

No. **12610**

Supreme Court of Illinois

Parmelee.

vs.

^T
Saxon.

71641  7

⁴⁷⁵
Sup. Court ¹⁴⁴ 15

Franklin Parmelee
Applicant

vs
Sarah E. Saxon
Defendant

Points & Authorities
for Supersedeas,

Filed Aug. 8. 1884.
S. Keland Clk.

State of Illinois
Cook County } ss.

Clear before the Honorable Robert S Wilson
Recorder of the city of Chicago and Presi-
-ding Judge of the Recorders Court of said
city at a term thereof begun and held
at the Court House in said City of Chicago
on the first Monday of February it being the
fifth day of the month February in the year
of Our Lord ~~one thousand~~ Eighteen hun-
dred and fifty five and of the Indepen-
-dence of the United States the seventy ninth
Present R S Wilson Recorder of the city of
Chicago and Judge of said Court
Daniel M. Troy States Attorney of 7th
Judicial Circuit James Andrew Sheriff
Cook County
Attest

P A Hoynes Clerk of said Court
Be it remembered that on the twelfth day of
January Anno Domini One thousand Eight hun-
dred and fifty five there was filed in the Clerks
office of said Recorders a certain Peoples writ
of summons which said summons is in words
and figures as follows to wit:

State of Illinois
Cook County } ss.

The People of the state of Illinois
to Any Constable of said County Greeting, You are
herely Comanded to summon Frank Parmelee
to appear before me at my office in S Chicago on the
9th day of December 1854 at 9 o'clock AM to
answer the Complaint of Sarah E Saxton in
trover and Conversion for a failure to pay
her a certain sum not exceeding one hundred

dollar, and hereof make due return as the law directs
Given under my hand and seal this 7th day of Dec^r
Ember A D 1854 Calvin Selwold ^{Seal}
Justice of the peace

And on the back of said writ was the following Endorsement
to wit: Served by reading to the within named defen-
dant this 6th day of December 1854 fees 55¢

C T Bogue Const

And afterwards to wit on the same day and year last
aforesaid there was filed in the Clerk's office aforesaid
a certain Transcript which is in words and figures
as follows to wit:

Sarah E. Saxton vs Frank Parmelee
Trove and Conversion, Demand \$100
Summons issued to C T Bogue Const Returnable
Dec 9 / 54 at 9 o'clock A.M. Returned Served
by reading to Defendant December 6th 1854
Contd on application of plff to Decr the 16 / 54
at 2 o'clock P.M. and by agreement
Declarans issued to take deposition, Contd to
Dec 20 / 54 at 2 P.M. on motion of plff Contd
to Decr 21st / 54 at 2 P.M. Contd to Decr
22nd / 54 at 2 P.M. Decr 22nd / 54 Caw
Called for trial after hearing the evidence judg-
ment is rendered in favor of the Plaintiff
against the defendant for the sum of (Judge
\$57.00 and for costs

January the 4th / 53 Deft prays appeal and
files Bond which is approved and appeal
allowed Taken to the Recorders Court of
the city of Chicago

Justices fees Dec 12 1/2

Summs 18 3/4

1 Const 12 1/2

1 S.p.a 18 3/4

		Const Bogue	
order	25-	1 ser	50
Judgt	25-	1 Mile	5-
Transcript & lost	50	Servic	25-
Bond & app	50	1. Mile	5-
Judges fees	150		

I Certify the foregoing Transcript to be a true copy of the proceedings before me from my docket in the above entitled cause

C De Wolf J P.

