

No. 12835

Supreme Court of Illinois

Parmelee, et al.

vs.

Fischer.

71641  7

216-57

Frank. Parrish
1-7 Etal.

Peter Fiedler

216

12835

1009

Be it Remembered that heretofore, to-wit:
2 On the 25th day of August, A.D. 1856, Peter Discher
by Messrs Darnsworth and Burgess his attorneys, filed
in the Office of the Clerk of the Court aforesaid, his
certain declaration, which is in the words and figures
following to-wit:

State of Illinois } ss
Cook County }

Circuit Court of Cook County
October Term 1856

Peter Discher the plaintiff in this suit by
Darnsworth & Burgess, his attorneys, complains of
Frank Parmelee and Liberty Bigelow, partners doing
business under the name style and firm of F. Parmelee
& Co., of a plea of trespass on the case,

— For, that whereas the said defen-
dants, before and at the time of the delivery of the
goods and chattels to them as hereinafter ^{men-}tioned,
were and from thence hitherto have been Common Car-
riers of goods and Chattels, for hire to-wit: from
the Michigan Central Rail Road Depot in the City
of Chicago, to the Galena and Chicago Union Rail
Road Depot in said City, And whereas, also the
said plaintiff, whilst the said defendants were
such Common Carriers as aforesaid, to-wit: on
the Seventh day of June A.D. 1856 at Chicago
aforesaid, cause to be delivered to the said de-
fendants, & the said defendants then and there
accepted & received of and from the said

Declaration

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plaintiff a large Chest, for which they gave to said plaintiff their check, and which chest at the time of delivery, contained the following described goods and Chattels, to-wit: Two new feather beds & pillows, including an upper and lower feather bed as one bed, two Coverlets, two bed & spreads or blankets, one Ladies black silk dress, ten yards of Muslin delain, one cloak, one fur-muff, one large woolen shawl, one oil cloth table cover, one mortar & pestle, two pairs woolen pantaloons, two frocks or ladies dresses, one umbrella, one pair of new Calf skin boots, one German Silver, (or Britannia) Teapot, one looking glass, one new double barrel gun, one set of common dishes, two dozen German Silver spoons, one serving tank. One woolen Over Coat one woolen dress Coat, five pairs of stockings and six towels, of great value to-wit: of the value of Three Hundred Dollars, to be safely & securely carried & conveyed, by the said defendant, from the Michigan Central Rail Road Depot, to the Galena and Chicago Union Rail Road Depot, in the City of Chicago aforesaid, and there, to-wit: at the Galena and Chicago Union Rail Road Depot aforesaid, safely & securely, to deliver to the said plaintiff, for a certain reasonable reward to the said defendants, then and there in that behalf paid.

Yet the said defendants not regarding their duty as such Common Carriers as aforesaid, but contriving and fraudently intending, Craftily

Declaration

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& subtlely to deceive, defraud, & injure the said
 plaintiff in this behalf, did not nor would they
 safely & securely carry or convey, the said chest
 & the goods Chattels & property therein as above stated
 from the Michigan Central Railroad depot, to
 the ~~Galena~~ ^{Chicago} Union Railroad depot, in
 Chicago aforesaid, safely or securely deliver the
 same, to the said plaintiff, but on the contrary
 the said defendants, so being such Common Carriers
 as aforesaid, so Carelessly & negligently behaved
 & conducted themselves in the premises, that by and
 through the Carelessness, negligence and default
 of the said defendants in the premises, the said chest
 goods Chattels and property, being of the value
 aforesaid, afterwards to wit: on the day & year
 aforesaid at Chicago, became & were wholly lost
 to the said plaintiff, to wit: at Chicago aforesaid.

And whereas also the said
 plaintiff, on the seventh day of June, in the year of
 Our Lord One Thousand Eight hundred and fifty
 Six, at Chicago aforesaid, was lawfully possessed
 as of his own property, of certain other goods, Chattels
 and property, to wit: Two new feather beds & pillows
 including an upper & lower feather bed as one bed, two
 coverlets, two bed spreads or blankets, one ladies black
 silk dress, ten yards of Muslin delaines, one cloak
 one fur-muff, one large woolen shawl, one oil
 cloth table cover, one woolen vest, two pairs woolen
 pantaloons, two frocks or ladies dresses, one umbrella

Declaration

5 one pair new Calf skin boots, one german silver or
(Brittania) teapot, one looking glass, one new double
barrel gun, one set common dishes, two dozen German
silver spoons, one sewing box. One mollen over coat,
one mollen
dress coat
five pairs of stockings & six towels; of great value to wit:
of the value of three hundred dollars, of lawful
money of the United States; And being so possessed
thereof, as the said plaintiff afterwards to wit: on
the day and year first above mentioned at Chicago
aforesaid, Casually lost the above mentioned goods
& chattels out of his possession & the same afterwards
to wit: on the day and year last aforesaid, at Chicago
aforesaid, came to the possession of the said defendants
by finding; Yet the said defendants well know-
ing the said goods & chattels to be the property of
the said plaintiff, and of right to belong & appertain
to him, but contriving & fraudulently intending, Craft-
ily & subtly to deceive & defraud, the said plaintiff
in this behalf, have not, as yet delivered the said
goods & chattels above mentioned, nor any or either
of them, or any part thereof to the said plaintiff;
although often requested so to do & have hitherto
wholly refused so to do, And afterwards to wit: on
the day and year last aforesaid, at Chicago afore-
said, converted & disposed of the said goods and
chattels to their own use, all of which is to the damage
of the said plaintiff, of five hundred dollars, and
therefore he brings suit &c.

