

No. 12692

Supreme Court of Illinois

Austin

vs.

Parmelee

160

Frank Perimeter

170

170

1858

12692

X

Prepared

Sup Court

Attest

Adm 170

Frank Parmelee

Commander The Court

~~170-68~~
170-68

(a full copy of
ans to 6 to sub —
in det of J. M. King)

This certifies the
transcript where
three is used for
these Filed May 21. 1858.

W. J. Phipps Clerk.
Attest a sig

1207-107

170

Court Circuit Court

State of Austin

Frank. Parnell

Appel. Defendant to
Supreme Court

\$5.00

Complete Record
& copy of records
for Supreme Court

See. Jm. Trans. of

P. 8 20

Filed April 20 1878

Edmund

Blk

Appellant

W. H. McAllister

Page 1

United States of
America
State of Illinois
Cook County

Monday April 13th 1857

Plas before the Honorable
George Morrison Judge of the
Seventh Judicial Circuit of the
State of Illinois and presiding
Judge of the Circuit Court of
Cook County in said State at
a trial Term thereof begun
and held at the Court House
in the City of Chicago in said
County on the second Monday
(being the thirteenth day) of April
in the year of our Lord One
thousand Eight hundred and
fifty seven and of the independence
of the United States the Eighty
first

Present Honorable George
Morrison Judge of the Seventh
Circuit

John L. Wilson Sheriff
of said County
Charles Hanson State
Attorney

Wm L. Church
Clerk

2

Be it Remembered to wit:— That on the 11th day of December AD 1856, there was filed in the office of the Clerk of the Circuit Court of Cook County in the State aforesaid a certain "Appeal Bond" which is in the words and figures following to wit:—

Know all men by these Presents that we, Franklin Parmelee and James L. Howe one held and firmly bound unto Kate Austin in the penal sum of two hundred & twenty five dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, and administrators jointly severally by these presents. Witness our hands and seals this 10th day of December AD 1856. The condition of the above obligation is such that whereas the said Kate Austin did on the 8th day of December aforesaid before Calvin D. Strey of the City of Chicago a justice of the peace for the County of Cook recover a judgement against the above bounden Franklin Parmelee for the sum of money seven dollars besides cost, from which judgement the said Franklin Parmelee has taken an appeal to the Circuit Court of the

3

Clerk of Court of said State
of Illinois. In of the said
Farrabee shall prosecute his
Appeal with Effect. And shall
pay whatever Judgments may be
rendered by the Court upon
disposal or trial of said
appeal. Then the above obligation
to be void otherwise to remain
in full force and Effect.

The above and
appeared this day of
December 1856 by me
at my office

Franklin Farrabee

Thos L. Herr

Seal
Seal

And afterwards to wit on the same
day to wit the 11th day of December
A.D. 1856. there was filed in the office
of the Clerk aforesaid a certain
"bill of items" which is in the words
and figures following to wit:

Contents of hat Box sent by
Omnibus Co. Wm. to Mrs Austin

1 Hat	\$25 Each	25.00
1 "	18	18.00
1 Bracelet		25.00
1 pair Shears		10.00
1 comb		5.00
2 "	4.00 Each	8.00
2 Collars		10.00

Wm Austin

\$98.00

4

And afterwards to wit: on the same day to wit: the 11th day of December A.D. 1856. There was filed in the office of the Clerk of the Circuit Court a certain "Security for Costs" which is in the words and figures following to wit:

State of Illinois }
County of Cook }

State Austen }
Frank Palmer } Demand \$100—

I, J. G. Lumbard, do hereby enter myself Security for all Costs that may accrue in the above entitled Cause this 3 day of Dec 1856

J. G. Lumbard

Shew ifne Summons in above Cause returnable on Monday next at 10 Am.