And afterwards to wit on the same day and year last aforesaid there was filed in the Clerks office aforesaid a certain Bond which is in words and figures as follows to wit: Know all men by these presents, That we Frank Parmelee and Frederick E Parmelee of the County of Cook and State of Illinois are held and firmly bound unto Sarah E Saxton in the penal sum of one hundred and twenty dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and Administrators jointly severally and firmly by these presents Witness our hands and Seals this 4th day of January A D 1855-

The Condition of the above obligation is such that whereas the said Sarah E Saxton did on the 22^d day of December A D 1854 before Calvin De Wolf a justice of the peace for the said County of Cook recover judgment against the above bounden Frank Parmelee for the sum of fifty seven dollars and costs, from which judgment the said Frank Parmelee has taken appeal to the Recorders Court of the City of Chicago of the County of Cook aforesaid and State of Illinois Now, if the said Frank Parmelee shall

prosecute his appeal with effect and shall
pay whatever judgment may be rendered
by the Court upon dismissal or trial of said
appeal then the above obligation to be void
otherwise to remain in full force and ~~effect~~
Approved by me at my office

this 4th day of January 1855 Frank Parmelee Seal
C DeWolf Justice of the peace J E Parmelee Seal

And afterwards to wit on the same day and year
last aforesaid there was issued out of the office
of the Clerk aforesaid The Peoples Certain Writ of
Summons directed to the Sheriff of Cook County
aforesaid which is in words and figures as
follows to wit;

State of Illinois }
Cook County }

City of Chicago ss. The People of the State of
Illinois to the Sheriff of said County Greeting
We Command you that you summon Sarah
E Saxton if he shall be found in your County
personally to be and appear before the Recorders
Court of said City, in said 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 February next to answer unto
Frank Parmelee on an appeal from the judg-
ment of Calvin De Wolf Esq. a Justice of the
peace within said City and have you then
then this writ with an endorsement thereon
in what manner you shall have caused executed
the same Witness Phillip A Hoyne Clerk of our said
Court and the seal thereof at Chicago aforesaid
this 12th day of January A D 1855
Seal P A Hoyne Clerk

And on the back of said writ is the following Endorsement to wit:

The within named Sarah E Saxton not found in my County this January 18th 1855
Fees 10¢ Jas Andrew Sherff By J Hammers Sep

And afterwards to wit on the eighth day of February in the year last aforesaid there was issued out of the Clerks office aforesaid the Peoples writ of Alias Summons which is in words and figures as follows to wit:

State of Illinois

Cook County } To the People of the State of Illinois
to the Sheriff of said County Greeting: We Command you as we before have commanded you that you Summon Sarah E Saxton if he shall be found in your County personally to be and appear before the Recorders Court of said City in said County on the first Monday of March next to answer unto Frank Parmelee on an appeal from the judgment of Calvin De Wolf Esquire a justice of the peace within said City and have you then and then this writ with an endorsement thereon in what manner you shall have executed the same Witness Philip Hogue Clerk of our said Court and the Seal thereof at Chicago aforesaid this 8th day of February AD 1855

Seal

P A Hogue Clerk

And on the back of said writ was the following Endorsement to wit The within named Sarah E Saxton not found in my County
4th March 1855 / Return 10 cts

James Andrew Sherff
Shff

And afterwards to wit on the 9th day of ~~January~~
February in the year last aforesaid it being one
of the days of the February Term of said Court
the following proceedings among others were had
and Entered of Record to wit
Sarah E Saxton

vs Appeal

Franklin Farnsworth

This day comes the said plaintiff by Farnsworth
~~and Bassett~~ her attorney and the said defendant
by Anderson his attorney also comes and issue
being joined it is ordered by the Court that a jury
come and thereupon come the jurors of a jury
of good and lawful men to wit J R Allen
H Kingsley S Caswell J P Knott George C Ross
H M Bird Jacob Doney James Duffey G A
Johnson F A Bacon B Brown and J A
Reed who being duly elected tried and sworn
will and truly to try the issue joined between
the parties according to law and the evidence
and they hearing the testimony of witnesses ar
guments of Counsel and instructions of the Court
Retire under charge of an officer of the Court to
consider of their verdict and afterwards come into
Court and say we of the jury find the issue for
the plaintiff and assess the damages at the sum
of sixty two dollars and seventy five cents and
now comes the said defendant by his attorney
and moves the Court for a new trial herein