Declaration

Darmouth & Burgess

Attys at l

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And afterwards, to-wit: on the 27th day of October AD 1856, Franklin Parmelee and Liberty Bigelow, defendants aforesaid, by W R McAllister, their attorney, and filed in the Office of the Clerk of the Circuit Court aforesaid their certain Plea; which is in the words and figures following to-wit:

Franklin Parmelee
+ Liberty Bigelow
ads
Peter Discher.

Cook County Circuit Court

And the said defendants by W R McAllister their attorney came, and defended the wrong and injury, when &c, and say they are not guilty in manner and form, as the said plaintiff hath above thereof complained against him, and of this the said defendants put themselves upon the Court &c.

W R McAllister

Deft's atty

And afterwards to-wit: On the 3^d day of July AD 1857, the said plaintiff by his said attorney filed in the Court aforesaid, an additional Count, to his declaration aforesaid, which is in the words and figures following to-wit:

→ Peter Discher
vs

(Franklin Parmelee
& Liberty Bigelow)

And for that whereas the said defendants, before and at the time of the delivery of the goods and Chattels to them, as herein after mentioned to wit: On the Seventh day of June AD 1856 at Chicago in this County of Cook, ~~over~~ from thence have been Common Carriers of goods and Chattels for him to wit: from the Michigan Central Rail Road Depot in the City of Chicago, to the Ogden & Chicago Union Rail Road Depot in said City. And whereas also the said plaintiff, whilst the said defendants were such Common Carriers as aforesaid, to wit: on the 7th day of June AD 1856, at Chicago aforesaid, Cause to be delivered to the said defendants, and the said defendants then and there accepted & received of and from the said plaintiff, a certain other large Chest and which Chest at the time of the delivery, contained the following described goods & Chattels, to wit:

Two new feather beds & pillows, including an upper ^{part} ~~the~~ covered as new bed, two bed spreads or blankets, one ladies black silk dress, ten yards muslin detain, One Cloak, One fur muff, one large woolen shawl, one oil cloth table cover, One woolen vest, two pairs woolen pantaloons, two frocks or ladies dresses, one umbrella one pair new calf skin boots, one german Silver or

Additional Count

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(Brittania) teapot, one looking glass, one new double barrel gun, one set common dishes, two dozen German silver spoons, one sewing box, one molen over coat, one molen dress coat, five pairs stockings & six towels. Of great value, to wit: of the value of Three Hundred Dollars, to be safely & securely carried and conveyed by the said defendants from the Michigan Central Rail Road Depot to the Galena & Chicago Union Rail Road Depot in the City of Chicago aforesaid, and there, to wit: at the Galena & Chicago Union Rail Road Depot aforesaid, safely & securely to deliver to said plaintiff for a certain reasonable reward to the said defendants then and there in that behalf paid.

Additional Count

And if the said defendants not regarding their duty, as such Common Carriers in that behalf, but contriving and fraudently intending craftily & subtly to deceive & defraud & injure the said plaintiff in this behalf, did not nor would they, safely & securely carry & convey the said chest & the goods & chattels & property therein as above stated, from the Michigan Central Rail Road Depot, to the Galena & Chicago Union Rail Road Depot, in Chicago aforesaid, safely & securely deliver the same to the said plaintiff, but on the contrary, the said defendants so being such Common Carriers as aforesaid so carelessly & negligently behaved & conducted themselves in the premises, that by and through the carelessness, negligence

Additional Count

9 and default of the said defendants in the premises, the said Chest, goods, Chattels & property, being of the value aforesaid, afterwards to-wit: on the day and year aforesaid, at Chicago aforesaid, became and were wholly lost, to said plaintiff, to-wit: then and there, to-wit: at Chicago aforesaid. By means whereof, the said plaintiff was wholly deprived of the said Chest goods & Chattels, and was put to great trouble and expense, in travelling from Dubuque in the State of Iowa, to Chicago aforesaid to search for and endeavor to find, said Chest goods and Chattels, and in searching for the said Chest, goods and Chattels at Chicago aforesaid, that said plaintiff spent a great amount of time to-wit: ten days, in searching for said Chest goods and Chattels, and was forced to, and necessarily did expend, a large amount of money, to-wit: the sum of One Hundred - as travelling and other necessary expenses in prosecuting said search to-wit: at Chicago aforesaid, to-wit: on the day and year aforesaid, to plaintiffs damages of One Hundred Dollars &c

Thamworth

Pliffs atty

And afterwards to-wit: on the 5th day of December AD 1857, the said defendant by their said attorney filed in the Court aforesaid their Certain Plea to the

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additional count of the said plaintiffs declaration,
which is in the words and figures following, to-wit:

Cook Co. Circ Court

Franklin Parmelee (Plai)

vs

Peter Dischar

Plea to Amended.

Plea to add'l Count

And the said defendants
as to the said counts of the said declaration and
said amended declaration, come & defend the wrong
and injury when &c, and say, that they are not
guilty of the said supposed injuries, or any or either
or any part thereof in said counts mentioned in
manner and form as the said plaintiff hath above
thereof complained against them, and of this they
put themselves upon the Country

W. H. McArthur

Defts Atty

And for a further plea to said ^{several} counts of the decla-
ration aforesaid, the said deft ^{several} says ^{action} now be-
cause they say that at the time of the receiving of
said goods & chattels, in said several counts
mentioned, which were received to be carried
to the place, in said first count mentioned, and not
otherwise, it was in consideration thereof, & expressly
agreed by the pltf. to and with the defendants to
be present at the place of ^{the} delivery of said goods
when the deft Carriage arrived at said place
and then and there demand his said goods, and if

//

he was not there or did not demand the same
the depts might deliver the same to any agent
at the said depot & depts should not in any event
be liable for said property, and they aver that
they took the same to said depot & ptiff did not
appear there or demand said goods, and depts
delivered the same to the agent of said Rail
Road at said Depot: as they lawfully might,
which are the same goods & chattels in said
declaration mentioned and the grievances &c,
and this they are ready to verify, wherefore they
pray judgment if the said plaintiff ought to
maintain said action &c.

