the same particularly?

In answer to the second Interrogatory, she says, I did—I started in the fore part of August, but cannot now recollect the exact day—I started from my mother's house, in the City of Monroe, and had with me as baggage, a Common sized leather russett colored travelling trunk, with hair rivets, filled with wearing apparel, and some school books, and had also a travelling Carpet bag. I travelled by cars over the Michigan Southern and Northern Indiana Rail Road, to Chicago—

Third Interrogatory—If in answer to the second interrogatory, you shall state that you took a trunk containing her baggage, then state whether you took a check from my Rail Road Company, and if yea, from what place, and for what place or destination,

Bill of Exceptions

and what did you do with such check.²

19.

In answer to the third Interrogatory—she says, I did, I took from the Mich. Southern and Northern Indiana Rail Road Company, at Monroe the check for the trunks^{from} Monroe aforesaid, to Chicago, Illinois—I gave it up on the cars, to the agent of the omnibus line in Chicago—

Fourth Interrogatory—State whether, or not, you at any time, and if so, when and where, received from any one, and if so, from ^{whom} whence, an omnibus ticket for your baggage.² if yes, then state whether you gave to such person, your said rail-road check, and whether the baggage was delivered to you, or was ever resigned by you, and state all the facts, in relation thereto, and state whether you went on board a Steam Boat, bound for Milwaukee, and whether you there received or found the said baggage.²

Bill of Exceptions

In answer to the Fourth Interrogatory, she says, I received an omnibus ticket from the agent of Parmelee and Co. Omnibus line, on the cars, shortly before reaching Chicago, on my said journey to Milwaukee, and at same time, I gave to such agent, my said Rail Road check—The baggage was never received by me, or delivered to me—I went on board the Steam boat, the evening I reached Chicago—I did not find my baggage on said Steam Boat, nor did I receive it then, or at any time afterwards—When I gave up my said Rail Road check, and took said

Omnibus ticket, from said omnibus agent, he informed me the trunk would be put into the Milwaukee steamer, and that I need not look for it until reaching Milwaukee. I informed him I was going to Milwaukee, by steamer, that night, and wished my baggage sent to the Milwaukee steamer, that same night.

Fifth Interrogatory — State whether the ticket to these Interrogatories annexed, is the ticket you received from the omnibus company, or their agent?

In answer to the fifth Interrogatory, she says — It is the same that she received.

Sixth Interrogatory — Do you know any other matter or thing touching the matter in question, that may tend to the benefit or advantage of the plaintiff? if yes, declare the same fully.

In answer to the sixth Interrogatory, she says she knows nothing more, that she deems important, except as to her age, which is fifteen years, the last April.

Cross Interrogatories, and answers thereto, by Kate C. Smith, the witness on the part of said plaintiff —

First Cross Interrogatory — Where were you going (if you say you left Monroe as stated in the third direct interrogatory to said Evalina) with whom did you go — How long did you stay, and when return, state fully?

Bill of Exceptions

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In answer to the first Cross-Interrogatory, she says, I was going to Milwaukee, was going alone, (except strangers on the cars, with whom I was not acquainted,) I remained until the latter part of December, last, reaching Milwaukee in the fore part of the August preceding.

Second Cross Interrogatory—If you say that said witness, Kate C. Smith, or either of you, had any trunk, or other baggage, when and where were the articles put up, and where do you, or either of you, recollect of last seeing the trunk, or trunks they were put into?

In answer to the Second Cross Interrogatory, she says, the articles in said trunk, were put into it, at my mother's house, the day and evening before I started for Milwaukee, as before stated, and I last saw the trunk the next day at Adrian, in _____ County, Michigan, where it was changed from the Monoc train, which stopped at Adrian, on to the cars or train from Adrian to Chicago—

Third Cross Interrogatory—(What particular articles (if any were had) did you have, for ~~whom~~ ^{whom} made or purchased? and how long had the same been had or used, and by whom used, and state whether the same were exclusively in the charge and possession of said Kate, or both of you, and whether it consisted of articles of clothing, for yourselves or either of you, necessary in travelling, or whether it

Bill of Exceptions

x

was Merchandize, or other property you were carrying or had in charge for some other person, or persons beside yourselves—

