

No. 12607

Supreme Court of Illinois

Parmelee et al

vs.

McNulty

71641  7

Monday March 2nd 1857
Page 1 United States of
North America
State of Illinois
Cook County

Please before the Honorable
George Manion Judge of the 7th
Judicial Circuit of the State
of Illinois and sole presiding
Judge of the Circuit Court of Cook
County in said State at a
Vacation Term begun and held
at the Court House in the City of
Chicago on the 1st Monday being
the 2nd day of March in the
year of Our Lord One Thousand
eight hundred and fifty seven
and of the Independence of
the United States the Eight
Fifth

Present

Honorable George Manion Judge
of the 7th Judicial Circuit
John L. Wilson Sheriff of
Cook County

Charles Harmon State
Attorney Arthur W. L. Church Clerk
Court opened by Proclamation

Be it Remembered to wit:
That on the 30th day of
January A.D. 1857 There was
filed in the office of the Clerk
of the Circuit Court of Cook
County in the State aforesaid
a certain process which is
in the words and figures
following to wit:

Clerk Circuit Court
James McMurry

vs

Frank Parsons
Libby Bigelow
Walter J. Johnson
and David J. Gage

The Clerk will please
issue Summons in this Cause
against the above Defendants
in a plea of trespass in the
Case
Damages \$200

January 1857

E Van Buren
Sess Atty

And afterwards to wit on the 30th day
of January A.D. 1858 there was filed in
the office of the Clerk of the Circuit
Court of Cook County aforesaid a certain
Bond for Costs which is in the
words and figures following to
wit:-

Cook County Circuit Court

James McKusick

vs
Howard Parsons

Liberty Bigelow

Master of Johnston

David A. Guy

I do hereby enter myself
as Security for costs in the Cause
and acknowledge myself bound to pay
in case to be paid all costs
which may accrue in this action
either to the opposite party or to any
of the officers of this Court in
pursuance to the laws of this
State

Dated this 23 day of January 1857

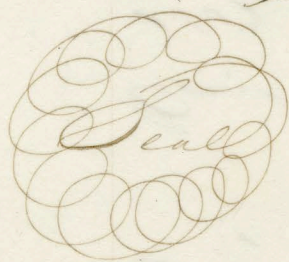
E. Van Buren

And afterwards to wit: on the
30th day of January A.D. 1854
There issued out of the office of the
Clerk of the Circuit Court of Cook
County aforesaid a certain Process
which is commonly called Summons
which is in the words and
figures following to wit:—
State of Illinois }
County of Cook } X

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

We command you that
you summon Isaac Parmelee
Liberty Bigelow Master J.
Johnson & David A Gage if
they shall be found in your
County personally 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
First Monday of March next, to
answer unto James M. Musty

3- in a plea of Traspas in The Case
to the damage of the said
Plaintiff as is said in The sum
of Ten hundred Dollars
and have you then and there
this writ with an Endorsement
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
Thirtieth day of January
A.D 1857

Wm L Church

and the said last mentioned
writ has endorsements on the
back which are in The words
and figures following to wit

Served by reading to the within
named Liberty Bigelow & David A
Gage the said day of Feb 1857 also
by reading to the within named
Frank Parmelee the 7th day of
Feb 1857 also by reading to the
within named Walter S. Johnson
the 12th day of February 1857

6 Fee. 4 Service 2.00 p by
 4 Mile .20 Spp atty
 1 Return 10. \$2.30
 John L Wilson Sheriff
 By John W Dent Deputy

Filed 5th March. 1857
Spk Church Clerk
And afterwards to wit on the
30 day of January A.D. 1857
there was filed in the office
of the Clerk of the Circuit Court
of Cook County aforesaid a certain
Declaration which is in the
words and figures following to
wit:

State of Illinois }
Cook County }

The Cook County Circuit
Court of the Term of March and
1857

Comes on duty by Evan Bena
his Attorney Complaints of Frank
Parmalee. Liberty Bigelow. Walter
S. Johnson David W. Gage of a
plea of trespass in the case
for that whereas the said
defendant heretofore to wit on
the twelfth day of December AD

7 1886 at Chicago in the County
of Cook were copartners in
the business under the name
firm & style of Parmelee and Co
and the said defendants
being such copartners as
aforesaid, to wit before and at
the time of the delivery of the
goods and chattels to them
and the committing of the
grievances as hereinafter more
mentioned and were the owners
and proprietors of certain
Common Coaches or Carriages
called Omnibuses going and
coming from the depot of the
Milwaukee Rail to the depot
of the Southern Michigan and
Northern Indiana Rail Road
and from and to various other
Rail Road depots and places
for the carriage and conveyance
thereof of passengers and their
Baggage for reasonable hire
and reward to the said
defendants in that behalf to
wit, at Chicago in the County
of Cook aforesaid —
And whereas also whil'd

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The said defendants were
 such owners and proprietors
 to wit on the 12th day of
 December 1856 at the Depot of
 the Milwaukee Rail Road in
 Chicago aforesaid they the said
 defendants received in their said
 omnibus the said plaintiff as
 a passenger therein to be carried
 and conveyed thereby from the
 said place called the depot
 of the Milwaukee Rail Road to
 the depot of the Southern
 Michigan & Northern Indiana
 Rail Road aforesaid together
 with a certain trunk or
 valise containing several yards
 & chattels, to wit one Black
 Broad Cloth Coat one Black
 Broad Cloth vest one pair
 of Broad Cloth pantaloons
 Eighteen Shirts Twelve pair of
 Socks Three dozen Collars
 Two woolen under shirts Two
 Silk under shirts. Six pocket
 handkerchiefs Ten pair of
 Woolen Drawers One pair
 of Patent Leather Boots one

9 pair of fur gloves Two Cusings
cards & Six Books of the
said plaintiff of great
value to wit of the value of
One hundred and twenty five
dollars to be carried and
conveyed by the said
omnibus from the said
place called the depot of
the Milwaukee Rail Road
to the place called the depot
of the Southern Michigan
and Northern Indiana
Rail Road and thence to wit
at the depot of the Southern
Michigan and Northern
Indiana Rail Road express
safely and securely to be
delivered for the said plaintiff
and for a certain reasonable
hire and reward to the said
dependants in that behalf

Let the said dependants not
regarding their duty in that behalf
but contriving and fraudulently
intending craftily and subtly
to deceive defraud and injure
the said plaintiff in this
behalf did not nor would safely

or Securely Carry or convey the
 said Trunk or valise and its
 Contents aforesaid from the said
 place called the Depot of the
 of the Milwaukee Rail Road
 run there to wit at the place
 called the Depot of the
 Southern Michigan & Northern
 Indiana Rail Road aforesaid
 safely or Securely deliver the
 same for the said Plaintiff
 but in the Contrary thereof
 they the said defendants or
 Carelessly and negligently
 behaved and Conducted
 themselves in the premises
 that by and through the
 Carelessness negligence and
 default of the said
 defendants in the premises
 the said Trunk or valise and
 its Contents aforesaid of the
 value aforesaid then and
 there became and were wholly
 lost to the said Plaintiff
 to wit at Chicago aforesaid

And whereas also
 afterwards to wit on the day
 and year aforesaid at Chicago

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aforesaid the said defendants
being such Copartners as aforesaid
and being such Common
Carriers as aforesaid to and
on the 12th day of December
1856 aforesaid received into
their said omnibus the
said plaintiff as a
passenger therein to be carried
& and conveyed to the depot
of the Southern Michigan &
Northern Indiana Rail Road
together with a certain trunk
or valise and various
goods and chattels of the
like number quantity quality
and description and value
as those in the first count
mentioned of the said plaintiff
to be carried & conveyed to the
said depot of the Southern
Michigan & Northern Indiana
Rail Road and there to and
at said depot safely and
securely to be delivered for the
said plaintiffs at and for
certain reasonable hire and
reward to the said defendants
in that behalf let the said

defendants not regarding
their duty as such Common
Carrier as aforesaid but
Contriving and fraudulently
intending craftily and
Subtly to deceive Deft and
injure the said Plaintiff
in this behalf, did not nor
would safely or securely
Carry or Convey the said
Trunk or valise and the said
last mentioned goods and
Chattels to the said Depot
aforesaid nor then to and at
the said Depot aforesaid
safely or securely deliver the
same for the said Plaintiff
but on the contrary thereof the
said defendants so carelessly
and negligently behaved and
conducted themselves in the
premises that by and through
the Carelessness negligence
and default of the said
defendants in the premises
the said Trunk or valise
and the said last mentioned
goods and Chattels became
and were wholly lost to the

the said Plaintiff to wit:
at Chicago aforesaid

And whereas also
afterwards to wit on the
day and year aforesaid at
Chicago aforesaid the said
Defendant at their Special
instance and request had
the Care and Custody of a
Certain other Trunk or valise
together with various other
Goods and Chattels of the
number quantity quality and
description and as value of
the as there in the said first
Count mentioned of the said
Plaintiff Let the said Defendant
not regarding their duty in
that behalf did not nor
would whilst they so had
the Care and Custody of the
said last mentioned Trunk
or valise and goods and
Chattels with due and proper
Care of the same or any
part thereof but wholly
neglected so to do and to the
fore such bad care thereof
that afterwards to wit on the