J. G. Lumbard

And afterwards to wit: on the 11th day of December A.D. 1856. There issued out of the office of the Clerk of the Circuit Court a certain Peoples and Common Council Supersedeas which is in the words and figures following to wit:

3 State of Illinois 3rd
Cork County 3rd

The People of the State
of Illinois to Calvin D. Hovey
Justice of the Peace and
a Constable in and for
said County. Greeting:-

Whereas, you,
the said Calvin D. Hovey a
Justice of the Peace as aforesaid
did on the Eighth day of December
inst. render a judgement in a
certain Suit before you; wherein
Hath Austin was Plaintiff and
Franklin Parmelee was defendant
in favor of the said Plaintiff and
against the said Defendant
for the sum of Ninety Seven Dollars
besides Costs of Suit, as it is said
And Whereas the said Franklin
Parmelee has taken an Appeal
from ~~the~~ ^{said} judgement to our Circuit
Court for the County of Cork, and
thereupon executed an appeal
bond with Security according to
law, now on file in the office of
the Clerk of said Circuit Court
Therefore We Command and
Enjoin you the said Calvin D.
Hovey Justice of the Peace, and
you the said
Constable as aforesaid that
you do absolutely and Entirely
Supersede and desist from

6 Proceeding any further in said suit
and all proceedings in relation
thereto you do absolutely suspend
until the further Order of our said
Circuit Court

Witness William L Church
Clerk of

Seal of
Court

said Court and the
Seal thereof at
Chicago, in said County
this Eleventh day of
December AD 1856

W L Church
Clerk

And in the back of said last
mentioned writ of Subpoena are
Endorsements which are in the
words and figures following to
wit:

Served by reading to the
within named Calvin Dwyer
this 13 day of December 1856

Service to. 1 mile S. 100 ft
etc. = 65c

John L Wilson Sheriff
By George Anderson Deputy

Filed Dec 13th 1856

W L Church Clerk

And afterwards to wit on
the 11th day of December AD 1856
there issued out of the office

7 of the Clerk of the Circuit Court
afforeaid a certain Peoples
Writ Commaney Called an
"Homonas Appeal" whiche is
in the Words and figures
following to wit:-

Circuit Court. Summoning

State of Illinois }
Cook County }
The People of

the State of Illinois to the
Sheriff of said County Greeting:-

We Command you to summon
Hate Austin if he shall be
found in your County. Personally
to be and appear before the
Circuit Court of Cook County
on the first day of the next
Term thereof, to be holden at
the Court House in Chicago
in said County on the fourth
Monday of March next, to
answer unto Franklin Parmelee
on an appeal from the Judgment
of Calvin D. Wolf Esquire
a Justice of the Peace within
said County;-

And have you
then and there this writ,
with an Endorsement thereon
in what manner you shall

8

Have Executed the same

State
Clerk

Witness William L
Church, Clerk of our said
Court and the Seal
thereof at Chicago
Afore said this Eleventh
day of December AD
1856

W L Church

Clerk

And the said last mentioned
Writ of Appent Summons has
Endorsements on the back thereof
which are in the words and
figures following to wit:—

Served by Reading to the
within Named Kate Austin
the 12th day of December 1856
Per Service 50.1 mileage 5. Return
10 = 65c

John L Wilson Sheriff
By George Henderson Deputy

Filed 13th Dec 1856

W L Church Clerk

And afterwards to wit On the 12th
day of March AD 1857 there
was entered and filed in the office
of the Clerk Afore said a certain
Detention which is in the words
and figures following to wit:—

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And afterwards to wit On the
5th day of April A.D. 1887. There
was filed in the office of the
Clerk of the Circuit Court of said
a certain "Transcript from Justice
of the Peace" which is in the words
and figures following to wit:

State of Austin }
vs } Demand \$100.00

Justice Fees
Dec 12 1/2
Sum 18 3/4
Order 25.
Sfc 25.
2 Sw 12 1/2
Judgt 25.
118
50
Sum 50
Cost 13 5
3.53

Frank Hermann }
December 3/86 } Sum issued to
Byrne Constable returnable
December 8/86 at 10 o'clock return
Served by reading to Deft Dec 3/86
December 8/86 Case called for trial
Deft fails to appear & after hearing
the Evidence Judgment is
rendered in favor of Plff against
Deft for the sum of Judgment \$94.
& Costs

Mary Wiggins }
Superioras Served on Justice from Clerk
County Circuit Court December 12/86