W R McAllister

Plf Atty

And afterwards to-wit: at the November term of
said Court first aforesaid, to-wit: on the 20th day
of November in the year first aforesaid, the follow-
ing proceedings, among others, were had and entered
of record therein, to-wit:

Peter Discher

v

vs

Frank Parmelee

Siberly Bigelow

7111

On this day again came the parties
by their attorneys aforesaid, and to try the issue here-
in between said parties, it is ordered that a jury
come. Whereupon came the Jurors of a Jury of
Good and lawful men To-wit:

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Verdict-

M. O'Connell . Stephen Samt. Robert Vial
 J. S. Cheney . W. Morris . J. A. Dendron
 John Mauritzon . David Miller . A. Spitzer
 W. H. Dickner . Dr. Kendall and Walter Dutherland
 Who being duly elected tried and sworn. Well and
 truly to try the issue aforesaid, after hearing the evi-
 dence ^{the} arguments of Counsel and instructions of the
 Court, retire under the charge of a sworn officer
 of the Court to consider of their verdict. And after
 wards come into Court and say, we the Jury find
 the defendants guilty, and assess said plaintiffs
 damages at One hundred and fifty two Dollars and
 fifty Cents, whereupon the Defendants Counsel move
 the Court for a new trial of this Cause and for
 arrest of judgement

And afterwards to-wit: at the term of said
 Court last aforesaid, to-wit: on the 24th day of
 January AD 1859, the following proceedings,
 among others, were had and entered of record
 therein, to-wit:

7111

Peter Discher
 (vs)
 Frank Parmeller &
 Liberty Bigelow } Case

This day comes again ^{small} the
 said plaintiff by Eastman Beveridge and Van
 Buren his attorneys, as the said Defendants by

13 Deats McAllister & Jarrett their attorneys,
and the Court having heard arguments of Coun-
sel, as well on the part of the said plaintiff as
of the said defendants, ^{on the motion of the said defendants} heretofore submitted to the
Court, for a new trial of this cause and in arrest
of judgment, and being fully advised in the premises,
now order that the said motion be, and the same
herby is, overruled, to which the said defend-
ants by their Counsel now here except,

Therefore it is considered by the Court
that said plaintiff do have and recover of the
said defendants, his damages of One Hundred
and fifty two Dollars and fifty Cents, in form
as aforesaid, by the Jury aforesaid assessed,
together with his costs and charges, by him
about his suit in this behalf expended and
have execution therefor.

Whereupon the said Defendants
by their Counsel except, and pray an
appeal to the Supreme Court of the State of
Illinois, which is granted by the Court, — on
Condition, that the said Defendant within ten
days from this date shall execute and file with
the Clerk of this Court, their appeal Bond
herein, in the penal sum of Five Hundred
Dollars, Conditioned according to law, with
G. W. Page their surety thereto.

And on motion of the said Defendants, it is ordered
that they have ten days, to file their Bill of Except-
ions herein

Judgment

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And afterwards, to wit: on the 5th day of January in the year last aforesaid, the said defendants by their said attorneys, filed in the Court aforesaid their certain Bill of exception which is in the words and figures following to wit:

Peter Discher	} In bank Circuit Court of Worcester, D. 1858
(vs)	
Frank Parmelee and Liberty Bigelow	} Case

Be it remembered that on the 20th day of November AD 1858, this cause came on to be tried before the Hon George M. Mansfield, Circuit Judge and a Jury, and on the said trial the plaintiff called Alonzo W. Enos, being duly sworn testified as follows, I know plaintiff. — In fore part of June 1856 plaintiff called upon me and gave me these tickets — and I went with him to Mr Parmelee's office — went the second time before I saw him — plaintiff accompanied me, I saw Mr Parmelee and made known to him my business — I stated to him that plaintiff had lost his baggage and that he had his agents checked and that the baggage had been delivered to his agent and I then showed him these checks — The initials of the agents name were on the back of the checks and Mr Parmelee admitted that the initials on the back of the tickets were those of his agent, and told me his name but I have forgotten it — There were two trunks, one large iron bound strap chest and a

Bill of Exceptions

15 Small trunk. — The larger one was lost. It was stated to Mr Parmelee by me that the plaintiff had stated to me that he had delivered the baggage to Mr Parmelee agent to be delivered at the Galena Rail Road Depot — That it also appeared that they were to be delivered there by initials on Cards — I also stated to him that the smaller chest or trunk was found at the Milwaukee Depot near the North Branch and that the larger one could not be found. Mr Parmelee asked Mr Discher for a description of the large Chest and said he would have a thorough search made for it — And either, at that, or a subsequent interview, or when Mr Discher was present, there was a conversation between Mr Parmelee and Mr Discher, as to the description of the property in the large Chest, and the value of it — Mr Discher stated to Mr Parmelee that he was moving from New Jersey, west and had purchased a good many things therein new, as he had supposed that he could there get them for less than at the west — and my recollection now is that a great many of the things were enumerated — Mr Parmelee requested Mr Discher and myself to call around again in a day or two to see if any thing should be found — Accordingly several days after this Mr Discher and myself called on Mr Parmelee again, and Mr Parmelee informed ^{us} ~~me~~ that he had heard nothing from the chest. I think it was at this interview that they talked over the particular contents of the trunk and the value of them — I think the plaintiff

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stated the contents of the chest as near as he could remember them, and the price or value of them and that the aggregate amount was \$204.00. - he also stated that he believed there were some other little things that he could not call to mind - Mr Discher complained to Mr Parmelee, that he and his wife were waiting here on expense - that he was destined for Iowa or Nebraska, and could illly bear the expense. Mr Parmelee said he could leave the matter in my hands and if the chest was found he could be informed of it. Mr Discher then determined to leave, and did.