14 day and year aforesaid, the
said last mentioned trunk or
valise and goods & chattels
became and were wholly lost
to the said plaintiff to wit
at Chicago aforesaid And
also for that whereas the said
plaintiff heretofore to wit on
the 12th day of December
A.D. 1856 at Chicago

aforesaid was lawfully
possessed of this now possessing
of certain goods & chattels
to wit. One Broad Cloth
Coat. One broad Cloth vest
One pair of broad Cloth
pants Eighteen dozen Shirts
12 pair of Socks 2 dozen
Collars 2 Woollen under Shirts.
2 Silk under Shirts 6 Pocket
Handkerchiefs 1 pair of
Woollen Drawers 1 pair of
patent Leather Boots 1 pair
of fur Gloves 300 business cards
Six Books of great value to
wit of the value of Ten
hundred dollars of lawful
money of this State and being so
possessed the said plaintiff

afterwards to wit in the
 day and year first above
 mentioned at Chicago aforesaid
 Came to the possession of the
 said Defendants by finding
 Yet the said defendants
 well knowing the said goods
 and Chattels to be the
 property of the said Plaintiff
 and of right to belong and
 appertain to him but
 Contriving and fraudulently
 intending craftily and
 Subtly to deceive and
 deprive the said Plaintiff
 in that behalf have not yet
 delivered the said goods
 & Chattels or any or either
 of them or any part thereof
 to the said Plaintiff
 Although often requested
 so to do and afterwards
 to wit in the day and
 year last aforesaid at
 Chicago converted and disposed
 of said goods and Chattels
 to their own use to the damage
 of the said Plaintiff of
 \$200.00 and therefore he brings

E Van Buren
Plffs Atty

And afterwards to wit on the
10 day of March AD 1857
then it being one of the days of
the March. Vacation Term of
Said Court for said year the
following among other proceedings
was had and Entered of Record
Therein to wit:-

Thursday March 5th 1857
Court met pursuant to
adjournment Present same as
yesterday -

James McCarty

vs

Frank Parrish

Leroy Bigelow

Walter S Johnson &

David A Gage

}
} apt
}
}
}

This day comes the said
plaintiff by E. Van Buren his
Attorney and due personal
Service of process of summons
issued in this cause being

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then had on said defendants
and they being three times
Solemnly Called in
open Court, Come not nor does
any person for them but herein
they make default which
on motion of said Plaintiff
is ordered to be and it is hereby
taken and entered of
Record. Wherefore said
Plaintiff ought to have and
recover of the said defendants
his damages herein sustained
by occupation of the premises
and thereupon a reference is
had to the Court to assess
the same herein hereafter

And afterwards to wit: in the
10th day of March, A.D. 1887
there was filed in the office
of the Clerk of the Circuit
Court aforesaid a certain
Stipulation which is in the
words and figures following
to wit: -

Dock On Court
Frank Parmelee
Liberty B. Jones et al

James M. McCarty

It is hereby
 Stipulated that the papers
 in this Cause may be set
 aside & the clerts file the
 General issue

Chicago March 10th 1857

Edw. B. Allen

Plffs Atty

And afterwards to wit: in the
 10th day of March A.D. 1857
 it being as yet one of the days
 of the said March Term
 for said year. the following
 among other proceedings was had
 and Entered of Record in said
 Court to wit:—

James M. McCarty

vs

Frank. Parmelee

Liberty Bijstow

Walter S. Johnson &

David A. Gage

This day came the said
 parties by their respective
 Attorneys and by their

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Stipulation on file. It is
ordered that the default
of the said defendants
heretofore, at a former day
of the present term, taken
and entered of Record, be,
and the same is hereby
vacated, set aside, and held
for nought —

And afterwards to wit on
the same day to wit the 10th
day of March A.D. 1859, there
was filed in the office of the
Clerk of the Circuit Court of
Cook County aforesaid a certain
plea which is in the words
and figures following to wit:

Cook Co Circuit Court
Frank Parmalee
Libby Bigelow Etal
vs
James McMuey

And the said defendants
by W. H. McAllister their attorney
Came and appeared the morning
and in jury when &c and
say that they are not guilty

20 of the promises in the said
Declaration in any part
thereof in manner and
form as the said Plaintiff
had above therein contained
against them And of this
the said Defendants put
themselves upon the Country
and the said Plaintiff And
the like

W. H. W. W. W.

Cleft Atty

And afterwards to wit
On the 13th day of April
AD 1857 there was taken and
filed in the Office of the Clerk
of the Circuit Court aforesaid,
(it being a part of the said March
Term of the said Court for said
year.) Certain Certificates
Interrogatories and Depositions
which are in the words and
figures following to wit:

2/ and afterwards to wit on the 17th day of December A.D. 1857 there was filed in the office of the clerk of the Circuit Court of Cook County aforesaid a certain Baggage Check which is in the words and figures following to wit:

"Omnibus Lane
Baggage Ticket

"H. Parmelee & Co."

and afterwards to wit on the 17th day of December A.D. 1858 it being one of the days of the November Term of said Court for said year and this Cause having been regularly continued thereto the following coming other proceedings were had and entered of Record in said Court to wit

Dec 17 1857

James McHarty

vs

Frank Parmelee &

Liberty Bigelow

Walter S. Johnson &

David A. Gage

} apt

22 And now at this day come
the plain parties by their
respective Attorneys and issue
being joined let a jury come
whereupon came the jurors of a
jury of good and lawful men
to wit J. H. Martin Thos. Carey
W. L. Feltus Adam Klein, Raymond
C. Lamb D. Barnes W. DeLong
G. B. Rucker E. Williston B. Freeman
R. S. Hicks who being well and
truly elected tried and sworn to
try the issue joined after
hearing the evidence adduced
arguments of Counsel and
instructions of the Court retired to
consider of their verdict and
afterwards came into Court
and say "We the jury find
the defendants Guilty and
assess the damages at one
hundred and sixty dollars —

And thereupon comes the
said defendants and submit
their motion for a new trial
and in arrest of judgment —



And afterwards to wit on the
24th day of January A.D.
1858 it being one of the days
of the January Special Term
of the said Court and this
Cause having been regularly
continued thereto. The following
among other proceedings were
had and entered of Record
therein to wit:

Jan'y 24th
1858

James McHughy
vs
Frank Paramore
Liberty Bigelow
Walter S Johnson
Daniel A Gage

This day came the said
parties by their Attorneys
and the Court having heard
Counsel on the said Defendants
motion for a new trial of this
Cause and in view of
Judgment and being well
advised in the premises overrules
the same

Therefore it is considered that
said Plaintiffs do have and

24 Account of Said Defendants
Their damages of one hundred
and Sixty Dollars as
in form as before and assessed together
with their Costs and Charges
by him in this behalf
Expended and Leave Execution
therefor

Whereupon the said
Defendants pray an appeal
to the Supreme Court of the
State of Illinois which is
granted. Bill of Exceptions
and Bond in the penal sum
of \$400 with George Gage as
Surety Conditioned according to
Law to be filed in Twenty Days

J. D. D.

25-

And afterwards to wit on the
13th day of February A.D. 1858.
There was filed in the office
of the Clerk of the Circuit
Court aforesaid a certain Bill
of Exceptions which is in the
words and figures following
to wit:—

For County Circuit Court
Frank Pammallee
vs
James McMulty

Before the Honorable George
Merrill Judge & C

Be it Remembered That on
the 13th day of April A.D. 1857
The said Plaintiff filed in this
Cause with the Clerk of the
said Court the depositions of
Peter O Marsh Timothy
McMannan Frank McMulty
and James McMulty the
Plaintiff above named which
depositions are as follows

[Signature]

To *John D. MacGregor Esq* of the
City of New York

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WHEREAS, it has been represented to us that

Frank M. Muey
Peter D. March. Timothy MacNamara
and James M. Muey.