In answer to the third Cross Interrogatory—she says, The list of the articles ~~was~~ ^{are} contained in the Schedule hereto annexed, marked Exhibit A. signed by me, and made part of this, my answer to the third Cross Interrogatory—The articles were mostly made and purchased for me, and were generally used by me, and were exclusively in my possession after leaving home, The articles were generally clothing, and necessary articles of wearing apparel, in travelling, and from home, except the few school books named in the list—There was no merchandize or other property in the trunk, except as stated, and nothing I can recollect except those enumerated in said list—and nothing belonging to anyone, except myself as stated—

Fourth Cross Interrogatory—Where was the plaintiff when you left Monroe, as mentioned in the direct interrogatories—Is she a married lady? did she furnish the goods in question, for said Kate, or did some other person? state fully—

In answer to the Fourth Cross Interrogatory, she says, The Plaintiff was in Milwaukee, when I left Monroe—She is not now, and was not a married lady when I left as stated—she is a widow—and she furnished the said articles for me, no one else fur-

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nished any of them, that I know of—

Fifth Cross Interrogatory— If you say you delivered your rail road check to the omnibus line, and received the ticket— who was present when you so delivered your rail road check? where was it, and did you see your baggage put into the hands of said omnibus line, or any of its agents?

In answer to the fifth Cross Interrogatory— she says, I did not know any of the persons that were present— they were the passengers on the cars, and were strange to me— It was on the cars just before reaching Chicago, perhaps an hour before— I did not see the trunk put into the hands of the omnibus line, or any of its agents, I only gave them my check, and took the ticket, and saw nothing more of check or trunk than stated in my answer above—

Kate C. Smith.

Exhibit "A"

1 Silk Dress—	16.00—	Books,	3.50
2 Colored Muslin Dresses,	6.00	Trunk,	7.00
2 Swiss " "	10.50		
1 Barege " "	6.00	Jet Bracelet,	1.50
2 Basques	5.00	Gold do	15.00
Merino Cape	4.00	Plain Gold rings,	4.00
Bonnets,	6.50	Pearl rings	6.00
Emb'd handkerf	6.50	Cameo Pin	3.50
Plain hdkf	2.50	Earrings	5.00
Han	1.25	Gold pencil	1.50

Stockings	2.75	Belts	.50
Underclothes	15.00	Ribbons	1.66
Collars	8.25	Pictures	4.25
Lace	2.25	Total \$ 146.91	
Undersleeves	1.00		

Kate C. Smith

Evelene Smith,

Interrogatory first— Do you know the parties, plaintiff and defendants, or either of them, in these interrogatories named, or either, and which of them, and how long have you known them, or either of them, and which of them?

Answer to first interrogatory— I have known the plaintiff, who is my mother, many years— I know none of the defendants—

Interrogatory Second— Where did you reside in the month of August, A.D. 1856. Are you in any way related to Miss Kate C. Smith of Monroe, Michigan— If yes, state what that relationship is?

Answer to Interrogatory Second— I resided in Monroe, Michigan— I am sister of Miss Kate C. Smith, of that place—

Interrogatory third— Please state what you knew, if anything, of Miss ^{Kate} C. Smith's leaving the City of Monroe, in, or about the month of August, 1856. for the purpose of going to or through the City of Chicago— state what route she took,

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by what conveyance, or conveyances she went, and whether she took with her any baggage, or clothing, or other articles—State all the facts in relation thereto?

Answer to Interrogatory Third—She left Monroe in August, 1856. to go to Milwaukee, through Chicago—she went on the Southern Michigan Rail Road, and took with her, baggage, being clothing and other articles, in a trunk, and a carpet bag—She left Monroe in the morning train, expecting to take the boat at Chicago, that evening for Milwaukee—

Interrogatory fourth—If in answer to the third interrogatory, you state that she took with her a trunk, a trunk, and baggage, then state your means of knowledge, and give a particular description of the trunk and baggage, and the value of each article.