(What do you know, if any thing, in relation to the articles enumerated by plaintiff, to Parmelee.)

At one of the interviews with Parmelee, I had drawn up an affidavit for Mr Discher to swear, enumerating the articles in the chest, and specifying the value of each, and I think the affidavit was shown to Mr Parmelee, and the articles enumerated in that affidavit, to my recollection, are the same articles enumerated in the declaration in this suit - and they are the same. Mr Discher spoke to Mr Parmelee about it in conversation referred to -

After Mr Discher left, within the period of three or four weeks, I called on Mr Parmelee and enquired of Mr Parmelee, whether he had found any thing of Mr Discher's lost baggage -

The first time I called Mr Parmelee informed me that he had not succeeded in finding the baggage. He ^{in two parcels} stated to me that he was about to send some one to a

Convention of the agents of Steamboats and railroad lines, and that he thought it was possible that he might get some clue to the baggage there, and desired me to wait until his agent returned, and after the agent returned I called on Mr Parmelee again, and he then informed me that he had heard nothing of the chest, he then stated to me, that he was going to send some one in his employ up to Saint Paul, and that it was possible he might hear something of the baggage. he also stated that if he did not hear from it, upon the return of his agent, that he would then pay for the baggage.

After that agent returned I called upon Mr Parmelee again and he informed me that he had heard nothing by the agent he had sent to Saint Paul, but that he had heard of a chest answering the description at Milwaukee, and he requested me to wait till he could hear from there, and stated that if it was not Mr Dischans, that he would then pay for the chest. I consented also to that. After the lapse of sufficient time to hear from Milwaukee, I then called again and he then told me he had heard nothing from plaintiffs baggage. I then remarked to him, that I supposed he would be willing to pay as he had promised - I think he then said, What are the contents of the chest I think I replied to this, that he knew the contents

18 - of the chest as well as I did, upon that he immediately said that he should pay for no such baggage.

Cross ex.

Bill of Exceptions

My profession is that of a lawyer and in that character the plaintiff called upon me in the first instance. Up to the time of the commencement of the suit I acted as plaintiff's attorney in ~~reference~~ reference to this matter. I have not been attorney of record. - Mr. Darroworth was plaintiff's attorney in bringing this suit and in consequence of Mr. Darroworth's absence I assisted in taking the deposition of Mr. Snider - but I did not act as his attorney or counsel in this suit. I drew the notice to take the deposition. I assisted in getting up the narr. in this case - I drew it - I did it as a friend to plaintiff. -

The added count I do not know who drew. I have kept track of this suit I do not know that I employed Mr. Van Buren to try this case. I have spoken to him about the case several times.

Only one chest claimed by plaintiff to have been lost. In enumerating the articles to Mr. Dummelle the plaintiff stated that there were two new feather beds.

It is admitted by defendants that their business consisted of carrying baggage as a baggage line, at the time the checks introduced in evidence were given, and that those checks were theirs.

"List of Goods annexed to memo.
admitted in evidence as a part of the case"

Defendant moves to exclude all evidence respecting loss of property in question. states that he does not wish to ^{specify} ~~specify~~ goods — Motion overruled and defendants then and there ~~excepted~~ ^{excepted} —

Plaintiff offered to show the ordinary value of the articles mentioned in memo, but by witnesses who had no knowledge of the quality or description of the property in question either from personal inspection or from the statements of any witnesses acquainted with the description or quality of the same. which evidence was objected to by the defendant, and the objection sustained.

The foregoing is all the evidence given in said trial.

The Court instructed the jury in the part of plaintiff as follows,

If the Jury find for the plaintiff. they will assess the damages for such articles as necessity and convenience as are usually carried by passengers for their personal use and comfort instruction and amusement or protection. having regard to the object and length of the journey —
to the giving of which the defendants then and there excepted —

Bill of Exceptions

That Court is requested to instruct the jury that the defendants are responsible only for such articles as were ordinarily termed "Baggage" and that the plaintiff cannot recover against the defendants for the beds, pillows, or coverlets set out in the declaration nor for the ten Pot looking glasses, dishes or spoons therein mentioned and if they find that the chest in question contained articles which travellers do not ordinarily carry with them as baggage, and the amount of the whole contents is shown to be worth the sum of Two hundred and four Dollars in gross, and there is no evidence as to the value of the said articles which are not included as baggage, or of the separate value of the articles which ought to be included as baggage, that the plaintiff is entitled to recover only nominal damages.

That if the jury believe from the evidence that the defendants were Common Carriers of passengers and their baggage, and that the contents of the chest in question were in part composed of beds and dishes and such articles, as travellers do not ordinarily carry with them, for their comfort or convenience, in travelling, but such articles were carried with him, in his removal from New Jersey, to the creek and not as baggage, the plaintiff cannot recover for the same in this action.