One material witness *in* a certain cause now depending in our Circuit Court of Cook County, in and for the
County of Cook aforesaid, between *James M. Muey*

Plaintiff, and

Frank Parmale, LeRoy Bjelke
Hector S. Johnson & David A. Gage

witness reside at

New York

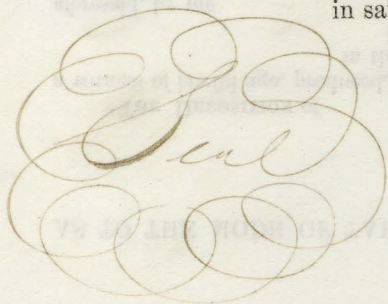
Defendant, and that the said
aforesaid, without the

said State of Illinois, and that *their* personal attendance cannot be procured at the trial of the said cause :
Now know ye that we, in confidence of your prudence and fidelity, have appointed you Commissioner to ex-
amine the said witness *es*, and do therefore authorize and require you to cause the said witness *es* to come before
you at such time and place as you may therefor designate and appoint, and diligently to examine the said
witness *es*, on the oath or affirmation of the said witness by you first duly in that behalf administered, and
faithfully to take the deposition of the said witness upon all interrogatories inclosed with or attached to
these presents, both on the part of the said Plaintiff and of the said Defendant and none others; and the
same when thus taken, together with this Commission and the said interrogatories, to certify into our said
Circuit Court of Cook County with the least possible delay.

WITNESS WILLIAM L. CHURCH, Clerk of our said Court, and seal thereof, at Chicago,
in said County, this *10th* day of *March* A. D. 185 *9*

Wm L Church

CLERK.



INSTRUCTIONS

AS TO THE MODE OF TAKING, CERTIFYING AND RETURNING DEPOSITIONS ACCORDING TO THE
STATUTE LAWS OF ILLINOIS.

1. Caption to the Deposition.

"THE DEPOSITION of _____ of the County of _____ and State (or Territory) of _____ day of _____
a witness of lawful age, produced, sworn and examined, upon his corporal oath, on the _____, at the office (or house) of _____
in the year of our Lord one thousand eight hundred and fifty _____, in the county of _____ and State (or Territory) _____
in the town (or city) of _____
aforesaid, by me _____ a commissioner (or "by us," if more than one commissioner, inserting all the names of the
commissioners,) duly appointed by a DEDIMUS POTESTATEM or COMMISSION issued out of the Clerk's office of the Circuit Court of
_____ county, in the State of Illinois, bearing TESTE in the name of _____ Esq., clerk of the said Circuit Court,
with the seal of said court affixed thereto, and to me (or "us," if more than one) directed as such commissioner (or "commis-
sioners") for the examination of the said _____ a witness in a certain suit, and matter in controversy, now pending and
undetermined in the said Circuit Court, wherein _____ is plaintiff, and _____ is defendant, in behalf of the said
_____, as well upon the cross interrogatories of the _____ as on the interrogatories of the _____ which
were attached to, or inclosed with the said COMMISSION, and upon none others. The said _____ being first duly sworn by
me (or "by _____ one of the said Commissioners," if more than one) as a witness in the said cause, previous to the com-
mencement 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 defendant so far as he should be interrogated, testified and deposed as follows :"

"Interrogatory First ;" (here insert the first interrogatory.)

"Answer to first Interrogatory," (here insert the answer,) and so on successively in the order in which the interrogatories
may be propounded and answered. Then follow : "Cross Interrogatories and answers thereto, by the witness on the part of the
defendant," (or plaintiff as the case may be.) (Here again write down the interrogatories, and answers successively in the order
aforesaid.) After the deposition is taken, the interrogatories and answers should be read over to the witness, and if he assents to
the truth of the answers as written down, the witness will then sign his name at the bottom of the deposition, and swear to the
truth of it before the commissioner (or before one of the commissioners, if more than one.) This oath is in addition to the pre-
liminary oath, which is administered previous to the commencement of his examination.

The COMMISSIONER should then certify as to the time, place and manner of taking the deposition as follows :

I _____ of the county of _____ and State (or Territory) of _____ a commissioner duly appointed to take
the deposition of the said _____ a witness, whose name is subscribed to the foregoing deposition, do hereby certify that pre-
vious to the commencement of the examination of the said _____ as a witness in the suit between the said _____ plaintiff,
and the said _____ defendant ; he was duly sworn by me as such commissioner (or "by _____ one of said commissioners,"
if more than one) to testify the truth in relation to the matters in controversy between the said _____ plaintiff, and the
said _____ defendant, so far as he should be interrogated concerning the same ; that the said deposition was taken at my office
(or "at the house of _____") in the city (or "town") of _____ in the county of _____ and State (or "Terri-
tory") of _____ on the _____ day of _____ A. D. 185 _____ ; and that after said deposition was taken by me (or
"us") as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness ; and that there-
upon the same was signed and sworn to by the said deponent _____ before me (or "us ;") the oath being administered by
_____ one of said commissioners ; (where there are more than one) as such commissioner, at the place, and on the day
and year last aforesaid."

(signed _____ " _____," "Commissioner."

(The foregoing certificate of the commission should be at the foot, or bottom of the deposition, immediately following the
signature of the witness.)

The commissioner should then fold up the deposition as thus taken and certified, together with the commission and interro-
gatories, and all exhibits (if any) produced on the examination, properly marked or lettered, as "exhibit A.," "exhibit B.," &c., and
enclose the whole in a suitable wrapper or envelope, and then seal up the same securely with three seals, writing his name trans-
versely across the middle seal ; or if two commissioners they will each write their names, one on each of the outside seals ; or if
three commissioners, then each one will write his name across one of the seals in manner aforesaid. The commissioner (or com-
missioners) will also endorse the names of the parties to the suit, transversely across one end of the package thus sealed up accord-
ing to the proper title of the suit, and direct the same to the proper address of the clerk, who may issue the commission, and
transmit the same by mail to the proper Post Office. Neither of the parties to the suit, or their attorneys or agents, or any per-
son at all interested in the event of the suit, are permitted by law to dictate, write or draw up, any part of the deposition required
to be taken as aforesaid.

N. B.—It is important to the validity of the deposition that these requirements and instructions should be strictly attended to.

P. S.—One caption will answer for the depositions of several witnesses, where they are all taken at the same time and place,
to be read as evidence in the same suit, by so modifying the form here given, as to make it applicable to the number of witnesses
to be examined—as for instance, at the commencement say : "The depositions of A. B., C. D., and E. F. of the county of _____
and State of _____ witnesses of lawful age, produced, sworn and examined on their respective corporal oaths,"
&c., and then in the latter part of the caption, say : "The said A. B., C. D. and E. F. being first duly sworn by me as witnesses
in the said cause," &c. Then at the commencement of each deposition, say : "Interrogatories propounded to the said A. B. a
witness produced and sworn as aforesaid, on the part of the said _____ and his answers thereto, as follow :"

"Interrogatory 1st." (Here insert the first interrogatory.)

"Answer to 1st Interrogatory." (Here insert the answer.)

And so on successively with all the interrogatories to be propounded to that witness. Then insert the Cross-Interrogatories
as before directed. The deposition should then be read over to the witness, and signed, and sworn to, by him, before the next
witness is examined. Then proceed with the second and third witnesses in like manner to the end.

One certificate as to the time, place and manner of taking such depositions, and that each one was signed and sworn to by
such witnesses respectively, will be sufficient, provided due care be taken to insert the names of ALL the witnesses, and the certificate
in other respects be in conformity with the form given in the first instance.