Answer to Interrogatory fourth— I packed the trunk, and saw it go on to the cars, having accompanied her to the depot— I saw her leave, taking her baggage along— The articles in her trunk, and their value, to the best of my judgment, were as follows— Silk dress, \$11— 1 Baize dress, \$6— 2 Colored muslin dresses, \$6. 2 basques \$5— 2 Swiss Muslin dresses, \$10.50. White Merino Cape, \$4. Bonnet, \$6.50. Belts, \$.50— Embroidered handkerchief, \$6.50— pictures, \$4.25— Plain handkerchiefs, \$2.50— Books \$3.50— Fan \$1.25— Earrings \$5— Stockings \$2.75— gold pencil, \$1.50 Underclothes \$15— Carnes pen, \$3.50. Collars,

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\$ 8, 25— Pearl ring \$ 6— Lace \$ 2. 25— Plain gold rings, \$ 4— Undersleeves \$ 1— Gold Bracelet \$ 15. Ribbons \$ 1. 66— Jet bracelet, \$ 1. 50— making with the trunk ^{worth 7 dollars} ~~several dollars~~, \$ 146-91— There may have been in the trunk, other articles, which I do not remember—

Fifth Interrogatory— Please state the age of Miss Kate C. Smith, and state who is her mother, and whether the baggage and articles were in her possession when Miss Kate C. Smith returned to her mother's residence in Monroe, aforesaid—

Answer to fifth Interrogatory— She is fifteen years old— the plaintiff is her mother— the carpet bag was in her possession when she returned to Monroe, but none of the articles, the value of which is given above.

Sixth interrogatory— Do you know any other matter or thing touching the matters in question, that might tend to the benefit or advantage of the plaintiff? if yes, declare the same fully, and at large, as if you had been particularly interrogated thereto—

Answer to Interrogatory six— The property above described, belonged to the plaintiff and was at that time used as the personal baggage of Miss Kate C. Smith.

Cross Interrogatories, and answers thereto, by E. E. Smith, on the part of the defendants—

Cross Interrogatory first— Where was the said Kate Smith going? with whom did she go, how long stay, and when return—

Bill of Exemption

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Answer— She was going to Milwaukee, alone— she staid about four months, and returned in December last—

Cross interrogatory second— If you say that said Kate Smith had any trunk or baggage, when and where ^{were} the articles contained, put up, and when and where did you last see the trunk or trunks they were put in?

Answer— The articles were put up in Monroe, just before her departure, and I last saw the trunk they were put in, as it was going on to the baggage car at Monroe, when she left for Milwaukee as above stated—

Cross interrogatory third— What particular articles did she have, for whom were they made or purchased— and how long had the same been used, and by whom used, and state whether the same were exclusively in charge of said Kate, or in charge of both of you, and whether they consisted of articles of clothing for yourselves, or either of you, and which of you, necessary in travelling, or whether it was merchandize, or other property you were carrying, or had in charge, for some other person besides yourselves?

Answer— She had the articles above described, besides some in her carpet bag, and they were all, or mostly all, made or purchased for her use— The pictures were family daguerotypes— I cannot

Bill of Exceptions

state how long the different articles have been used— all the articles had been used by Kate, my sister, more or less, and they were exclusively in her charge, and they were generally articles of apparel, and ornament, for her, necessary in travelling— none of them were merchandize, or other property, carried or had in charge, for any body besides herself—

Cross Interrogatory fourth— Where was the plaintiff when said Kate left Monroe, and where were you?

Answer— The plaintiff was in Milwaukee, and I was in Monroe—

Cross Interrogatory fifth— How old are you, and how do you know the age of said Kate, and where were you, when said Kate returned?

Answer— I am twenty one years old— I know the age of my sister Kate, from information from our family, from her appearance, and from the record in the family bible— I was in Monroe, when she returned—

Winfield Smith

Eva F. Smith

Interrogatory first— Do you know the parties, plaintiff and defendants, in the title of these interrogatories named, or either, and which of them?

Answer to Interrogatory ~~first~~— I know the plaintiff, who is my mother— I have only once seen the defendant Parmelee, to talk with him, and I am not acquainted with the other defendants—

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Interrogatory Second — Did you, at any time, and if yes, state when and where, have any conversation with the defendants, or either of them, and which of them, in relation to certain baggage claimed to be lost by Miss Kate C. Smith? if yes, when and where was that conversation, and what was the conversation? state the same particularly —