That if the jury find from the evidence that a part of the articles in question, were beds

21 and dishes. Such articles are not baggage and the defendants are not liable therefor, in this action:

The jury found a verdict for the plaintiff of one hundred and fifty two dollars and fifty cents. Whereupon the defendants move for a new trial, and that the judgment be arrested. The Court overruled the motion for a new trial, and also overruled the motion to arrest the judgment, and to the overruling of the said motion, the defendants then and there excepted, and because none of said matters appear in the record &c, the said judge upon the prayer of said defendants has to this bill of exceptions set his hand and seal.

Of George Mancoske (Seal)
Judge 7th Judicial Circuit
Ill

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

Know all men by these presents, that we — Franklin Parmelee Liberty Bigelow and George W Gage, are indebted to Peter Fischer in the penal sum of One hundred Dollars

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

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the pleadings, proceedings, returned of pleas, Bill of Exceptions, & appeal Bond in a certain cause pending in said Court on the Common Law side thereof, wherein Peter Vischer was Plaintiff and

Frank Parmalus & others were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 22nd day of January A. D. 1859

Wm L Church
Clerk.

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lawful money for the payment of which shall
and truly to be made, now bind ourselves our
heirs Executors and administrators, jointly sever-
ally severally and firmly by these presents,
witness our hands and seals this fourth day
of January AD 1859.

The Condition of the
above obligation is such, that whereas the above
named Peter Discher, did on the fourth day of
January AD 1859, in the Cook County Circuit
Court, recover a judgment against the said
Franklin Parmelee and Liberty Bigelow, for
the sum of One Hundred and fifty two Dollars
and fifty Cents, besides the costs from which
the said Parmelee & Bigelow, have taken an
appeal, to the Supreme Court of the State
of Illinois, now therefore if the said Parmelee
and Bigelow, shall duly prosecute their said
appeal, and pay the judgment costs
interest and damages, in case said judgment
shall be affirmed by the Supreme Court
then this obligation to be void otherwise to
remain in full force and virtue

Franklin Parmelee (Seal)
Liberty Bigelow (Seal)
Jas W. Page (Seal)

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Supreme Court

Franklin Parmelee &
Liberty Bigelow

Appellants

Peter Fischer Appellee

And afterwards to wit at the April Term of said Court A D 1859 before the said Judges at Ottawa by Scates McAllister & Jewett their Attorneys come the said Franklin Parmelee & Liberty Bigelow and say that in the Record and proceedings aforesaid and in giving the judgment aforesaid there was manifest error even in this viz:

- 1st The Court erred in overruling the motion of the defendants below to exclude all evidence of the loss of the goods & chattels in the declaration mentioned.
- 2^d The Court erred in giving the instruction asked on the part of the plff.
- 3^d The Court erred in overruling the motion for a new trial and in arrest of judgment.
- 4th The Court erred in giving judgment for the plff as to the debts below.

Wherefore for the errors aforesaid and other errors in the record and proceedings aforesaid the said Appellants pray that said judgment may be reversed and they be restored to all things which they have lost by reason thereof &c

Scates McAllister & Jewett
Attys for Appellants

Superior Court

~~Pete Fisher~~ Parmelee

et al

vs

vs

Pete Fisher et al

And now comes the said
defendant in error by
E. A. & J. Van Buren his

Attorneys & says there is no error in the record and
proceeding as judgment affirmed in manner
and form as is above recited by plaintiff in
error wherefore the said defendant prays
that the said judgment may be in all
things affirmed E. A. & J. Van Buren
attys for app

SUPREME COURT.

FRANKLIN PARMELEE &
LIBERTY BIGELOW,
Appellants, } APPELLANTS' POINTS.
vs.
PETER FISCHER,
Appellee. }

I.

The defendants' plea (Rec. p. 10, 11) contained facts which constituted a complete defence to the action.

1st—Because the carrier may show the plaintiff's consent to deliver the goods to a person other than himself, and such delivery discharges the carrier; or he may show a long-continued, uniform and notorious custom and usage.

Lewis vs. The Western R. R. Corporation, 11 Met. 509.
Gibson vs. Culver and another, 17 Wind. 305.

2d—The plaintiff, by going to trial without answering said plea, admitted it to be true.

Pearl vs. Wellman et al., 3 Gilm. 326.
Williams vs. Van Meter, 19 Ill. 293.
Porter's Adm. vs. Knapp & McCord 205.

The necessary element
this case is the
general issue—
the action is Case.

216-57

Green-Court of Cook County

Peter Fischer

att.

Franklin Parnell

appet

chal

Record

Filed April 19, 1859
de Leland
clerk

40.65

5.65

II.

The plaintiff under the evidence in the cause was entitled to recover nominal damages only.

A large portion of the contents of the alleged lost chest was composed of common household goods and not *baggage* in any legal sense; but defendants, being carriers of passengers and their baggage, were not liable for the loss of such household articles. *Woods vs. Devin*, 13 Ill. 746. And the only evidence of value of the goods alleged to be lost, was, that the plaintiff, in the presence of his lawyer, who was the only witness in the cause, stated to one of the defendants, that the aggregate amount of the whole contents of chest was two hundred and four dollars. This was, in reality, no evidence whatever of the value of such articles as might fall within the legal definition of baggage; for if there was no evidence of the value of the household furniture, nor of the baggage, by what criterion could the jury ascertain the value of the latter? There is no apology or excuse for this loose practice. The law permits the plaintiff, if he has no other evidence, to be a witness in this behalf for himself. 19 Ill. 556. If he had the better evidence, and withheld it, the law justly raises a presumption against him.

Armory vs. Delamoire, 1 Strange R. 505.

But the plaintiff was bound to prove the value of the articles, for which, if lost by defendants, he had a right to recover, or take a verdict for nominal damages only. *Sedgwick on Dam.*, 60, 61.