Great care should always be taken to attach such depositions firmly together by means of tape, or ribband, and using wax, or
wafers when necessary.

Cook County Circuit Court
James M. Kelly

vs
Frank Sammales Libby
Bijeler Hach S. Johnson
and Daniel A. Gay

To the above defendants
Take notice that on
the 16th day of March
instantly at the October term
of said Court I shall sue
out from the Clerk of the Cook
County Circuit Court at
his office in Chicago a
Complaint in this cause to
John D. MacGregor Esq. of
the City of New York to
Examine Frank M. Kelly
Peter D. March Timothy
McManis and James
McMully as witnesses for
the plaintiff in this cause
upon interrogatories. Copies
of which are herewith
served upon you
March 5th 1857

J. Van Buren
Pepp. City

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Cook County

Erast Van Buren being
Savannah says: on the 16th day of
March that he personally served
the within named Frank Parmelee
with a copy of the within notice
of the interrogatories in this
Cause

Erast Van Buren
Served before me
this 16th March
A.D. 1857

Wm L Church

clerk

Interrogatories to be
administered to Frank McMully
Peter D Marshall and Timothy
Mac Namara witnesses to be
produced from and examined
On the part and behalf
of James McMully Plaintiff
in a certain Cause now pending
against Frank Parmelee
Levy Bigelow and David
A Gage Defendants in the
Cook County Circuit Court
in the State of Illinois
under and by virtue of a
Certain Commission hereto annexed

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First

Do you know the parties
 plaintiff and defendants in
 the title to these interrogatories
 named or either and which
 of them and how long have
 you known them and which of
 them - Declare

Second Where do you and each
 of you reside and what is your
 age?

Third Where did the plaintiff
 James McCarty reside in the
 fall of 1856 and the winter
 of 1856 & 1857

Fourth Did James McCarty
 leave the City of New York in
 the fall of 1856 or winter
 of 1856 & 1857 to go to the
 Western States? If yes when
 did he leave - for what place
 and for what purpose and
 when did he return? State
 your knowledge fully and
 your means of knowledge -

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Fifth Did he take with him any
Trunk or Baggage if yea then
State particularly what Baggage
he took and the Contents
and value thereof and
your means of Knowledge

Sixth State whether or not when
he returned from his journey to
the City of New York he had
or brought back with him any
baggage and whether he
brought back any of the
Contents of the Trunk or
Baggage he took away
with him

Seventh

What do you or either
of you know of his making any
demand for his Baggage
if any thing State when where
and of whom such demand
was made and what was said
or done at such time or times
State what you know of
anything of said Plaintiff
being detained and the Expense
of such detention and what

82 Caused such detention
Lastly

Do you know any other
matter or thing touching the
matters in question that
may lead to the benefit
or advantage of the plaintiff
If you declare fully and
at large as if you had
been particularly interrogated
thereto:

Interrogatories to be
administered in said Suit
to James McNeely the Plaintiff
in the above mentioned Suit on the
part of the Plaintiff in said
Suit

First Do you the Plaintiff
in this Suit in the title to the
first mentioned interrogatories hereto
annexed named?

Second Do you know the contents
and value of the trunk or
Baggage mentioned in the
declaration in this cause if you
state the items of such contents
and of the value of such
Trunk or Baggage & of its

33 Contents when the same went
into the possession of the Defendants
E. Van Buren
Pepp City —

The depositions of Peter D
Marsh. Timothy Mac Namara
Frank McMully and James
McMully of the City and State of
New York witnesses of lawful age
produced. Sworn and Examined on
their respective Corporal oaths
On the 27th day of March in the
year of Our Lord one Thousand Eight
hundred and fifty seven at the
office of ~~Ed~~ John McMully in the
Said City and State of New
York by me a Commissioner
only appointed by a Dedimus
Potestatem or Commission issued out
of the Clerks Office of the
Circuit Court of Cook County in
the State of Illinois bearing
Teste in the name of William
L Church Esq. Clerk of the
Said Circuit Court with the seal
of the said Court affixed thereto
and to me directed as such
Commissioner for the Examination

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of the said Peter D March
 Timothy Mac Namara Frank
 Mc Multy and James Mc Multy
 Witnesses in a certain suit
 and matter in Controversy
 now pending and undetermined
 in the said Circuit Court when
 James Mc Multy is plaintiff
 and Frank Macmallee Liberty
 Bigelow Hackett & Johnson
 and David A Gayer are
 Defendants in behalf of the
 said Plaintiff on the Interrogatories
 of the said Plaintiff which
 were attached to and included
 with the said Commission and
 upon more after The said
 Peter D March Timothy
 Mac Namara Frank Mc Multy
 and James Mc Multy being
 first duly sworn by me as
 witnesses in the said Cause
 previous to the Commencement
 of their Examination to testify
 the truth as well on the part
 of the Plaintiff as the Defendants
 in relation to the matters in
 Controversy between the said Plaintiff
 and the Defendants so far as

35- they should be interrogated
testified and depose as follows

Interrogatories propounded to the
said Peter D. Marsh a witness
produced and sworn as aforesaid
on the part of the said Plaintiff
and his answers thereto as
follows —

Interrogatory First Do ^{you} know the
parties Plaintiff and Defendants
in the title to these Interrogatories
named or either and which of
them and how long have you
known them and which of them
Declare

Answer to First
Interrogatory. I know the
Plaintiff and the Defendant
Parmalee I have known the
Plaintiff about two years
and the Defendant Parmalee
since the month of December
last.

Interrogatory Second

Where do you and
Each of you reside and what is
your age

Answer to the Second Interrogatory

36 I reside in the City and State
of New York and am twenty
six years of age

Interrogatory Third
Where did the plaintiff
James McSherry reside in the
fall of 1856 and the winter of
1856 & 1857

Answer to the Third Interrogatory
The plaintiff in the fall
of 1856 and winter of 1856 & 1857
resided in the City and State of
New York

Interrogatory Fourth

Did James McSherry leave
the City of New York in the
fall of 1856 or winter of 1856 & 1857
to go to the Western States
If yes when did he leave, for
what place and for what
purpose and when did he
return? State your knowledge
fully and your means of
knowledge

Answer to the Fourth

Interrogatory
The plaintiff James McSherry
left the City of New York
in the fall of 1856 I said

37

him in Chicago in the State
of Illinois on the 13th day
of December 1856 from
Chicago we went together
to Lockport in Illinois from
Lockport to Peoria and to
Canton. Lerriston Vermont,
Harrington, Harroville
McComb Quincy Jacksonville
and Springfield. We
parted at Springfield James
McMully went to St Louis
I met him in St Louis and
subsequently I met him
again in Chicago I met
him again in New York City
in the middle of February
We travelled together at
that time about a month
He was travelling on business
collecting and soliciting trade

Interrogatory Fifth —

Did he take with him
any trunk or baggage —
If you then state particularly
what baggage he took and
the contents and value
thereof and your means of

Knowledge

Answer to the Fifth

Interrogatory

He took with him a trunk or large double valise as his baggage. He did not know the contents nor the value thereof.

Interrogatory Sixth

State whether or not when he returned from his journey to the City of New York he had or brought back with him any baggage and whether he brought back any of the contents of the trunk or baggage he took away with him.

Answer to the Sixth Interrogatory

When the Plaintiff returned to the City of New York he brought back some baggage which he had bought while travelling.

Consisting of wearing apparel. But did not have any of the baggage which he took with him from this City.

Interrogatory Seventh

What do you or either of you know of his making any

demand for his Baggage if any
 thing state when where and
 of whom such demand
 was made, and what was
 said or done at such time
 or times state what you
 know of any thing of said
 Plaintiff being detained and
 the expense of such
 detention and what caused
 such detention

Answer to the Several
 Interrogatories

I was present when
 the Plaintiff made a
 demand of Mr Parmalee the
 Defendant, for his baggage
 It was in Chicago on the 16th
 day of December 1856 The
 Plaintiff sail in my presence
 On that occasion I demand
 my baggage at the same time
 Exhibiting a Baggage Check
 marked 953 Omnibus Line
 "A Parmalee & Co" Parmalee said
 in answer to the demand
 "I have looked for it all I
 am going to and will pay
 for it when I am obliged to."