And afterwards to wit on the fourteenth day of
February in the year last ~~mentioned~~ aforesaid there
was filed in the Clerks office aforesaid a certain
motion in writing which is in words and figures
as follows to wit;

Franklin Parmelee }
 advs }
 Sarah E Saxton }

Records Court

Now comes the said Franklin
 Parmelee and by his attorneys Anderson McAllister
 Harmon and moves for a new trial in this case on
 the grounds that there was no evidence that the trunk
 and contents had been in the actual possession of
 the deft with his knowledge and assent and that
 he had converted them to his own use, or that he
 had them in his possession when demanded
 and refused to deliver them up

Anderson McAllister Harmon
 Defts attys.

And afterwards to wit on the first day of March
 in the year last aforesaid it being one of the days
 of the said February Term aforesaid Court the follow-
 -ing other proceedings were had and intended
 of Record in said Court to wit, This day
 comes the said plaintiff by Farnsworth his attorney
 and the said defendant by Anderson his attorney
 also comes and the Court having fully advised
 himself on the motion for a new trial heretofore
 entered in this cause orders that the same
 be overruled Therefore it is ordered and
 Considered by the Court that the said plaintiff
 do have and recover of the said defendant
 her damages assessed as aforesaid of sixty
 two dollars and seventy five cents together
 with all her costs and charges as well in
 the Court below as in this Court by her herein
 Expended and have Execution therefor

And now comes the said defendant by his attorney
and prays the Court for an appeal to the Cook County
Circuit Court which is allowed by the Court ~~xxx~~
upon the filing of an appeal bond by the said
defendant with sufficient security conditioned
according to law, by the first day of the next term
of this Court

And afterwards to wit on the first day of
March in the year last aforesaid comes the
said defendant by his attorney & files his Bill
of Exceptions herein which is in the words &
figures to wit

Recorder Court of the City of Chicago

Franklin Parmelee

ads } appeal
Sarah E Supton

And afterwards to wit on the day and place within
mentioned before the Hon R S Wilson Recorder of said
City of Chicago comes as well the said Sarah E
Supton by Farnsworth & Burgess her attorneys as
the said Parmelee by Anderson McAllister & Garrison
his attorneys and the jurors aforesaid being called
likewise come and after being elected tried and
sworn to try the issues herein the said plaintiff
introduced and gave evidence to said jury as
follows to wit:

William H Frederick being called and sworn
as a witness on the part of the plaintiff testified
that he resided at the City of Utica New York - that
he first saw the plaintiff about the month of October
last coming to Chicago ^{upon} the Cars of the Michigan
Southern Rail Road that shortly before arriving

at the Depot in this City plaintiff gave witness a check for her trunk saying that she was going to take the Milwaukee Boat and requesting witness to see that her trunk was properly sent there - that on arriving at the Depot witness enquired if there was any agents of Parker & Co's line of Omnibuses there (Here defendants Counsel objected to the witness stating the answer he received which objection was sustained by the Court) that thereupon a person presented himself who had according to witnesses best recollection a badge upon his hat with "Parkers Line" upon it. to whom witness gave the check for the trunk and told him it was to be sent to the Milwaukee Boat, witness said this person who took the check got the plaintiffs trunk and put it upon the top of an omnibus which omnibus was marked upon its side "Parkers or Parkers & Co's line" that he saw the plaintiff go into the omnibus and the driver then drove the same away.

Question by the Court Did what Capacity did this man appear to be acting there at the depot who took the check and placed the trunk upon the omnibus? To which question the defendants Counsel objected that the acts of this person in the absence of the deft are not competent to prove his agency. but the Court overruled the objection and permitted the question to be answered. To which ruling of the Court the defendants Counsel then and then excepted

The witness answered, he appeared to be acting as agent of Parkers line of Omnibuses by receiving baggage from passengers, placing it upon the omnibus and driving the omnibus

George Scoville another witness on the part of the plaintiff testified being duly sworn.