Frieze vs. Thompson, 1 Taun. 121.

Bond et al. vs. Hilton, 2 Jones (N. C.) Rep. 149.

Connoss vs. Meir, 2 E. D. Smith's Rep. 314.

SCATES, McALLISTER & JEWETT,

Attorneys for Appellants.

216-57

Pannula vs *Fischer*

Apollis *Porus*

Filed April 28. 1859

Leland
Clerk

IN THE SUPREME COURT.

FRANK PARMELEE ET AL.,
Appellant,
vs.
FISHER,
Appellee.

POINTS FOR APPELLEE.

The only question here is, as to the evidence of the value of the articles in question. A list of the articles was produced, and the aggregate value of them was admitted by defendants. The jury found less than the whole amount of the articles. How they arrived at their conclusion we do not know, and cannot inquire. If they deducted the value of some articles as not being baggage, they had a right to act on their own judgment as to their value.

De Tastal v. Barring, 11 East R. 270.
2 C. & P. p. 613.

Besides, there is no evidence that those particular articles were of any value. This is not a case where there was no evidence. And when there is any evidence, it is a question of fact for the jury, and "the court will not attempt to analyze the evidence."
14 Ill. R. 166.

No injustice has been done to the defendants, and when substantial justice has been done, the court will not reverse the judgment.

Gillet v. Sweat, 1 Gil. R. 475.
Greenup v. Stokes, 3 ibid. 202.
Smith v. Shultz, 1 Scam. R. 491.
3 ibid. 15.
Newkirk v. Cone, 18 Ill. 454.

To send this cause back, therefore, will be a useless expense.

E. VAN BUREN,

Of Counsel Attorney for Appellee.

11

The Judgment ought not to be reversed on the ground that there is no replication to the 2^d plea & the amended Count of the declaration - This Court was at 200 to recover special damages for expenses in endeavoring to obtain the property - The other Courts were good to them

When there is an issue in a declaration con-
taining several counts some of which are faulty but
one of them is good a verdict is rendered for the
plaintiff the Court will presume unless the contrary
is shown that the evidence was offered under and
sustained the good count. 2 Cpl 453 -

Now by the same reasoning
where an issue has been joined upon the good counts
of the declaration and it appears by the evidence
in the case that it applies to those counts
I submit that the Court ought not to grant a
new trial. There was no evidence upon the un-
well count.

Where there is any evidence to support
a verdict the judgment will not be set aside. 11
1 Morris (Iowa) 1218 13 A 32-87

The special plea amounts to nothing
more than the general issue: ~~and~~ every
fact alleged in it could be given in
evidence under the general issue
the general issue was pleaded, & the
special plea amounts to nothing. it
could have been stricken out
on motion, or it might be
overruled. The whole issue was tried.

The party need not insist without
objection -

SUPREME COURT.

FRANKLIN PARMELEE &
LIBERTY BIGELOW,
Appellants,
vs.
PETER FISCHER,
Appellee. }

APPELLANTS' POINTS.

I.

The defendants' plea (Rec. p. 10, 11) contained facts which constituted a complete defence to the action.

1st—Because the carrier may show the plaintiff's consent to deliver the goods to a person other than himself, and such delivery discharges the carrier; or he may show a long-continued, uniform and notorious custom and usage.

Lewis vs. The Western R. R. Corporation, 11 Met. 509.
Gibson vs. Culver and another, 17 Wind. 305.

2d—The plaintiff, by going to trial without answering said plea, admitted it to be true.

Pearl vs. Wellman et al., 3 Gilm. 326.
Williams vs. Van Meter, 19 Ill. 293.
Porter's Adm. vs. Knut, 1 McCord 205.

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Supreme Court
Frank R. Parmelee et al
App'ts

vs
His Honor
Appellee

Friends for Appellee

E. A. & J. Van Buren
Attys for Appellee

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Clark

II.

The plaintiff under the evidence in the cause was entitled to recover nominal damages only.

A large portion of the contents of the alleged lost chest was composed of common household goods and not *baggage* in any legal sense; but defendants, being carriers of passengers and their baggage, were not liable for the loss of such household articles. *Woods vs. Devin*, 13 Ill. 746. And the only evidence of value of the goods alleged to be lost, was, that the plaintiff, in the presence of his lawyer, who was the only witness in the cause, stated to one of the defendants, that the aggregate amount of the whole contents of chest was two hundred and four dollars. This was, in reality, no evidence whatever of the value of such articles as might fall within the legal definition of baggage; for if there was no evidence of the value of the household furniture, nor of the baggage, by what criterion could the jury ascertain the value of the latter? There is no apology or excuse for this loose practice. The law permits the plaintiff, if he has no other evidence, to be a witness in this behalf for himself. 19 Ill. 556. If he had the better evidence, and withheld it, the law justly raises a presumption against him.

Armory vs. Delamoire, 1 Strange R. 505.

But the plaintiff was bound to prove the value of the articles, for which, if lost by defendants, he had a right to recover, or take a verdict for nominal damages only. *Sedgwick on Dam.*, 60, 61.

Frieze vs. Thompson, 1 Tauné 121.

Bond et al. vs. Hilton, 2 Jones (N. C.) Rep. 149.

Connoss vs. Meir, 2 E. D. Smith's Rep. 314.

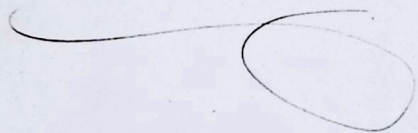
SCATES, McALLISTER & JEWETT,

Attorneys for Appellants.