40 This was in the street on
the corner by the Young
America Hotel no one else
was present Plaintiff was
detained at Chicago at
least this time four days. in
consequence of the loss of
his baggage I should
estimate the expense and
loss by such detention at
Twenty Five Dollars a day
to the Plaintiff

Interrogatory lastly -

Do you know any other
matter or thing touching the
matters in question that may
tend to the benefit or advantage
of the Plaintiff If you declare
freely and at large as if you
had been particularly interrogated
therein -

Answer to the last. Interrogatory

I do not think of any matter
or thing which may tend to
the benefit or advantage of the
Plaintiff in this matter -
J. R. Marsh

41) Interrogatories propounded to
the said Frank McQuitty
a witness produced in
court as aforesaid on the
part of the said Plaintiff
and his answers thereto
as follows

Interrogatory First—

Do you know the
parties Plaintiff and
Defendant in the title to these
Interrogatories named or either
and which of them can you
say have you known them
and which of them—Declare—

Answer to the First Interrogatory—
I know the Plaintiff James
McQuitty and have known him
ever since I can remember
I do not know either of the
Defendants.

Interrogatory Second

Where do you and each
of you reside and what is
your age

Answer to the Second
Interrogatory —

I reside in the City and State of New York and am twenty six years of age -

Interrogatory Third

When did the Plaintiff James McMulty reside in the Fall of 1856 and the winter of 1856 & 1857

Answer to the Third Interrogatory

The Plaintiff James McMulty in the fall of 1856 and winter of 1856 & 1857 resided in the City and State of New York

Interrogatory Fourth

Did James McMulty leave the City of New York in the fall of 1856 or winter of 1856 & 1857 to go to the Western States. If yes when did he leave for what place and for what purpose and when did he return State your knowledge fully and your means of knowledge

Answer to the Fourth

Interrogatory

The Plaintiff James
 McHultry left the City of New
 York in November 1856
 to go to the Western States.
 I went to the Cars with him
 and saw him go. He went
 for business purposes.
 Collecting and soliciting trade.
 He returned here on the 10th
 of February 1857. I met him
 at Angelica. Chlegham
 County State of New York.
 He was then on his return
 home.

Interrogating Fifth

Did he take with him
 any trunk or baggage he took
 off you then state particularly
 what baggage he took and
 the contents and value thereof
 and your means of knowledge
 — Answer to the Fifth

Interrogating

The Plaintiff took with
 him when he went from this
 City as stated by me in my
 answer to the Fourth Interrogating
 a large trunk value as his
 baggage. It contained a fine

drop
44

Suit of Clothes - Shirts, silk
under shirts, Sherten and or
Shirts - drawers - Patent
Leather Boots, Socks,
Handkerchiefs Fur Gloves
and a general assortment
of gentlemen's wearing apparel
of the value of at least one
hundred & fifty dollars I was
present at the packing of the
valise and had seen the
Contents

Interrogatory Sixth. State
whether or not when he returned
from his journey to the City
of New York he had or brought
back with him any baggage
and whether he brought back
any of the Contents of the trunk
or Baggage he took away with
him -

Answer to the Sixth Interrogatory
When the Plaintiff returned to
the City of New York he did not
have the valise or baggage
which he took with him from
the City He brought back no
baggage whatever excepting
a few shirts and some socks and

45 Dollars and the clothes he
had on when he went away
the shirt, socks and collars
which he bought such more none
of these he took to the next
interrogatory Serenith

What do you or either of
you know of his making any
demand for his baggage or
any thing state when, where
and of whom such demand
was made and what was
said or done at such time
or times state what you know
of any thing of said plaintiff
being detained and the expense
of such detention and what
caused such detention

Answer to the Serenith Interrogatory

I do not know any thing
of plaintiff having made any
demand for his baggage, nor
of his being detained as
inquired of me in the Serenith
Interrogatory

Interrogatory lastly Do you
know any other matter or thing
touching the matters in question.

That may tend to the benefit
or advantage of the plaintiff
If you declare freely and at
large as if you had been
particularly interrogated thereby

Answer to the last Interrogatory

I do not know any other
matter or thing which may
tend to the benefit or advantage
of the plaintiff

Frank McMully
Interrogatories propounded to The said
James McMully Plaintiff as
aforesaid produced and sworn as
aforesaid on the part of the
plaintiff and his answers
there to as follows -

Interrogatory First -

Are you the plaintiff
in the suit entitled in the title
to the first mentioned
Interrogatories heretofore
mentioned

Answer to the First Interrogatory

I am -

Interrogatory Second -

Do you know the contents
and value of the book or

47 Baggage mentioned in the
declaration in this cause
of your State the items of
Objected such Contents and the value
to be set off such Trunk or Baggage
and of its contents when the
same went into the possession
of the Defendant—
Answer to the Second Interrogatory
I know the Contents & value
Objected to of the Trunk or baggage for
(by Act) which the answer and action is
brought Excepting perhaps some
items which I may have
forgotten There was a large
Trunk value containing wearing
Apparel Consisting of a Dress
Suit of Clothes a dozen and
a half of Shirts a dozen
pair of Socks — two dozen
Collars — two silk Shirts
Wrappers, two woolen wrappers
two pairs of Drawers — a pair
of Patent Leather Boots —
Cravats — Handkerchiefs — a
pair of Fur Gloves some books
for my use while travelling
Shaving utensils Toiletries articles
and other articles of Baggage

and apparel which I cannot
 now specify of the value of
 One hundred and fifty dollars
 in the whole at the time
 the same went into the possession
 of the Defendant the valise
 or trunk was worth Ten
 Dollars in addition to the
 contents It was an Extra
 large size Sole leather trunk
 valise

Sub M. M. M. M. M.

Interrogatories responded to the
 said Timothy Macnamara
 a witness produced and sworn
 as aforesaid on the part of the
 said Plaintiff and his
 answers thereto as follows
 Interrogatory First

Do you know the parties
 Plaintiff and Defendant in
 the title to these interrogatories
 named or either and which
 of them and how long have
 you known them and which
 of them - Declare -

Answer to the First Interrogatory

I know the Plaintiff
 and have known him personally

49 about four months and by
Sight about three years
I know the Defendant
Females since January
last the other Defendant I
do not know
Interrogatory Second

Where do you and each
of you reside and what is
your age

Answer to the Second
Interrogatory I reside in the
City and State of New York
and am about turning Eighty
years of age
Interrogatory Third

Where did the Plaintiff
James McMulty reside in the
fall of 1856 and the winter
of 1856 & 1857—

Answer to Third Interrogatory

The Plaintiff James
McMulty resided in the
City of and State of New
York in the fall of 1856
and the winter of 1856 & 1857
so far as I know—

Interrogatory Fourth—

Did James McMurtre leave
the City of New York in
the fall of 1856 or winter
of 1856 & 1857 to go to
the Western States If you
when did he leave for what
place and for what purpose
and when did he return
State your knowledge fully
and your means of knowledge

Answer to Sub B Interrogatory
I met James McMurtre in
Albany in January 1857
About the 20th we travelled
together to Chicago we
separated there he was
travelling on mercantile
business I saw him leave
Chicago in the Cars to come
to New York in the last of
January

Interrogatory Fifth —

Did he take with him
any trunk or baggage If
you then state particularly
what baggage he took
and the contents and value
thereof and your means of

Knowledge

Answer to the Fifth Interrogatory I have no knowledge on the Subject Interrogatory Sixth

State whether or not when he returned from his journey to the City of New York he had or brought back with him any baggage and whether he brought back any of the Contents of the trunk or baggage he took away with him

Answer to the Sixth Interrogatory — I cannot say — Interrogatory Seventh

What do you or either of you know of his making any demand for his baggage or any thing — State when where and of whom such demand was made and what was said or done at such time or times State what you know of any thing of said Plaintiff being detained and the Expense of such detention

and what caused such detention
Answer to the Serenals

Interrogatory

It was present when the
Plaintiff made a Demand
of his baggage from the
Defendant Parmalee It was
in the latter part of January
last at Chicago in the office
of the Defendant The Plaintiff
asked Parmalee if he had
found his baggage Parmalee
told him it was probably lost
Plaintiff demanded payment
for the baggage and Parmalee
replied that he had delivered
it at the Depot and fulfilled
his part of the Contract
Parmalee acknowledged that he
had received the Baggage
I have no knowledge in
relation to Plaintiffs being
detained at Chicago except
that he appeared to be doing
nothing at the Hotel in
the City of Chicago except
waiting as if for the recovery
of his baggage and going
up to defendants place enquiring