That he was a resident of the City of Chicago and a practicing lawyer - that he knew the defendants and knew Parker & Co's line of omnibuses, and knew that defendant was one of the firm of Parker & Co last October

On his Cross Examination the witness stated that Parker & Co were a Company who had a line of Omnibuses which run to and fro for the carriage of passengers and their baggage to Cars depots boats & Hotels &c for pay. That Parker had been dead some time, but still it was called "Parker & Co's Line" and he knew that defendant and one Swift carried on the business since Parker's death. He did not know whether Parker's death dissolved the partnership or not. - did not know whether the property had been sold or not. That he knew about the Company from having done professional business for them and for the said defendant connected therewith.

William Burgess being called and sworn on part of plaintiff testified that he was an attorney at law resided here that he was requested by plaintiff to assist her in getting her trunk that afterwards and before the commencement of this suit and after the 9th October last he saw the defendant at his office in this City and asked him for the plaintiffs trunk that it was not delivered to him nor to the plaintiff to the knowledge of the witness -

The plaintiffs Counsel then offered the plaintiff as a witness to prove the contents of the said trunk not being otherwise able to prove the same to which the defendant objected and the court overruled the objection allowed the plaintiff to be sworn for that purpose, to which the defendant then and there excepted.

And Sarah E Saxton the plaintiff being sworn testified that she had heard the testimony of the witness Deederick and could state the contents of the trunk in question She had in it a muff and victorine could not tell the quality of the victorine was in good order the muff she had ripped up to make a victorine of it was good Had a plaid silk dress worn some 12 yds in it. in pretty good order. french merino dress in good condition seven yards of it. a de laine dress 10 yds not made up a good article Mourning bonnet just bought Crape a good article a winter bonnet velvet and feather on it got last winter - a summer hat of straw and lace wore it through the summer had a gingham dress good but not expensive a plain skirt made of silk linen and cotton a pretty good one a black silk back two yds of silk in it trimmed with lace and ribbons - a blue de laine sack lined and trimmed had another Alpaca sack they were in good order Two aprons one de laine the other gingham Two pairs of under sleeves good order some dotted muslin a lace cape embroidered with linen braid one yd of embroidery for underhandkerchief a good article two yds of new ribbon plaid a good article

And linen under clothes,
With the consent of the Counsel for the defence
the witness then stated the value of each article
which in the whole amounted to the sum found
by the jury in their verdict.

After the plaintiff had given her evidence in
answer to the Counsel employed in the case
one of the jurymen asked her if she had
ever got her trunk and she replied that
she had never seen it since she got into
the omnibus.

The above is all the evidence given on
the trial of said cause and the plaintiff rested
her case and thereupon the defendant moved
the Court to nonsuit the plaintiff on the following
grounds.

1st The evidence is insufficient in law to au-
thorize a recovery by the plaintiff against the
defendant in this action. There being no dis-
pute about the facts of the case it resolves
itself into a question of law.

2nd The trunk and contents were not in the
def'ts possession or under his control when
demanded by the plaintiff. Hence trover will
not lie. The action should have been assumpsit
or Case founded upon the Custom &c.

3rd The def't cannot be made liable in an action
of trover for the negligence of his servant or
agent.

4th There is no evidence showing that the money
due for the carriage of the trunk has been paid
or tendered by the plff to the def't before suit
brought. Which motion to nonsuit the plff
the Recorder refused and the defendant then
then excepted to such decision.

The defendant asked the court to give the jury the following instructions in writing to wit

1st "That the non delivery of the trunk and contents to the owner by the deft is not sufficient to authorize the plff to recover in trover which the court refused as written but gave with the following modifications "Yet if the jury believe from the evidence that the trunk was in defts possession & he refused to deliver it, it is different" To the refusal of which as asked and giving with said modification said defendant then and then Excepted.

2nd "That if the jury should find from the evidence that the person receiving the trunk was the agent of the deft and the same was lost through the negligence of such agent or was stolen from him, the deft is not liable in trover."

Which was not marked given or refused nor was it modified by the court and defts Counsel then and then Excepted.