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Parmelle vs Trischa

Appalto Points



Filed April 28, 1859

L. Helms

clerk

IN THE SUPREME COURT.

FRANK PARMELEE ET AL.,
Appellant,

vs.

Peter FISHER,
Appellee.

POINTS FOR APPELLEE.

The only question here is, as to the evidence of the value of the articles in question. A list of the articles was produced, and the aggregate value of them was admitted by defendants. The jury found less than the whole amount of the articles. How they arrived at their conclusion we do not know, and cannot inquire. If they deducted the value of some articles as not being baggage, they had a right to act on their own judgment as to their value.

De Tastal v. Barring, 11 East R. 270.

2 C. & P. p. 613. *Butler v. Baring* 12 E.C.

Besides, there is no evidence that those particular articles were of any value. This is not a case where there was no evidence. And when there is any evidence, it is a question of fact for the jury, and "the court will not attempt to analyze the evidence."

14 Ill. R. 166.

No injustice has been done to the defendants, and when substantial justice has been done, the court will not reverse the judgment.

Gillet v. Sweat, 1 Gil. R. 475.

Greenup v. Stokes, 3 *ibid.* 202.

Smith v. Shultz, 1 Scam. R. 491.

3 *ibid.* 15.

Newkirk v. Cone, 18 Ill. 454.

To send this cause back, therefore, will be a useless expense.

E. VAN BUREN,

II.

Of Counsel ~~Attorney~~ for Appellee.

The verdict of Judgment ought not to be reversed on the ground that there is no replication to the 2^d plea to, ^{the answer in addition} ~~assumed~~ Count of the declaration - This was added to recover special damages for expenses in endeavoring to obtain the property

The other counts were good, & & then there
was an issue iff a declaration contained some
al counts, some of which are faulty, but
one of them is good, a verdict is rendered
for the plaintiff, the Court will presume
unless the contrary appears is shown, that
the evidence was offered under a summons.
The good counts 11 2 Opinions 455. Now by
the same rule where an issue has been found
upon two counts of the declaration, & it
appears by the evidence in the case that
the is applied to those counts, I think
the Court ought not to grant a new
trial - there was no evidence upon the
amended count - The Court has frequently
held that they will not grant a new trial
where no evidence has been shown

- 11 where there is any evidence to support
- 11 a fault verdict the judgment will not
- be set aside 11 1 Motion (Jones) 1218
- 11 13-52-87

Again - The special plea
amounted to nothing more than
the general issue. Every fact alleged
in it could be given in evidence
under the general issue. The general
issue was pleaded & the special
plea might have been thrown out
on motion, or it might be heard

SUPREME COURT.

Franklin Parmelee and Liberty Bigelow, Appellants, vs. Peter Fischer, Appellee.	}	Appeal from Cook Circuit Court.
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ABSTRACT OF RECORD.

Rec. p. 2 This action, case, was brought to the October Term, 1856, of the Cook
County Circuit Court, and was tried at the November Term, A. D. 1858,
11, 12 before the Court and a Jury.

2, 3, 4, 5 The declaration is, in case, against the defendants as common carriers,
founded upon the custom, and the original declaration contained one
count against them as common carriers, and a count in trover.

The first count alleged that defendants were common carriers of goods and chattels, for hire, from the Michigan Central Railroad Depot, in Chicago, to the Galena and Chicago Union Railroad Depot, and that on the seventh day of June, A. D. 1856, at Chicago, the plaintiff caused to be delivered to defendants a large chest, containing the following described goods and chattels, to wit: Two new feather beds and pillows, including an upper and lower feather bed as one bed, two coverlets, two bed spreads or blankets, one lady's black silk dress, ten yards of muslin de laine, one cloak, one fur muff, one large woolen shawl, one oil-cloth table cover, one woolen vest, two pairs woolen pantaloons, two frocks or lady's dresses, one umbrella, one pair of new calfskin boots, one German silver or britannia tea pot, one looking-glass, one new double-barreled gun, one set of common dishes, two dozen German silver spoons, one serving-box, one woolen overcoat, one woolen dress coat, five pairs of stockings, and six towels—of great value, to wit, of the value of three hundred dollars, to safely, &c. carried by the defendants from the Michigan Central Railroad Depot to the Galena and Chicago Union Railroad Depot, Chicago, and there delivered to plaintiff, for certain reasonable reward, &c.

as a nullity - The whole you was
true. The party went to that without
objection

Paul Jones
of Copper

216-57

Supreme Court

Frank Parnell & al
app^{ts}

vs

Fisher
app^{ee}

Points for app^{ee}

E. At I Van Buren
Atty for app^{ee}

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Clerk

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4, 5 The second count is in trover, for goods of the same description.

6 To this declaration the defendants, at the October Term, A. D. 1856, filed the plea of not guilty.

6, 7, 8, 9 On the third of July, 1857, the plaintiff filed an amended declaration of one count, against them as carriers, for goods of the same description, but with allegations of special damage.

Neither count against them as carriers contains any allegation that the plaintiff owned or had any interest in the property alleged to have been delivered.

To the declaration as amended, the defendants, on the fifth day of December, 1857, pleaded—1st, the plea of not guilty; 2d, a special plea, as follows :

10, 11 And for a further plea to said several counts of the declaration aforesaid, the said defendants say *actio non*, because they say, that at the time of the receiving of the said goods and chattels, in said several counts mentioned, which were received to be carried to the place in said first count mentioned, and not otherwise, it was in consideration thereof expressly agreed by the plaintiff, to and with the defendants, to be present at the place of delivery of said goods, when the defendants' carriage arrived at said place, and, then and there, demand his said goods; and if he was not there, or did not demand the same, then defendants might deliver the same to any agent at the said depot, and defendants should not in any event be liable for said property. And they aver that they took the same to said depot, and plaintiff did not appear there or demand said goods, and defendants delivered the same to the agent of said railroad, at said Depot, as they lawfully might—which are the same goods and chattels in said declaration mentioned, and the greivances, &c. And this they are ready to verify, &c.