Answer to — I had a conversation with the defendant Parmelee, in his stable, at the city of Chicago, on the 6th day of January A. D. 1887, in regard to the baggage lost by ^{my} sister Kate Smith. I told him so far as I knew the particulars, of the loss, and that the plaintiff desired compensation therefor — he made a number of enquiries, and we had considerable conversation on the subject — talking about the manner of the loss, the efforts made to find the trunk, the previous correspondence I had had with his office, referring among other things to a trunk I had just examined at the Merchants Hotel, in that city, which corresponded outwardly in some respects, to the lost trunk — I told him that we should resort to a suit, if he would not make a definite agreement to pay for it. He wanted to know the value of the trunk, and contents, which I told him, I did not know, but I could ascertain, and would furnish him, if he desired. He then said the defendants did not wish to be sued, and if my mother would wait ninety days,

Bill of Exceptions

and after that furnish him a statement of the value of the trunk and contents, verified by affidavit, they would then pay the amount, unless they should in the mean time, have got the trunk for her— that was the conclusion of the conversation—

Interrogatory third— If in answer to the second interrogatory, you shall answer that the defendants, or either of them, promised to pay for the baggage so claimed, to be lost, upon condition that you should furnish, or caused to be furnished, an affidavit of its value, then state whether you did procure, or caused to be procured, such affidavit, and who made it, and whether you presented, or sent it to such defendants, and state particularly what you did do in the matter—and whether the defendants, or either of them, did pay for the same—

Answer— After the expiration of the ninety days, I procured to be made by my sister, Evelina F. Smith, an affidavit of the value of the trunk and contents, a copy of which, I here produce, marked "A" I sent to F. Parmelee & Co. about third of June, last, that affidavit enclosed in a letter, directed to them at Chicago, ^{which} mailed in this city, postage paid— in that letter, I requested payment, and mentioned the mode of payment— I received no reply, and soon after, wrote, and sent them another letter, calling their attention to the matter— I never received any

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replied to either letter, and to the best of my knowledge, they have never paid any sum to the plaintiff, or any one for her, nor has she received any compensation for the trunk and contents—

Interrogatory fourth — Please state whether you are related to Miss Kate C. Smith, and to the plaintiff, in this suit, and what that relationship is — state where you reside —

Answer — I reside in Milwaukee — the plaintiff is my mother, Kate C. Smith is my sister —

Last Interrogatory — Did you know any other matter or thing touching the matters in question, that may tend to the benefit or advantage of the plaintiff if yes, declare the same fully —

Answer — It may be proper to state that when in Chicago last January, I was about to have suit commenced against the defendants, for the value of this lost trunk and contents, and should have done so at that time, but for Mr. Parmelee's promise to pay after ninety days, as I have before stated, of which intention I informed Mr. Parmelee, in the conversation referred to — on account of his promise, no suit was commenced until after his failure to attend to my last letters, — in my correspondence with the defendants, and in my conversation with Parmelee, I acted as the agent of the plaintiff, and with authority from her — I had before this conversation, exhibited at the office of the de-

Bill of Exceptions

pendants, the ticket furnished to my sister, by the omnibus agent, numbered 3812 - which was recognized as having been issued by the omnibus line, by the persons in charge of the office, and I believe, although I am not positive, that I showed the same ticket to Mr. Parmelee, in my conversation with him -

Winfield Smith -

State of Michigan } A.
County of Monroe. }

On the 29th day of May, A.D. 1857, personally appeared before me, Alex. D. Anderson, a Justice of the Peace, in and for said county, Evelyn F. Smith, and being duly sworn, according to law, deposes and says, that some time in the month of August last, her sister, Kate C. Smith, left her mother's residence in the City of Monroe, in said county, by the Michigan Southern Bail Road, through Chicago - and that previous to her leaving home, she (deponent) packed the clothes, and ^{articles of} ~~wearing~~ apparel, of her sister Kate, into her trunk, which was a brown or yellow leather travelling trunk, having a card attached, or tacked on, to the end thereof, with the name of Mrs. Henry Smith written thereon. Deponent states further that the list of articles hereto annexed, was made out by her, deponent, and that the same is a true and correct statement of the articles and

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of their value, which she packed into the trunk of her sister, as aforesaid, that her said sister returned home, on or about the 19th day of December 1856. last past, and on her return, stated to her mother, and to this deponent, that upon her leaving the cars at Chicago, on her way to Milwaukee, as aforesaid, she placed her said trunk in charge of the agent, of the Omnibus line or company at Chicago, and directed him to take it to the Milwaukee boat, and took from said agent a check for said trunk, and that upon her arrival at Milwaukee, by boat, she discovered that her trunk and contents were missing, and was unable to find the same, and has never been able, thus far, to learn anything concerning it, and has not yet recovered her said trunk, nor any of the articles mentioned in the statement hereto annexed, which were in said trunk, at the time it was lost—

Euclina P. Smith—

I sworn to, and subscribed

before me, the day and year above written—

Alex. D. Anderson,

Justice of the Peace.