Count Byrne
Fees 45
69
All costs before C.S. Paid by Deft

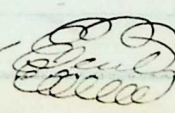
And attached to said last mentioned Transcript appears a certain summons which is in the words and figures following to wit:-

State of Illinois }
Cook County }

The People
of the State of Illinois to our
Constable of said County Greeting

You are hereby commanded to
Summon Frank Parronelle to
appear before me at my office
in South Chicago on the 8th
day of December A.D. 1856
at ten O'clock A.M. to answer
the Complaint of Kate Austin
for a failure to pay her a
certain sum not exceeding
One hundred dollars and
being made due at the
law directs

Given under my hand and
Seal this Third day of December
A.D. 1856

Cabot D. Stolf 
Justice of the Peace

And on the back of said last
mentioned writ is an endorsement
which is in the words and figures
following to wit:-

11

Served by reading to the within
Hannah Defendant this 3^d of
December 1856

Respectfully
C. J. Byrne
Clerk.

State of Illinois }
Circuit Court }
I Certify

that the foregoing is a true
Transcript of all the proceedings
before me in the above entitled
Cause from my Report & that
said Transcript & the papers
herewith transmitted contain
a full & perfect statement of
all the proceedings before me
April 4th 1857

C. D. Wolf
Clerk

And afterwards to wit on the 23^d
day of May A.D. 1857, it being
one of the days of the April Term
of said Court for said year: The
following among other proceedings
were had and entered of Record
in said Court to wit:—

125 Kate Austin }
vs } Appeal
Frank Parnell }
This day
came the said parties then

Attorneys & ifue being joined
 herein it is Ordered that
 a Jury come Whereupon Come
 the Jurors of a Jury of good
 and lawful men to wit,
 J P Clark L M Dickinson
 C L Gilson J Stoneham
 J B Smith B Lindheim
 J Spencer

J B Bracken

J B Shuckley

T F Astill

Thos Briggs

A Sutton

Who being duly elected, tried
 and sworn were and they to try
 the issue joined aforesaid, after
 hearing the Evidence adduced
 arguments of Counsel and instructions
 of the Court retire to consider of
 their verdict and afterwards
 come into Court and say "We
 the Jurors, find for the Plaintiff
 and assess his damages herein
 to the sum of Ninety Seven
 Dollars"

Whereupon the said
 Defendant moves the Court
 for a new trial of this Cause

And afterwards to wit on
 the 23 day of May aforesaid there
 was filed in the office of the Clerk
 of the Circuit Court aforesaid

13

a certain motion which is in
the words and figures following

Amis
Carl Le Cor Court
Frank Parmelee
vs
Kate Austin.

The Deft moves
for a new trial in this cause
on the ground that the Court
erred in refusing to give the
instructions asked for & giving
the same as amended and
because the deposition read
in evidence does not show a
Cause of Action.

J. H. McAllister
Atty for Deft

And afterwards to wit On the
30th day of May A.D. 1857. it
being one of the days of the
April Term of said Court for
said year there following among
other proceedings were had and
Entered of Record in said
Court to wit;

125 Kate Austin
vs
Frank Parmelee } Appell

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This day comes the said parties by their Attorneys and the Court having heard Counsel on said defendant's motion heretofore made for a new trial of this cause, and being fully advised in the premises overrules the same

Wherefore it is Considered that said plaintiff do have and recover of said defendant her damages of Eleven Seven dollars in form as aforesaid assessed together with his Costs and Charges by her in this behalf Expended and have Execution therefor

Whereupon said defendant brings an appeal to the Supreme Court of the State of Illinois which is granted and twenty days given him to file his Bill of Exceptions and a Bond for Ten hundred and fifty dollars with William L. Lewis and Theodore Day as Sureties Conditioned according to Law -

And afterwards to wit On the 15th day of June 1857. There was filed in the office of the Clerk of the

15 Circuit Court presented a
Certain Bill of Exceptions —
which is in the words and
figures following to wit:—

Circuit Court

Frank Tamm

vs

State of Texas

Be it Remembered that at
the March Term of the Court
Circuit Court held by
and before the Honorable George
Mannière Judge thereof at the
City of Chicago on the 2nd day
of March 1887, the Deposition
of William a man resident
Michigan taken by a Commissioner
sworn out on the part of the
plaintiff in this cause was
filed & opened which
Deposition is as follows