Objected
to by
Depts

53

for it He was in Chicago
at this time three days
The Expense of such detention
I should consider at about
Twenty Dollars a day
Interrogatory last

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 you declare fully and
at large as if you had been
particularly interrogated
thereto

Answer to said Interrogatory
I do not —

J M McMadden

I John D McGregor of the
City County & State of New York
a Commissioner duly appointed
to take the Depositions of said
Peter D Marsh Frank
McHuey James McMuey
and Timothy McMadden
Witnesses whose names are
subscribed to the foregoing
Depositions do hereby certify
that previous to the

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Commencement of the Examination
 of the said Peter D. March
 Frank McMully James McMully
 and Timothy McMannan as
 Witnesses in the said suit
 between the said James
 McMully Plaintiff and
 the said Frank Permalee
 Liberty Bijelon Walter S.
 Johnson and Daniel A. Gage
 Defendants they were severally
 duly sworn before me as
 such Commissioners to testify
 the truth in relation to the
 matter in Controversy between
 the said James McMully
 Plaintiff and the said
 Frank Permalee Liberty
 Bijelon Walter S. Johnson
 and Daniel A. Gage
 Defendants so far as
 they and each of them
 should be interrogated
 Concerning the same that
 the said depositions were
 taken at the office of
 Dr. John McMully in the City
 and State of New York on the
 24th day of March A.D. 1857

55 and that after said deposition
was taken by me as
aforesaid The Interrogatories
and answers thereto as
written down were read
over to the said witnesses
respectively and that
thereupon The same were
respectively signed and sworn to by the
said deponents respectively
before me The oath being
administered by me the
said Commissioner as
such Commissioner at
the place and on the day
and year last aforesaid
John D. MacGregor
Commissioner

And afterwards to wit. on the
16th day of April A.D. 1887. then
was filed in the Office of the
Clerk of the Circuit Court of Cook
County aforesaid a certain motion
which is in the words and
figures following to wit:

Cook Co. Cir. Court

Frank Parsons et al

vs

That on the 16th day of April
A D 1857 at the March
Term of said Court the
said Defendant filed
their motion in writing to
Exclude the deposition of
the said James McHutchy
which motion is as follows:

[Large decorative flourish]

Frank Paronaleste
vs

56

James M^cNeely

The said depts by
W H McAllister their attorney
came and moved the Court to
suppress & Exclude the deposition
of James M^cNeely the plaintiff
in this cause on the ground that
he is not a competent witness
in this cause that his
evidence cannot be taken
by Commission or depositions
potestatem because he cannot
be deemed a non resident
witness within the 10th Sec of
Chapter 40 or within the
provisions of said Chapter
and this motion is founded on
the deposition filed in this
cause on the 13th April 1857
including that of said depts
and on the papers in this
cause

W H McAllister

Depts atty

which said motion the
said Court overruled and
the defendants then and
there Excepted

That on the 17th day of
 December A.D. 1897 that
 being one of the days of the
 November Term of the said Court
 the Case came on for Trial before
 the Judge aforesaid and a jury
 and to maintain the issues on
 his part the said Plaintiff
 his Counsel read in evidence
 the aforesaid Depositions of
 Frank McHally Peter D Marsh
 and Timothy McHennara and
 offered to read the Deposition
 of the said James McHally
 the Plaintiff to the reading
 of the answer of the said
 Plaintiff to the second
 interrogatory the said Defendants
 objected but without assigning
 any special ground therefor
 the attorney stating that the
 objection was noted in the
 deposition by his partner
 McAllister who was not
 present and that he knew
 of no objection except the
 one already made to the
 deposition of this witness
 which objection was overruled

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by the Court And the
 Defendants then and then
 Excepted and the said
 answer of the said pliff
 to the second Interrogatory was
 read in evidence to the Jury
 Except so much thereof as
 related to pliffs delay
 which was Excluded by the
 Court The plaintiffs Counsel
 then read in evidence a
 Check for Baggage issued by
 the defendants as follows

Omnius Line Baggage Ticket
 J. Parmelee & Co

on the back of which was
 letters S. M.

And it was admitted by
 the Defts Counsel that the said
 Check was one of the Clifts
 that it was given by them
 to pliff at the time the
 pliffs said Rail Road Check
 was Surrendered

The Plff further to maintain
 the issue on his part called as a
 witness Albert Cline who being
 sworn testified that in the fall
 of 1856 he was in the Employment

59 of the Mich Smt R. R Co
that his business was
general baggage man to look
for it & see that people get
it as called for I was required
to look for this trunk or valise
some time in 1856 or winter of
1857. McMusty called for it and
requested me to look for it, and
it could not be found Search
was made for it and it could
not be found Plff came there
twice I think of the Ticket Stand
for Southern Michigan The Letter
S.M. on the back

The foregoing is all the evidence
given in the Trial of said Cause
and when the plff rested his
Cause the depts Counsel moved
the Court to Exclude all evidence
as to the valise trunk on the
ground of variance which
motion the Court overruled and
the depts then & there Excepted

The Court then gave to
the Jury on the part of the
Plaintiff the following Instructions

D

60

Given

1 If the Jury find the Plaintiff had in his possession one of the defendants Checks such as they usually give to passengers on receipt of their Baggage then such ticket is presumptive Evidence that the defendants did receive such Baggage in their possession

2 If the Jury find that the baggage of the Plaintiff was delivered to the defendants then the defendants were liable as Common Carriers and were answerable at all Events for the loss unless it was occasioned by the act of God, the Public Enemy, or the fraud of the owner, or the delivery by the defendants according to the terms of their Contract

Given

3 If the Jury find that the defendants received the baggage to be delivered at the Southern Michigan and Northern Indiana Rail Road Depot then their

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liability continued until they had delivered it to the owner in person or to the Agents of the Southern Michigan & Northern Indiana Rail Road Co and if the Jury shall find that the baggage negligently was left upon the platform without protection or notice to the Agents of the Rail Road at the Depot then such a delivery will and be sufficient to discharge the Defendants from their liability.

To the giving of which several instructions the Defendants then and there accepted.

The Court then instructed the Jury in the part of the Acts as follows.

1st. If the Jury believe from the Evidence that the Defendants delivered the baggage of the Plaintiff at the place and in the manner agreed upon between the said Plaintiff & the

Gover

62 Depts then they must find
for the Defendant

And Of the Jury believe from
the evidence that the Defendant
by their Agent undertook to
carry the Baggage of the
Plaintiffs described in the
Declaration from the Depot
of the Milwaukee & Paul Road
Co to the Depot of the
Michigan Southern & Northern
Indiana Rail Road Co and
there deliver the same safely
and that said Baggage
was safely carried by the
Agent of said Defendants
to said Depot of the Mich
S & N Ind R R Co and there
delivered the same with
ordinary care at the Depot
then such delivery discharged
the Defendants from any
further liability on account
of their undertaking and
the law is for the Defendant

The Jury found a
verdict for Plaintiff and

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assessed the damages at one
hundred and Six dollars
The depts moved for a new
trial which motion was denied
by the Court & depts then and
there excepted

And because none of the
said several matters appears
upon the Record the said
Judge when the forgers of the
said depts. has to this
bill of Exceptions set his
hand and seal

George W. Mason *Geo*
Judge of 7th Judicial
Circuit, Ills.

and afterwards to wit on the
10th day of February A.D. 1858
there was filed in the office
of the Clerk of the Circuit Court
aforesaid a certain Appeal
Bond to the Supreme Court
which said Bond is in the
words and figures following
to wit:

Know all men by these
presents that Frank Parmelee
Loring Bigelow, David A. Gay
Nathan S. Johnson & George W. Gay

are held and firmly bound
unto James McNulty in the
penal sum of four hundred
Dollars for payment of
which well and truly to be
made to said James McNulty
or his heirs and assigns
we bind ourselves jointly
and severally our heirs
Executors and administrators
firmly by these presents.