Silk dress	16.	Books	3.50
2 Colored muslin dresses,	4.	Trunk	7.
2 Swiss muslin do.	10.50.	Jet bracelet	1.50
1 Bangle	do	6. Gold Bracelet,	15.

2 Basques	3. Plain gold rings	4.
White merino cape,	4. Pearl , do	6.
Bonnet,	6.50 Cameo pin	3.50
Embd Handkerchief,	6.50. Earrings	3.
Plain —	2.50 Gold pencil	1.50
Hair	1.25. Total	\$ 146.91
Stockings	2.75	
Underclothes	15.	
Collars	8.25	
Lace	2.25	
Undersleeves	1.	
Ribbons	1.66	
Belts	.50	
Pictures	4.25	

Bill of Expenditures

The Defendants, by their Counsel, thereupon admitted, that at the time of the alleged loss, the Defendants were common carriers of passengers and their baggage, in the City of Chicago — and gave her their usual baggage ticket, made, an exhibit in and by the said depositions — The foregoing was all the evidence given upon said trial —

The evidence being closed, the depts, by their counsel, requested the Court to give to the Jury, the following instructions —

That if the Jury believe from the evidence, that one of the defendants told the witness, Winfield Smith, that if his mother would wait ninety

* But which Instructions the said Court then and there required to give, and the depts, by their counsel, then and there objected.

Bill of Exceptions

Refused

Given

Withdrawn

days, and furnish the defendant a statement of the value of the trunk, and contents in question, the depts would pay for the same, and also that such statement was afterwards made and verified in pursuance of such proposition; yet the plaintiff cannot recover for a breach of said agreement, in this action -

Depts Instructions:

If the jury believe from the evidence that the plaintiff is the mother of the witness, Kate Smith, and the clothing and apparel in question, had been furnished by the plaintiff, and given to, and put in to the possession of the said Kate, to be kept by her for her use as her own, and were so in the use of said Kate, at the time of delivering the same to the said defendants, and that the plaintiff was not present at the time of such delivery, and was not carried by the defendants, or agreed to be carried by them, then the plaintiff cannot maintain this action, for the loss of the same articles, although the jury also believe that the said Kate was a minor, at the time of such delivery - *

The jury retired to consider of their verdict, and returning into Court, rendered the following verdict:

We, the jury, find the Defendants guilty, and assess her damages at one hundred and forty-six Dollars, and ninety-one cents - \$146.91.

Stephen White, foreman

The defendants thereupon moved the Court to set aside the said verdict, and to grant a new trial. - Afterwards, on the 24th day of ~~April~~^{July}, aforesaid, and during the same term, the said Court overruled said motion, for a new trial, and the defendants then and there excepted - Whereupon the defendants prayed the said Court, for an appeal to the Supreme Court, and to sign and seal this bill of exceptions, which is accordingly done -

George Maniere 
Judge 7th Judicial Circuit
Ills.

And afterwards, to wit, on the same day and year last aforesaid, the said defendants, by their said Attorneys, filed in the Court aforesaid, their certain appeal bond, which is in the words and figures following, to wit -

Know all men by these presents, that we, Franklin Parmelee, David A. Gage, Liberty Bigelow, Walter S. Johnson, and George W. Gage, are held and firmly bound unto Alvin H. Smith, in the penal sum of two hundred and ninety three dollars, and eighty two cents, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, and administrators, jointly, severally, and firmly, by these presents, - Witness our hands and Seals, this 12th day of August, A.D. 1858.

