

No. 13830

Supreme Court of Illinois

Pearson

vs.

Chapman

71641  7

34 The cause came on for trial before the Hon. George Manierre, Circuit Judge, and a jury, on the 28th day of December, 1857.

64 Before the offering of any evidence, the defendant, by leave of the Court, withdrew his 2d, 3d and 4th special pleas.

The plaintiff, to prove the issues on her part, called the following witnesses, who testified as follows:

Cora Winders.—I am a daughter of the plaintiff; knew the defendant. Mother kept house in town during the years 1854, 1855 and 1856.

Question.—Did the defendant board at your mother's? If yes, state all you know on the subject.

65 The defendant objected to the question and also objected to the plaintiff offering any proof as to the boarding and nursing of the defendant, care, attention, fuel, use of apartment, on the ground that it was admitted by the pleadings that the same were furnished to the defendant by the plaintiff as a gratuity to the defendant, and were to be without charge to him the defendant, which objection the Court overruled and permitted the witness to answer; and further ruled that all the evidence which might be offered by the plaintiff as to such boarding and nursing, care, attention, fuel, and use of apartments, should be taken subject to the said objections of the defendant, without the same being again repeated, to which decision admitting such testimony the defendant then and there duly excepted.

The defendant boarded at mother's; commenced in the summer of 1854. I went away to school on 1st September, 1854; he was at mother's then, and had been there some weeks. I think I returned home on the Thanksgiving day following, and remained at home after that. He was there at my return, and remained there till November, 1856. He had a room and his lodging; cannot tell their value. Had his washing and mending done there. He had two bed comforters of mother's. He sent for them one night, after he left. Don't know their value. Don't know of his having sheets and pillow-cases. Know of his having a mattress and piano stool. He was sick while there, two or three times, and once about two or three weeks; at another time about a week. Was nursed by my mother.

67 On being cross-examined, testified: Defendant went to mother's house in 1854, before fall, and staid till fall, 1856. I was married April, 1856. He left in the fall following. Don't know when he came, exactly. I was only at school about two months. Think the defendant left about November, 1856.

Mrs. Rockford testified: Know defendant. Was at plaintiff's house on 5th of November, three years ago. I remained there about eighteen months. The defendant was away two or three months; came there after he came back from New York. I don't know what the value of board is. He had a room; was sick twice, at one time about two or three weeks, at another about a week; was confined to his bed, and was nursed by Mrs. Chapman. I went to her house several times after I left; saw defendant there; can't tell how long he remained after I left. He was well taken care of, washing and mending done there, except for about two or three weeks in 1856.

69 On being cross-examined, testified: I very seldom went into his room. I only know that Mrs. Chapman took toast and tea to him. No one else about the house took care of him.

On being re-examined: I did not go into his room while he was sick to attend upon him, and never heard him request the plaintiff to take care of him.

Henry Winders testified: I know the parties to this suit. The witness, on being shown the bill, said: I presented this bill to the defendant.

CHICAGO, Dec'r 1st, 1857.

GEORGE T. PEARSON

To EMILY CHAPMAN, Dr.

108 weeks' board and lodging, @ \$5,	\$540 00
Less 13 weeks' absence, @ \$2 50,	32 50
	<hr/> \$507 50
Washing, mending, &c., 108 weeks,	100 00
Cash paid Wm. Smith,	20 00
Two Bed Comforters,	5 00
Three Sheets and Pillow-cases,	4 00
Three Linen Towels,	1 50
One Mattress,	5 00
Piano Stool,	8 00
Nursing and attendance, &c.	60 00
Cash loaned Aug. 18th, 1853,	\$56 00
70 Cash loaned Nov. 3d, 1856,	100 00—156 00
Erroneous charge of personal property obligation to Freer,	100 00
For Board and Lodging,	507 50
For Nursing and Attendance, and Goods and Chattels,	203 50
Cash loaned,	156 00
Charge in the matter of Freer,	100 00
Advertising "Money to Loan,"	3 00
	<hr/> \$970 00

The plaintiff then proposed to prove admissions of the defendant, to which defendant objected, and plaintiff reserved the testimony till he had further examined the witness. The witness then said: I married the daughter of the plaintiff. I have been in Chicago two years last August. Commenced visiting the plaintiff's house in November, 1855. Defendant was there then, and I saw him there down to November, 1856. I heard him acknowledge having fifty-six dollars borrowed of her by him at Niagara Falls.