To

17 *All Members of New York City in the
County and State of New York*

WHEREAS, it has been represented to us that

*Hate Austin and
J M King*

On material witness in a certain cause now depending in our Circuit Court of Cook County, in and for the
County of Cook aforesaid, between

Hate Austin

Plaintiff, and

Frank Parmelee

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

WITNESS WILLIAM L. CHURCH, Clerk of our said Court, and seal thereof, at Chicago,
in said County, this *Seventh* day of *January* A. D. 1857



Wm L Church

CLERK.

INSTRUCTIONS

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

1. Caption to the Deposition.

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

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

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

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

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

(signed _____ " _____," "Commissioner."

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

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

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

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

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

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

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

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

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

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Cook County Circuit Court
 Kate Austin }
 vs }
 Frank Sumner }

I said Defendant
 You are hereby notified that on
 Saturday the 17th of January
 instant at 9 o'clock A.M. or as
 soon thereafter as Counsel can
 be heard, we shall sue out of
 the Clerk's office of the Cook County
 Circuit Court a Commission directed
 to J. A. Woods Esq. of New York City
 in the County and State of New York
 authorizing and requiring him to
 cause Kate Austin and J. M. King
 of the place last aforesaid take on
 necessary witnesses in the part of
 the Plaintiff to come before the
 said Woods and to take their
 Depositions upon such interrogatories
 as may be enclosed with said
 Commission to be read as
 Evidence in the above entitled
 Cause in the part of the said
 Plaintiff a copy of which
 Interrogatories is hereto attached
 When and Where you may appear
 and file Corp. Interrogatories
 Dated Chicago Jan 6. 1857
 Yours &c
 Harwood and Burges
 Attys for Plaintiff

Cook County Circuit Court
 State of Austin
 vs
 Frank Parmelee

Interrogatories to be
 propounded to Franking:—

- 1 What is your ^{age,} name ~~age~~ and
 Residence?
- 2 Do you know the parties to this
 suit or either of them?
- 3 Was you the Plaintiff in Chicago
 at any time during the months
 of November and December last
 what is your means of earning?
- 4 Upon her arrival in Chicago
 in November last had she had
 baggage or checks for the same
 how much or how many and
 what became of the same State
 fully and particularly
- 5 If in your answer to the
 fourth Interrogatory you state
 that the plaintiff's checks were
 delivered to the Agent of the
 Chicago Omnibus Line State
 whether or not such agent
 returned to said Plaintiff or
 any one for her a Memorandum

Q1

Containing a Description
of said Checks and what
has become of the Same?
If such memorandum is in
your possession please attach
to your answer to this
interrogatory and return the
Same herewith—

6 If in your answer to the former
interrogatory you state one piece
of Plaintiff's baggage was lost by
the Chicago Omnibus Line, state
the contents, description and
value of the Same

7 Do you know any other matter or
thing touching the matters in
question that may tend to the
benefit or advantage of the said
Plaintiff? If you declare
the Same fully and at large
as if you had been particularly
interrogated thereto:—

Interrogatories to be propounded
to Kate Austin

Have you read the Deposition of
J M King, in this Suit?

What was the description and
contents of the lost baggage therein
mentioned and the value of the

22 Same?

3 Do you know of any other person who could testify as to the contents and value of the Lost Baggage?

Frank Parmelee
and
Kate Austai }

Conf. Interrogatories to be
propounded to Jim King

1st How long have you known Kate Austai? Where have you known her what has been her occupation?

2nd When did she get the articles included in the alleged lost baggage where was she going with it and for what purpose?

3 What was the object of your and her visits to Chicago & how long did you stay and where did you stay?

Do you know any other matters or things which may tend to the benefit or advantage of the deft
If you Declare fully

Conf. Interrogatories to be

propounded to Kate Austin

1. Are you married or single?

2. Where did you get the certificate claimed to be lost by Deft & how did you happen to have so many along with you and where were you going with the same & for what purpose?