Sealed with our Seals
and dated this Second
day of February 1858

The condition of this
obligation is such, That
whereas, in a certain suit
in the Cook County Circuit
Court wherein said James
McNulty was Plaintiff and
said Frank Parmelee
Libby Bigelow David A
Gage & Walter S Johnson
were Defendants, the said
Plaintiff on the twentieth
day of December 1857
secured a judgement against
the said Defendants for the
sum of One hundred and

65 Sixty Dollars damages
costs of said, from
which said judgment
said last named defendants
have prayed an appeal to
to the Supreme Court of the
State of Illinois, which
appeal has been granted
upon said defendants
giving this Bond
That if the said above
named Defendants shall
well and truly pay the
judgments costs interest and
damages in case the said
judgments shall be affirmed
by said Supreme Court, and
shall duly prosecute their
said appeal then the
above obligation to be void
otherwise of force

Frank Parnall

Liberty Bigelow

D. S. Gage

W. Johnson

Geo. W. Gage

Seal
Seal
Seal
Seal
Seal
Seal

State of Illinois }
 Cook County } L



I William L Church
 Clerk of the Circuit
 Court of Cook County
 in the State aforesaid
 do hereby certify that
 the above and foregoing
 transcript is a true and perfect
 copy of the files as well as
 the orders had and entered of
 record in the said Court in a
 certain suit lately pending
 therein wherein James McWaltz
 was plaintiff and Frank
 Parmalee, Liberty Bigelow and
 A Gage & Walter S Johnston
 were defendants and of the
 whole thereof as appears to
 us of record

In witness whereof
 I have hereunto set my hand
 and affixed the Seal of our
 said Court this 16th day of
 March A D 1858

Wm L Church
 Clerk

Supreme Court

Franklin Parmelee

David H. Page & others
vs
Plffs in error

} April Term
A D 1858

James M^c Nutty

And now come the said plaintiffs by
Scates Wallcut Jewett & Peabody their
attorneys and say before the Justices of
the aforesaid Court and say that in the
Record and proceedings aforesaid there is
manifest error in this writ.

The Court erred in overruling the several
motions to exclude the deposition of the
said James M^c Nutty.

Also

In overruling the motion to exclude
the evidence relating to the Value Truck

Also, In giving the several instructions
aforesaid in the favor of said M^c Nutty and
refusing a new trial. and for other
errors &c Wherefore they pray that said
judgment may be reversed &c

Scates Wallcut Jewett & Peabody
Plffs to this

And the said defendant in error now comes by Edward Brown
his Attorney and says that in the record & proceedings
aforesaid, she prays that the Court may examine the re-
cord & proceedings aforesaid as well as the errors above
aforesaid that the judgment may in all things be
reversed &c

Edward Brown
Resp atty

Wm. C. C. C. C.

Yours very truly

or

Thos. P. C. C. C.

Recd. Receipt of
Cash \$100.00

Tell'd April 20, 1858

L. L. C. C.
C. C.

Cash Recd.

Cash to Supreme Cb
of Ill.

by Dep.

See for Cash

\$18.00

W. C. C. C. C.

120015

SUPREME COURT.

FRANKLIN PARMELEE, *et al* }
Plaintiffs in error. }
vs. }
JAMES McNULTY. }
Defendant in error. }

The Defendants in error, brought an action on the case against the Plaintiffs in error to the March term, A. D., 1857, of the Cook County Circuit Court.

The declaration contains four counts—the first two of which are upon the custom as common carriers for the loss of a “trunk or valise” and contents. The third count charges them as bailees. The fourth count is in trover. (Rec. 8 to 13 pages.)

The defendants pleaded the general issue. (Rec. page 19.)

On the 13th of April, A. D. 1857, the plaintiff caused to be filed in the clerk's office of said court the depositions of one Marsh, McNamara, Frank McNulty and of himself, taken before the same commissioner, and upon the same set of interrogatories. (Rec. page 25.)

Peter D. Marsh, stated in substance that he was twenty-six years of age, resided in the city of New York. That in the fall of 1856, the plaintiff resided in the city of New York, that witness and plaintiff came to Chicago together on the 13th December 1856 and went to Springfield together. That he met plaintiff again in Chicago, and met him again in New York city about the middle of February. That plaintiff took with him a trunk or large double valise as his baggage, did not know the contents. That he was present when plaintiff made a demand of Mr. Parmelee, the defendant for his baggage, in Chicago, on the 16th December 1856, plaintiff said, I demand my baggage at the same time exhibiting a baggage check, marked 953, Omnibus Line, F. Parmelee & Co. Parmelee said in answer to the demand I have looked for it all I am going to and will pay for it when I am obliged to. This was in the street.

Frank McNulty stated that he resided in New York, that plaintiff left New York in November 1856 to go to Western States, that he, witness, went to the cars with him, that the plaintiff took with him a large trunk valise as his baggage. It contained a fine dress suit of clothes, shirts, silk under-shirts woolen undershirts, drawers patent leather boots, socks, handkerchiefs, fur gloves, and a general assortment of gentlemen's wearing apparel, of the value of at least one hundred and fifty dollars.-- I was present at the packing of the valise and had seen the contents.

He brought back no baggage whatever, excepting a few shirts and the clothes he had on when he went away.

Timothy McNamara stated that he resided in New York, was travelling with plaintiff and with him in Chicago, was present when plaintiff made a demand of his baggage from the defendant, Parmelee, the latter part of January last (1857) in the office of defendant. Plaintiff asked Parmelee if he had found his baggage. Parmelee told him it was probably lost, plaintiff demanded payment for the baggage. Parmelee replied that he had delivered it at the depot and fulfilled his part of the contract. Parmelee acknowledged that he had received the baggage.

(Rec. page 28 to 53 inclusive.

These depositions being filed on the 13th April 1857, on the 16th same month and before the trial, the plaintiffs in error, filed a motion to exclude and suppress the deposition of said James McNulty, the party plaintiff below. Stating therein as the grounds that he was not a competent witness in the cause. That his evidence could not be taken by commissioner because he could not be deemed a non-resident witness within the 10th sec. of chap. 40, and that the motion was founded on the depositions filed on the 13th April 1857 and in the papers in the cause.

This motion the court overruled and the defendants excepted. (Rec. 56.)

On the 17th December 1857, the cause was tried before the court and a jury.

The plaintiff below having read the said depositions of Marsh, McNamara, and Frank McNulty in evidence, offered to read that of the plaintiff. To reading the answer of said plaintiff to the second interrogatory, the defendants objected, the court overruled the objection and the defendants excepted.

And the answer was read to the jury which is the same above set forth.
(Rec. 57.)

The plaintiffs counsel then read in evidence a check for baggage as follows:

"Omnibus Line Baggage Ticket,
F. PARMELEE & CO."

On the back of which were the letters, "S. M."

The bill of exceptions then states, thus, "and it was admitted by the defendants counsel that the said check was one of defendant's. That it was given by them to plaintiff at the time the plaintiff's Rail Road check was surrendered." (Rec. 58.)

One Cone, an agent of Southern Michigan Road, who had care of baggage, was called by plaintiff and gave evidence that the plaintiff called at the depot and made a demand or inquiry for his baggage, and that it was not found.

The foregoing is the substance of all the evidence given, and the bill of exceptions so certifies.

The defendants moved to exclude the evidence of the valise trunk for variance; overruled exceptions.

At the request of plaintiff's counsel the court instructed the jury as follows:

1. If the jury find the plaintiff had in his possession one of the defendant's checks such as they usually give to passengers on receipt of their baggage, then such ticket is presumptive evidence that the defendants did receive such baggage into their possession.

2. If the jury find *that the baggage of the plaintiff was delivered to the defendants* then defendants are liable as common carriers and are answerable at all events for the loss, unless it was occasioned by the act of God, the public enemy, or the fraud of the owner until a delivery by the defendants according to the terms of their contract.

*There was no proof
that bags were
common carriers
& this was error*

3. If the jury find that the defendants received the baggage to be delivered at the Southern Michigan and Northern Indiana Rail Road Depot then their liability continued until they had delivered it to the owner in person or to the agents of the Southern Michigan and Northern Indiana Rail Road Co. And if the jury shall find that the baggage negligently was left upon the platform without protection or notice to the agents of the Railroad at the depot, then such a delivery will not be sufficient to discharge the defendants from liability.