71 The witness being shown a note, in the words and figures following:

"Due Mrs. Chapman, for money borrowed, one hundred dollars, to be returned in thirty days.

"Nov. 3, '56.

GEO. T. PEARSON.

"30 days."

Said: The signature to this is in the hand writing of the defendant. I have seen him write and know his hand writing. The note was then read in evidence.

The plaintiff now proposed to prove admissions made by the defendant, to witness to which the defendant objected, on the ground that if any such were made they were made pending negotiations for a settlement.

72 Whereupon, the Court allowed the defendant to examine the witness as to the time, place and circumstances of the alleged admissions. And the witness thereupon testified: The plaintiff, and self, and wife, at the time, occupied rooms at the Revere House. Defendant came there and spoke of settling a demand of his against Mrs. Chapman. I told him I had nothing to do with it; he must go to Mrs. Chapman's lawyer. But he would talk. We sat down at the table. We did not have any negotiations for a settlement. He did not deny Mrs. Chapman's account. He said that was all right; that he wanted to talk about his own account against Mrs. Chapman. He professed a desire to have all their matters settled.

73 Defendant thereupon objected to any evidence being offered as to said alleged admissions, because the same, if made, were made pending a negotiation for a settlement, which objection the Court then and there overruled, to which decision the defendant did then and there except.

The witness then testified: The defendant, at such interview, admitted the board, washing and mending as charged in the bill; also admitted having the bed clothing, pillow-cases, sheets, mattress, piano stool, nursing and attendance, and the money loaned, fifty-six dollars, in November, 1855. Also admitted had been paid one hundred dollars for Freer, and afterwards had obtained one hundred dollars out of plaintiff's money in his hands.

74 On being cross-examined:—This conversation was in our rooms, at the Revere House. Defendant said would like to settle if he could. Said so when he first came in. He looked at the plaintiff's account. He had no papers. Did not see his bills. I showed him her bill (the bill in proof). We talked over items. Said it was right. Said he had a bill. I spoke to him about Freer—refreshed his recollection. Said he recollected receiving it. He said he could not dispute the plaintiff's bill for nursing; whatever charges she made he would agree to. He admitted the board at five dollars per week.

75 He then proposed that we should examine his bill and agree upon it. I told him I would have nothing to do with it, because it was in court, and that I was not authorized to settle his claim against Mrs. Chapman. This was after he had looked over the bill of Mrs. Chapman. He then presented his bill for services, and I told him Mrs. Chapman would have nothing to do with it, and would leave that matter to the court; that she had trouble enough with him in trying to arrange their matters; that she would let the court settle it for them.

76 The defendant moved to strike out the evidence of witness, on the ground that it was not proof of an independent fact, but such admissions of a general character which a person would make who was honestly trying to treat for a settlement, and were made with a view and expectation that his own counter claim would be allowed. The Court overruled the motion, and the defendant then and there excepted.

The witness then being shown a paper, by the defendant, in the words and figures following:

"I have this day examined the accounts of George T. Pearson, as agent and attorney in fact of E. P. Hastings, my trustee, and myself, as appear by said Pearson's books, and find them, including this date, correct and satisfactory.

"Chicago, December 29th, 1853.

EMILY CHAPMAN."

Said signature thereto was in the hand writing of the plaintiff, and the same was thereupon put in evidence.

77 L. C. P. Freer testified: Some four or five years ago, Mr. Pearson applied to me in behalf of Mrs. Chapman, and desired me to qualify as guardian and take charge of her estate. I declined at first, but finally I told defendant I would accept if he would give me his note for one hundred dollars, not to be paid if property sold and I got my legal fees. He gave me the note and I qualified and acted as guardian. The property was sold and I got my fees from Mrs. Chapman, out of the proceeds of the sale. Afterwards, I gave up note to him. He paid me nothing on account of it.