3. What is your occupation, where do you reside and for what purpose were you coming to Chicago how long did you stay where did you stay &c.

J. H. McAllister
Atty for Deft

The deposition of J. M. King of the City of New York and State of New York a witness produced before and examined upon her oath on the second day of February A.D. 1857 at the City of Chicago New York aforesaid by me J. A. Woods a Commissioner duly appointed by the Commissioner Hereto appointed to me directed as such Commissioner for the Examination of said Witness in a certain Suit now pending in the Circuit Court of the County of Cook and

24 State of Illinois wherein Kate Austin is plaintiff and Frank Parmelee is defendant upon the Interrogatories and Corp Interrogatories attached to said Commission the said Witness being first duly sworn by me as a witness in said Case previous to the Commencement of her Examination testified and deposed as follows:

1st To the first Interrogatory on the part of Plaintiff she answering says "My name is Mary King, my age is Thirty Eight years, my residence is New York"

2^d To the Second Interrogatory she answering says "I know the plaintiff Kate Austin - do not know the defendant"

3^d To the Third Interrogatory she answering says "The plaintiff was in Chicago during the latter part of November and first part of December last I went there with her and saw her while there"

4th To the fourth Interrogatory she answering says "Upon the arrival of the plaintiff

at Chicago in November last we had between us three trunks one belonging to plaintiff one money belonging to me and I had a hat trunk which contained articles of clothing of both plaintiff & myself I had the three checks for all three trunks and I gave the checks to an agent of Omnibus Line on the arrival of the cars at Chicago. The hat trunk was never delivered by the Omnibus Line so as either of us saw the check for the same returned to us"

5th To the 5th Interrogatory The Witness answering says "The agent did give me a memorandum of the checks when he took the same. The last I saw it was at the trial of this case before Judge DeMay in the possession of Mr. Lombard"

6th To the 6th Interrogatory The answering says. The hat trunk which was lost contained three articles belonging to the plaintiff one winter hat which was worth eighteen dollars one summer hat worth twenty five dollars, one bracelet worth twenty five dollars

26. Our pair undershirts worth two dollars - two collars worth five dollars each. Three handkerchiefs one worth five dollars and the others two dollars each and some other articles which I cannot describe -

4th To the Second Interrogatory she answering says, "We were detained in Chicago some two or three weeks trying to have the Defendant either paid or pay for the baggage, the other two trunks were delivered -"

Answer to Defendants Interrogatories

1st To the first Corp Interrogatory the witness answering says "I have known her in New York for the last two or three years she has no particular occupation."

2nd To the Second Corp Interrogatory she answering says - She got the articles which were lost in New York she was going to Chicago on a visit -

3rd To the Third Corp Interrogatory she answering says The object was to visit friends near Chicago

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I Staid there some ~~time~~ Three
or four weeks in Chicago, a
part of the time at the Tremont
and a part of the time at the
Bojpp House,

4th To the Grand Corp Interrogating the
Concerning Days

I do not

J M King

I J A Morda The Commissioner
appointed by the Commission and
resets of the City, County and State
of New York do hereby Certify
that previous to the Commencement
of the Examination of the said
J M King the witness whose name
is subscribed to the foregoing
deposition she was duly sworn by me
to testify the truth in relation to the
matters in Controversy between the
said parties Kate Austin plaintiff
and Frank Parmelee defendant
so far as she should be interrogated
concerning the same that the said
Deposition was taken on the second
day of February A D 1887 at the City
of New York in the State of New York
that the said deposition was carefully
read to said Witness and was
then and there sworn to by her in
my presence the oath being administered
to her by me as such Commissioner

JA Munde

Commissaries

say yes for taking Deposition &c.
said by plaintiff

JA Munde

Commissaries

On the third day of April 1887 in the aforesaid Term of said Court the said defendant by his Attorney filed his motion in Writing to Exclude the said Deposition which motion so filed is as follows

Book Co Circuit Court

Shaul Parronau

and

State Auditor

And now comes

the said Shaul Parronau on this 3 day of April 1887 and by W H McAllister his Attorney moves the Court to Exclude the Deposition of W H King filed in this Cause and to suppress the same on the ground that it appears in the answers to said the Interrogatories therein that the said W H King is interested in the result of this suit and therefore incompetent, also because the Commissaries does not Certify