3^d "That to maintain this action it is necessary for the plaintiff to show that the goods were in the possession of the defendant or under his control at the time of demand."

Which was refused and so marked by the court and to the refusal of which the defendant then and then Excepted.

4th "That the plaintiff cannot recover without showing that she paid the debt or his agent for carrying said trunk and contents.

"That without such payment the debt has a lien on the property for such charges"

Which was refused by the Court and so marked and to the refusal of which the defendant then and there excepted."

5th "That the facts in this case do not warrant a recovery in trover."

Which was refused by the Court and so marked and to ~~which~~^{the} refusal of which the defendant then and there excepted.

6th "That to make out a delivery of the trunk to the debt it is necessary for the plff to show that the person receiving the same was the debt's agent and the fact that the person acted as such is not sufficient proof to authorize the jury to find that he was in fact the agent of the debt."

Which the Court refused to give as asked for but gave with the following modification

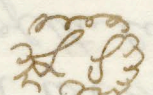
"But if the evidence shows that he was at the Cars with the debt's omnibus receiving baggage and driving omnibus there are circumstances to be considered by the jury in determining whether he was the agent."

To the refusal of which as asked for and the giving it as modified the said defendant then and there excepted—

The jury having received the above instructions retired to consider of their verdict and returned into court with a verdict finding the issue herein for the plaintiff and assessing her damages at sixty two dollars and seventy five cents.

The defendants Counsel moved for a new trial ^{upon} the foregoing grounds and also on the ground that there was no evidence that the trunk and contents had been in the actual possession of the defendant deft with his assent and knowledge and that he had converted them to his own use or that he had them in his possession when demanded and refused to give them up - Motion denied and defts Counsel then and there excepted,

And because none of the said Rulings decisions and exceptions appear upon the Record of said trial the said Recorder has thereupon upon the prayer of said defendant by his Counsel set his hand and seal to this bill of Exceptions this first day of March one thousand Eight hundred and fifty five according to the statute in such case made and provided, in open court.

R. S. Wilson 
Recorder &c

Afterwards to wit on the Second day of July
A D 1855. Comes the said defendant and
files his bond for a writ of Error which
said bond, and the approval thereof by the
said Court endorsed thereon, is in the words
and figures following to wit:

Know all men by these presents that we Frank-
lin Parmelee and William R Loomis of the City of
Chicago in the County of Cook are held and firmly
bound unto Sarah E Saxton in the penal sum
of two hundred dollars lawful money of the
United States for the payment of which well
and truly to be made we bind ourselves our heirs
Executors and administrators firmly jointly and
severally by these presents

Witness our hands and seals this twenty seventh
day of June A D 1855.

The condition of this obligation is such that when
- as at the February Term of the Recorders Court
in and for the City of Chicago held on the first
day of March A D 1855 at the Court House in
said City by and before the Hon R S Wilson Recorder
Sarah E Saxton by the consideration of said Court
received a judgment in a certain action of
Trove then and there pending against the above
bounden Franklin Parmelee for the sum of sixty
two dollars and seventy five cents damages besides
the Costs of the said action, from which said judgment
the said Franklin Parmelee brings a writ of Error
from the Supreme Court of the State of Illinois to
said Recorders Court —

Now therefore the condition of this obligation is such
that if the above bounden Franklin Parmelee
shall diligently and effectually prosecute his
suit of Error in this cause and shall pay what
- ever judgments costs interest and damages
may be rendered imposed and awarded in
case the said judgment shall be affirmed
then the above obligation to be void otherwise
to remain in full force and effect

Franklin Parmelee *Test*
Wm R Loomis *Test*

Which said bond is endorsed as follows to wit:

" Recorders Court June Term 1855
The within Bond approved by the
Court June 28th 1855 in open Court
R S Wilson Recorder "