On being cross-examined, testified: The note was given on his part, for the plaintiff, as an act of friendship. I think this was in fall of 1852. The amount of this note was charged by defendant to the plaintiff in his account with her.

This was all the evidence given on either side.

The defendant then requested the Court to instruct the jury—

1st, That the plaintiff is not entitled to recover in this suit for the board, nursing, care, attention, fuel, use of apartment, &c., because it is admitted in the pleadings in the cause that the same were furnished by the plaintiff as a gratuity to the defendant.

2d, That the plaintiff is not entitled to recover in this suit for the board, nursing, care, attention, fuel, use of apartments, &c., because it is admitted by the pleadings in the cause that the same were to be furnished and were furnished by the plaintiff to the defendant without any charge in that behalf.

79 3d, The testimony of Harry Winders must be disregarded.

4th, The plaintiff cannot recover for the value of the board, as there is no proof of value beyond the testimony of Winders.

5th, The plaintiff, not proving the value of the board, is not entitled to recover therefor.

Which instructions the Court refused, to which refusal the defendant then and there excepted.

The cause was then submitted to the jury, who found for the plaintiff, and assessed the damages at \$947.

80 The defendant then moved for a new trial, on the ground that the Court erred in refusing to give the instructions asked by the defendant, and in allowing the plaintiff to prove the evidence objected to by the defendant; also on the ground that the verdict is contrary to law, contrary to evidence and excessive; and on the ground, also, of new discovered evidence.

83 Which motion the Court overruled, and the defendant excepted.

The defendant then moved for judgment on the special pleas, notwithstanding the verdict, on the grounds that the matters averred therein were admitted by the replication, and the plaintiff not entitled to recover for the board, nursing, fuel, use of apartments, &c., and that the amount thereof should be deducted from the verdict.

84 Which motion the Court denied, and the defendant's counsel duly excepted, and prayed an appeal, which was granted.

The following are the errors relied upon by the appellant:

1st, That the Court erred in refusing to instruct the jury, as requested by the defendant below, viz:—

1st, That the plaintiff is not entitled to recover in this suit for the board, nursing, care, attention, fuel, use of apartments, &c., because it is admitted by the pleadings in the cause, that the same were furnished by the plaintiff as a gratuity to the defendant.

2d, That the plaintiff is not entitled to recover in this suit for the board, nursing, care, attention, fuel, use of apartments, &c., because it is admitted in the pleadings in the cause that the same were to be furnished and were furnished by the plaintiff to the defendant without any charge in that behalf.

3d, That the testimony of Harry Winders must be disregarded.

4th, The plaintiff cannot recover the value of the board, as there is no proof of value beyond the testimony of Winders.

5th, The plaintiff, not proving the value of the board, is not entitled to recover therefor.

2d, The Court erred in permitting the plaintiff below to offer any evidence as to board, nursing, care, attention, fuel and use of apartments, &c., because it is admitted by the pleadings in the cause, that the same were furnished by the plaintiff below as a gratuity to the defendant below.

3d, That the Court erred in permitting the plaintiff below to offer any evidence as to board, nursing, care, attention, fuel, use of apartments, &c., because it is admitted by the pleadings in the cause that the same were to be furnished by the plaintiff below to the defendant below without any charge in that behalf.

4th, That the testimony of Harry Winders, as to admissions made by the defendant below, was improperly admitted, because it appeared from his testimony that such admissions were made upon an interview had for the purpose of settlement of the matters in difference between them, the plaintiff and defendant below.

That the verdict is contrary to evidence and excessive.

That the verdict is contrary to law.

That the Court erred in refusing the motion for a new trial.

That the Court erred in overruling the motion of the defendant below for judgment on the special pleas, notwithstanding the verdict.

That the Court erred in entering judgment for the plaintiff below.

3 Series

~~No~~ 82

George T. Pearson
or

Emily Chapman

Abstract

Filed May 20. 1858
Leland
Clerk

Jr

13830