11, 12 There was no replication filed to or issue taken upon either of the last named pleas.

14 On the trial of the cause, the plaintiff called Alonzo W. Enos, who was sworn and testified, That, in the fore part of June, 1856, plaintiff called on him and gave him these tickets, and he went with plaintiff to Mr. Parmelee's office. Went second time before he saw him, plaintiff accompanying witness; saw Parmelee, and made known his business; stated to him that plaintiff had lost his baggage, and that he had his [Parmelee's] agent's checks, and that the baggage had been delivered to his agent, and witness showed him the checks. The initials of agent were on them, and Parmelee admitted that the initials were those of his agent, and told his name, which I have forgotten. There were two

15 trunks—one large iron bound strap chest, and a small trunk; the large one was lost; that he stated to Parmelee that plaintiff told him that he had delivered the baggage to Mr. Parmelee's agent, to be delivered at the Galena Railroad Depot; that it also appeared they were to be so delivered by the initials on the cards; that he stated to Parmelee that the smaller trunk or chest was found at the Milwaukee Depot, near the North Branch; that the larger could not be found. Parmelee asked plaintiff for a description of large chest, and said he would have a thorough search made for it. That, at that or a subsequent time, when plaintiff was present, there was a conversation between plaintiff and Parmelee, as to the description of the property in the larger chest, and the value of it. Plaintiff stated to Parmelee that he was moving from New Jersey west, and had purchased a good many things therein new, as he had supposed he could there get them for less than at the west; and witness' recollection was, that a great many of the things were enumerated. Parmelee requested Mr. Fischer and witness to call again in a day or two, to see if anything could be found. Several days after this, plaintiff and witness called again, and Parmelee informed them that he had heard nothing from the chest. At this interview, witness thought, they talked over the particular contents of the trunk, and the value; thought plaintiff stated the contents of the chest, as near as he could remember them, and the price or value of them; and that the aggregate amount was two hundred and four dollars, and that he believed there were some other little things that he could not call to mind.

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At one of these interviews with Parmelee, witness had drawn up an affidavit for Plaintiff to swear to, enumerating the articles in the chest, and specifying the value of each, and he thought the affidavit was shown to Parmelee; and the articles enumerated therein, to his recollection, are the same in the declaration, and the same plaintiff referred to. After plaintiff left, within three or four weeks, he called on Mr. Parmelee, and inquired whether he had found anything of plaintiff's lost baggage. The first time he called, Parmelee informed him that he had not succeeded in finding the baggage. He stated to witness that he was about to send some one in his employ to a Convention of the Agents of Railroad and Steamboat Lines, and that he thought it possible he might get some clue to the baggage there, and desired witness to wait till his agent returned. After the agent returned, witness called again, and Parmelee informed witness that he had heard nothing of the chest, and then stated that he was going to send some one in his employ up to St. Paul, and that it was possible he might hear something of the baggage. He also stated that if he did not hear from it upon the return of his agent, he would then pay for the baggage. After that agent returned, witness called upon Mr. Parmelee again, and he informed

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witness that he had heard nothing by the agent he had sent to St. Paul, but that he had heard of a chest answering the description at Milwaukee, and he requested witness to wait till he could hear from there, and that if it was not plaintiff's, he would then pay for the chest. Witness consented to that. After the lapse of sufficient time to hear from Milwaukee, he called again, and Parmelee then told witness he had heard nothing from plaintiff's baggage. Witness then remarked that he supposed defendant would be willing to pay, as he had promised; thought Parmelee said, "What are the contents of the chest?" Thought he
18 replied to this, that he [defendant] knew the contents of the chest as well as witness did. Upon that, defendant immediately said that he should pay for no such baggage.

Cross Examined.—Witness said, My profession is that of a lawyer, and in that character the plaintiff called on me in the first instance. Up
18 to the time of the commencement of this suit, I acted as plaintiff's att'y, in reference to this matter. I have not been attorney of record. Mr. Farnsworth was plaintiff's attorney in bringing this suit, and in consequence of Mr. Farnsworth's absence, I assisted in taking the deposition of plaintiff; but I did not act as his attorney or counsel in this suit. I drew the notice to take the deposition. I assisted in getting up the narr. in this case—I drew it—I did it as a friend to the plaintiff. The added count I do not know who drew. I have kept track of this suit. I do not know that I employed Mr. Van Buren to try this case. I have spoken to him about the case several times. Only one chest claimed by plaintiff to have been lost. In enumerating the articles to Parmelee the plaintiff stated that there were two new feather beds.

It was admitted by defendants that their business consisted of carrying baggage, as a baggage line, at the time the checks introduced in evidence were given, and that the checks were their's.

19 List of goods annexed to narr. admitted in evidence as part of the case.

19 Hereupon the defendants moved the Court to exclude all evidence respecting the loss of the property in question.

Motion overruled, and defendants excepted.

19 Plaintiff offered to show the ordinary value of the articles mentioned in narr. by witness who had no knowledge of the quality or description of the property in question, either from personal inspection or from the statements of any witness acquainted with the description or quality of the same—which evidence was objected to, and the objection sustained by the Court.

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Parmelle & Co

vs.

Grischer

Abstract

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Leland
Kelley

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