Endorsed Filed July 2^d 1855
P A Hoynes Clerk

Filed

State of Illinois

Cook County City of Chicago I Philip A Hoynes Clerk of the
Recorders Court of the City of Chicago in said County and
State do hereby certify that the foregoing is a correct
transcript of the Original Record and
proceedings in the foregoing cause, and of
the Bond and approval remaining
on file in my office and of the whole
of said original ^{and complete} record
Witness Philip A Hoynes Clerk of said Court
and the Seal thereof at Chicago this
2^d day of July A D 1855

P A Hoynes
Clerk



Recorder Court City of Chicago
Sarah E. Saxton

²⁵
Frank Parmelee
Copy of Record & Bond

Supreme Court

Franklin Parmelee

Plff in Err

vs
Sarah E Saxton

Def't in Err

Of the June Term
Nov. 1858

And now comes the said Franklin Parmelee by Anderson & McAllister his Attorneys and says that in the Record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this that the said Court erred in overruling the objection made by the said defendant in the Reinders Court to the question put by said Court to witness Dieckerich

And also in this that the said Court decided that the said Sarah E Saxton was a competent witness in her own behalf and so received her -

Also that the Court refused to nonsuit the said plaintiff.

The Court also erred in refusing to charge the jury as requested by the defendant in said Court in & by proposition ^{a instruction} Number one, and in modifying the same,

The said Court also erred in not making proposition ^{a instruction} Number two aforesaid request, either as "given" or "refused" as required by the statute in case made & provided,

The Court also erred in refusing to charge as requested in proposition ^{a instruction} Number four five and six and in modifying Number six - and in refusing to give the same as requested,

The Court erred in refusing to the defendant in said Court a new trial,

Anderson & McAllister Attys
for Plff in Err

W. McAllister of Counsel

~~Supreme Court~~

Franklin Parmelee

15 L.D. no. ^{Plff in Error}

Sarah E. Sargent

^{Def't in Error}

Transcript of Record
& Assignment of Errors.

Filed Aug. 8. 1855.
L. Keland Clk.

In this case the appeal to the
circuit court was perfect and upon
the hearing in that court the jury
the Recorder's court was affirmed
and this case is placed in 13th of
any case I know of this court.
Again no writ of error lies
in civil cases to this circuit from
the Recorder's court - the power
to review proceedings of that
inferior courts is as with the
constitution as by common law from
in the circuit courts -
There is no error
James W. Thompson
for Sarah E.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ^{record} ~~error~~ court of the City of Chicago in said county, before the Judge thereof, between Sarah E. Saxton, plaintiff

vs Franklin Parmelee —

defendant, it is said that manifest error hath intervened, to the injury of the said Defendant

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa; before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Sarah E. Saxton

that *she* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *she* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Saxton*

notice, together with this writ.

Walter B. Scates

WITNESS, the Hon. Samuel H. Troat, Ch. of Justice of our said Court, and the Seal thereof, at Ottawa, this 12th day of August in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Seland

Clerk of the Supreme Court.

15-4-144
Franklin Parmelee
Sarah E. Saxton

Sci. Ia.
to June Term, 1856.

I hereby certify that
after diligent inquiry
and search, the said
Deft. in error Sarah E.
Saxton cannot be
found in my County
Data June 9-1856
per \$10

James S. Beach Coroner
Serving Sheriff
By John H. Dart Deputy

Filed June 11, 1856,
L. Leland
Clerk

Know all men by these presents that we Franklin Parmelee
and Theodorus Doty. Inn Keeper
of the City of Chicago in the County of Cook are held and firmly
bound unto Sarah E Saxton in the penal sum of two hun-
dred and fifty dollars lawful money of the United States
for the payment of which well and truly to be made
we bind ourselves our heirs Executors and Administrators
jointly and severally firmly by these presents.