To the giving of which said several instructions the defendants excepted. (Rec. 60-61.)

The jury found for the plaintiff and assessed his damages at \$160.

Defendants moved for a new trial; motion overruled; exception.

The overruling the motion to exclude the deposition of the plaintiff below and permitting his answers to be read to the jury, is assigned for error. Also for overruling motion to exclude the evidence as to valise trunk. Also giving the instructions aforesaid.

And also refusing the motion for a new trial.

SCATES, McALLISTER, JEWETT & PEABODY.

Attorneys for Plaintiff in error.

SUPREME COURT.

FRANKLIN PARMELEE and others, Plaintiffs in error	}	Points for Plaintiffs in error.
vs. JAMES McNULTY, Defendant in error.		

I

The court erred in refusing to suppress or exclude the deposition of James McNulty, the party plaintiff, and in permitting the same to be read to the jury — Because it appeared by the deposition of Frank McNulty, that there was other proof of the contents of the trunk in question and their value.

The party, by the general rule of the common law was incompetent, 1 Phil.

Ev. 69. The exception is founded on "necessity or default of other proof."

1 Phil. Ev. 70,

2 Greenleaf Ev. 213th Sec.

1 id Ev. 348 Sec.

Herman vs. Drinkwater 1 Greenleaf.

Reps. 27.

Snow vs. the Eastern R. R. Co.

12 Metcalf 44.

II.

The court erred in giving the second instruction on the part of plaintiff below that "*if the jury find that the baggage of the plaintiff was delivered to the defendants then the defendants were liable as common carriers and were answerable at all events for the loss, unless it was occasioned by the act of God, the public enemy, &c.*"

This instruction makes the responsibility of a common carrier follow the mere delivery of the property.

"The defendant is *proved* to be a *common carrier* by evidence that he undertakes to carry for persons generally, exercising it as a public employment, and holding himself out as ready to engage in the transportation of money or goods for him as a business, and not as a casual occupation. 2 Greenleaf Ev. Sec. 211.

"Evidence that defendant kept a booking office for a considerable number of coaches and wagons, is not sufficient of itself to prove him a common carrier." Sec. 211 above cited.

But whether defendants were common carriers was a question for the jury, under all the evidence, and not to be inferred as a matter of law from the mere delivery and receipt of the property.

III

There was no sufficient evidence to authorize a recovery.

Superior Court
Frank P. Armleder
vs. 169
James M. Nutty
Abstract &c

Filed Apr 24, 1838
De Leland
Relat

11
Guaranty Ex. Sec. 311.
money or goods for him as a principal and not as a casual contributor. 5
ment and putting himself out as ready to engage in the transportation of
debtors to carry for business generally, concerning it as a public employ-
ment. The defendant is shown to be a common carrier, by evidence that he an-
nounced of the property.
This instruction makes the responsibility of a common carrier follow the mere
fact of the loss, unless it was occasioned by the act of God, the public enemy, &c.
When the defendants were liable as common carriers and were exempted at all events
that "if the jury find that the packages of the plaintiff were delivered to the defendants
the court erred in giving the second instruction on the bill of lading, below."

carrier." Sec. 311 above cited.
of consignor and consignee is not sufficient of itself to prove him a common
"Evidence that defendant kept a booking office for a considerable number

were delivered and receipt of the property.
under all the evidence, and not to be inferred as a matter of law from the
But whether defendants were common carriers was a question for the jury.

III

There was no sufficient evidence to authorize a verdict.

Supreme Court.

James M. Kelly
Def't in Error

advsr
Frank Parsons

Plf in Error

Key Points

1 There was no Error in the decision of the Court. in refusing to suppress or exclude the deposition of Jas M. Kelly because,

1st The ground of the objection was. That he could not be deemed a non resident witness within the 10th section of Chap. 40. and that his Evidence could not therefore be taken by Commission.

The only question is, whether the Evidence is ~~an~~ objectionable ~~on~~ on that ground. A party is not at liberty to make an objection upon a particular ground stated, and afterwards avail himself of another ground. The effect would be, that a party objecting might state a false ground & thus mislead both the party & the Court.

7 ~~Bar~~ 23.

8 J & M 319.

Sonadis & Marshall
misp.

8 Cushing 205.

17 Alabama 415.

15 Gilman 273. 280. 281.

1 Smith R. 205. 336

See Record
56-57

The only question presented to the Court by this objection & the only question he decided was. That ~~McNulty~~ the plaintiff was a Witness within the meaning of the law in relation to non resident-Witnesses, so that he could be examined upon Interrogation, no other question was passed upon by the Court. Again, although we had some testimony of the contents & its value, we did not have evidence of the particular items & it might be claimed by defendants that it was insufficient & under such circumstances we are entitled to use the evidence of the Plaintiffs.

22 There is no Error in the 2nd Instruction of the Court: That the Defendants were common carriers was not disputed. They are such as such. The Evidence shows that they run a line of Omnibuses. This appears by their tickets. it also appears by the ticket, that they received this Baggage to be taken to the Southern Michigan R. R. Depot. & whether they did or not was submitted to the Jury by the 3^d Instruction. The liability of a Common Carrier continues until the property is delivered. Yet until it is delivered, it is not carried — his duty is not discharged.

953

Dec 29

Angel on Carriers, Sec. 113, 282, 319 & Note 1,
^{Sec}
~~114~~ 114

If the defendants wished to
submit to the jury the question of their
being common carriers, they should have
asked the Court so to instruct the jury

E. A. of Vermont
Atty for Defs

169
Supreme Court

James M. Gully
Depts in error

admn

Frank Parnell & Co
Ply in error

Depts Points

Filed April 28, 1858
L. Leland
Clk

C. A. + J. Van Buren
Atty for debt

Supreme Court

James E. Nutty
Deft in Error

adfm
Grant Parnell

Plt in Error

There was no Error in the decision of the Court in refusing to suppress or exclude the deposition of Jas E. Nutty. Because.

The ground of the objection was. That he could not be deemed a non resident witness within the 10th section of Chap 40. And that his evidence could not therefore be taken by commission. The only question is, whether the evidence is objectionable on that ground.

See Reed
56-57

A party is not at liberty to make an objection upon a particular ground stated, and afterwards avail himself of another ground. The effect would be. That a party objecting might state a false ground & thus mislead both the party & the Court.

7 Barr 23.

8 S & P 319.

Smith & Marshall
Crisp

8 Cushing 205.

17 Alabama 415.

5 Gilman 273, 280, 281.

1 Smiths R. 206, 336.

20-21
The only question presented to the Court by this objection and the only question he decided was, What duty the plaintiff was a Witness within the meaning of the law in relation to non resident witnesses, so that he could be examined upon Interrogatories. No other question was passed upon by the Court. Again, although we had some testimony of the contents and its value, we did not have evidence of the particular items & it might be claimed by defendants that it was insufficient and under such circumstances we are entitled to use the evidence of the Plaintiff.

22 There is no error in the 2^d Instruction of the Court. That the defendants were common carriers, was not disputed. They are such as such. The Evidence shows, that they run a line of Omnibuses. This appears by their tickets. It also appears by the ticket that they received this Baggage to be taken to the Southern Michigan R R Depot. and whether they did or not, was submitted to the Jury by the 3^d Instruction. The liability of a Common Carrier continues until the property is delivered. ^{until it is delivered} It is not carried. His duty is not discharged. Angel on Carriers, Sec. 113, 282, 319 & Notes 1 & ^{See} ~~But~~ 114,

See Record
39

If the Defendants wished to submit
to the jury the question of their being common
carriers, they should have asked the Court
so to instruct the jury.

E. A. & J. Van Buren
Attys at Law

189
Superior Court

Samuel B. Mully
Clerk in Court
ad fm

Frank Parmelee
Att'y in Court

Points for Debt

C. A. & J. Van Buren
Attys for Debt

769

Filed April 28, 1888
L. Leland
clerk

169 = 67.

Frank Permelat

vs

James McVilly

Opinion

169

1858

12607

X

Referred