The condition of the above obligation is such,

Done

The defendants thereupon moved the Court to set aside the said verdict, and to grant a new trial. - Afterwards, on the 24th day of ~~April~~^{July}, aforesaid, and during the same term, the said Court overruled said motion, for a new trial, and the defendants then and there excepted - Whereupon the defendants prayed the said Court, for an appeal to the Supreme Court, and to sign and seal this bill of exceptions, which is accordingly done -

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The condition of the above obligation is such,

Done

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that whereas the said Alvin H. Smith, did on 24th day of July, A. D. 1858. in the Cook County Circuit Court holden in and for the County of Cook, and State of Illinois, recover a judgment against the above-bounded Franklin Parmelee, David A. Gage, Liberty Bigelow, and Walter S. Johnson, for the sum of one hundred and forty-six dollars, and ninety-one cents, besides costs from which judgment, the said last-mentioned obligors have taken an appeal to the Supreme Court, of said State—Now if the said Franklin Parmelee, David A. Gage, Liberty Bigelow, and Walter S. Johnson, shall duly and diligently prosecute their said appeal ~~and~~ ^{and} shall pay the ~~same~~ judgment costs, interest and damages, in case the judgment aforesaid shall be affirmed in and by the said Supreme Court, then this obligation to be void, otherwise to remain in full force and

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of ~~Wash. Declaration Plea Judgment Bill of Exceptions~~ ^{Verdict} in a certain cause lately pending in said Court on the ~~Common Law~~ side thereof, wherein Alvin H. Smith was Plaintiff and

Frank M. Parmelee et al were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Fifteenth day of February A. D. 1859

True for Record 9-35

Wm L Church

Clerk.

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Dord

that whereas the said Alvin H. Smith, did on 24th day of July, A. D. 1858. in the Cook County Circuit Court, holden in and for the County of Cook, and State of Illinois, recover a judgment against the above-bounded Franklin Parmelee, David A. Gage, Liberty Bigelow, and Walter S. Johnson, for the sum of one hundred and forty-six dollars, and ninety-one cents, besides costs from which judgment, the said last-mentioned obligors have taken an appeal to the Supreme Court, of said State - Now if the said Franklin Parmelee, David A. Gage, Liberty Bigelow, and Walter S. Johnson, shall duly and diligently prosecute their said appeal ~~and~~, and shall pay the ~~same~~ judgment costs, interest and damages, in case the judgment aforesaid shall be affirmed in and by the said Supreme Court, then this obligation to be void, otherwise to remain in full force and

Franklin Parmelee	(seal)
Liberty Bigelow	(seal)
D. A. Gage	(seal)
W. S. Johnson	(seal)
George W. Gage	(seal)



Supreme Court
 Franklin Parmelee
 Liberty Bigelow
 David A. Gager
 Walter S. Johnson
 vs Appellants

Alvira F. Smith Appellee

Afterwards to wit at the April Term 1859
 of the said Supreme Court before the Judges
 thereof at Ottawa Come the said Appellants
 by Scates Wallsten & Jewett their
 attorneys and say that in the record and
 proceedings aforesaid and in giving the
 judgment aforesaid there is manifest
 error in this to wit:

1st The Court erred in refusing the

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instruction asked on the part of the said
Franklin Parmelee Liberty Bigelow David
A. Hays & Walter L. Johnson depts below

2nd The Court Erred in denying the motion
of the said depts to set aside the
verdict and for a new trial,

3rd The verdict rendered as aforesaid is
irregular informal & void

4th The Court Erred in rendering judgment in
favor of said Alvira F. Smith against
the said depts

Wherefore for the reasons aforesaid and
other reasons in the said record and proceed-
ings the said appellants pray that
the said judgment may be reversed
and held for naught and the appellants
restored to all things which they have
lost by reason thereof &c

Scates McAllister & Jewett
Attys for Appls

Superior Court

Frank J. Smith

et al App^t

vs

China Smith

App^t

And now comes

the said defendant

in Equity Et al & Trust for the same
& says that in no case in the record
proceedings a defendant appeared
in manner & form as is above alleged
by plaintiff in error & therefore the said
defendant ^{may} that the said defendant may
be in all things oppressed

Et al Trust for the same

Atty for App^t

Circuit Court of Cook Co
215
Elvira J. Smith

no

Frank Parmelee Est
appt.

Complete Record

Filed April 12. 1859
L. Leland
Clerk

M. H. Lester

Aug 9 55