Witness our hands and seals this sixth day of August
A D 1855

The Condition of this obligation is such that whereas, at the
February Term of the Recorders Court in and for the City of
Chicago in said County held on the first day of March A D
1855 at the Court House in said City by and before the Hon
R S Wilson Recorder, Sarah E Saxton by the consideration
of said Court recovered a judgment in a certain action
of trover then and then pending, against the above bounden
Franklin Parmelee for the sum of sixty two dollars and
seventy five cents damages besides the costs of the said
action, from which said judgment, the said Franklin
Parmelee brings a writ of error from the Supreme Court
of the State of Illinois to the said Recorders Court
Now therefore the condition of this obligation is such
that if the above bounden Franklin Parmelee shall
diligently and effectually prosecute his writ of error
in this cause and shall pay whatever judgments
costs, interest and damages may be rendered, imposed
and awarded in case the said judgment shall
be affirmed in and by the said Supreme Court
then the above obligation to be void otherwise to
remain in full force and effect

Franklin Parmelee

Seal

Theodorus Doty

Seal

State of Illinois }
Cook County ss

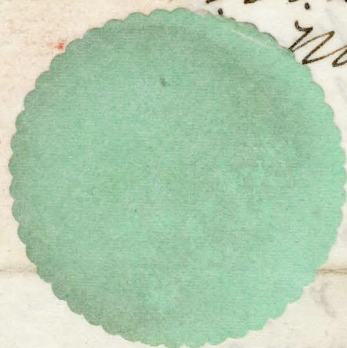
Theoderus Doty

of the City of Chicago in said County Iron Keeper
Surety for Franklin Parmelee in the foregoing bond
being duly sworn deposes and says that he
is a freeholder and resides in the City of Chicago
aforesaid and that he is worth the sum
of five thousand dollars over and
above what will pay his debts,

Sworn to and Subscribed
the 20th day of August
A.D. 1855 before me

Geo. Dason prob.

Notary Public



45 15
45

Sarah E. Saxton }
vs
Franklin Parriner)

The transcript is left with the Court to examine
with an assignment of errors. Will Judge
Dixley or Patton make a motion for
a supersedeas in the case to morrow?

The Clerk is satisfied with Bond &c

Aug 6th 1855

Anderson & McAllister
Chicago

Mo. refused the
court being of
opinion that the
burden of proof
is on the plaintiff
in error to show
the loss of the
goods —

Chicago Aug 10th 1855-

L Leland Esq

Dear Sir.

We have altered our
minds respecting that case of Parmelee vs
Saxton. You may docket the case and
issue Sci. Fa. for they will not appear
unless compelled to, inasmuch as they
will get the money into their pockets.

The court has refused the supersedeas without
fully understanding the facts in the Bill of
Exceptions. So it ^{is} ~~always~~ ^{now} when a case
is submitted without argument.

We return the four dollars ^{therefor}.

Yours to

Anderson & McAllister

Sup Court
Parmelee
ad

Supter

II

Trover will not lie against a common carrier unless he has actually converted the goods to his own use, or having them in his possession refuses to deliver them on demand,

Packard vs Lytman 21 Wend 613
1 Chit Pl 143 old h

Salk 655 5 Burr 2825

Peake 49 1 Taunt 391 4 Esp 157
Cited in 4th Wend,

See also Hallanbaker vs Fish 8 Wend 547
In this last case the goods were actually delivered to the deft. The car says, "The plff demanded them of the deft; what had become of them or that at the time of the demand they were in the possession of the deft was not shown" The Sup Court held that trover would not lie and remarks a well settled distinction between trover, and case & assumpsit,

The Bill of Ex. expressly states that it contains all the evidence given upon the trial and there was not a syllable of proof that the deft. ever converted the goods, &c or that he had them in his possession when demanded and we submit that the verdict is wholly against law, and so the ruling of the court below; for these points were expressly taken.

II

But it was clearly error, for the Court to refuse to mark the Defts Second Instruction either "given" or "refused." The Statute with which the Court is familiar imperatively demands it, and it is just as much the right of a deft to ask the Court to give instructions to the jury on the law (if he does it in the mode required by the Statute) as it is to call witnesses to sustain his part of the issue on the facts, of this right this deft was deprived.

The plff is a non-resident and if she should collect this judgment, and this Court afterwards reverse the same, she would have the money notwithstanding.

W B M^c Allister
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H. Parmelee
to
S. E. Saxton

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