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that the witness signed the deposition

J. H. McCarter
Deft Atty

Afterwards on the 23 day of May 1857. at the April Term of said Court held at the Court House and before the Judge aforesaid. the said Court overruled the said motion to Exclude the said Deposition of J. M. King and the Defendants Counsel then & there to such ruling & order of the said Court Excepted And the said Cause then came on to be tried before the said Court and a jury and the said plaintiff to sustain the case on her part then and there read in Evidence the aforesaid Deposition of the said J. M. King and rested the case on her part whereupon the Defendant by his Counsel moved the Court to Exclude the Evidence from the Jury which motion the said Court overruled and the Defendants Counsel then & there Excepted

The said Deposition of J. M. King was the

only evidence given upon the
Trial of said Cause.

The Defendant
requested the said Court after
the Evidence was closed & before
the Jury retired to instruct the
Jury as follows

"That if the Jury
believe from the Evidence that the
Plaintiffs and the Witness Mr
Hing were the joint owners of
the Boat trunk in question and
as such made a Special
Agreement with the Defendant's
Agent for the Custody or Conveyance
of the same ^{and} the Contents then
the Law is for the Deft."

Which
instruction the said Court then
refused to give as asked
for but gave the same amended
as follows:-

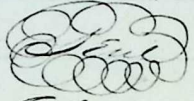
"That if the Jury believe
from the Evidence that the Plaintiffs
and witness Mr Hing were joint
owners of the Boat trunk in question
and the goods therein contained and
as such made a Special
Agreement with Deft's Agent for
the Custody or Conveyance of the
same and the Contents then
the Law is for the Deft."

So the Defendant
to give the said instruction as

31

acted ~~for~~ and giving the same
with the addition aforesaid
the defendants Counsel then &
then Excepted,

The Jury then
to Consider of their Verdict and
returned a verdict for the
plaintiffs assessing the damages
at \$44.00 The depts Counsel
thereupon moved the Court for a
new trial which the Court
overruled & the depts then moved
that Excepted Because none
of the said matters and things
appear upon the Record in this
Cause the said Judge upon the
prayer of the said defendant
has to this bill of Exceptions
set his hand & seal this 3rd
day of May 1854.

George M. Wallace 
Judge of J. Judicial in
Illinois

And afterwards to wit. On the
10th day of June A.D. 1854. There
was filed in the Office of the
Clerk of the Circuit Court of Cook
County aforesaid a certain "Affidavit
Bund" which is in the words and
figures following to wit:

I am all men by these presents that
we Strunk Parsons and
William B. Lewis and

Shendens Day are held and
 going round unto Kate Austin
 in the said sum of two hundred
 dollars lawful money of the
 United States for the payment
 of which sum well and truly to be
 made we bind ourselves our heirs
 and administrators jointly severally
 and firmly by these presents
 Witness our hands and seals
 this 30th day of May A.D. 1887.
 The condition of the above
 obligation is such that whereas
 the said Kate Austin did on
 the ~~20th~~ day of May A.D. 1887 in
 the Cook County Circuit Court recover
 a judgment against the above
 bounden Frank Parmelee for
 the sum of ninety seven dollars
 besides costs from which judgment
 the said Frank Parmelee
 has taken an appeal to the
 Supreme Court of the State of
 Illinois Now if the said Frank
 Parmelee shall duly and
 diligently prosecute his said
 appeal and shall pay the
 judgment's costs interest and
 damages which may be rendered
 awarded or assessed in case the
 said judgment shall be
 affirmed then this obligation
 to be void otherwise to remain
 in full force and effect

Frank Parmelee
J. D. J.
Wm. J. Lewis

Great
Full
Court
Hall
etc.

And Afterwards to wit On
the 23 day of January A.D
1858 There was filed in the
Office of the Clerk of the Circuit
Court of Cook County aforesaid
a certain "Stipulation" which is
in the Words and Figures
following to wit:-

Circuit Court

State Custody

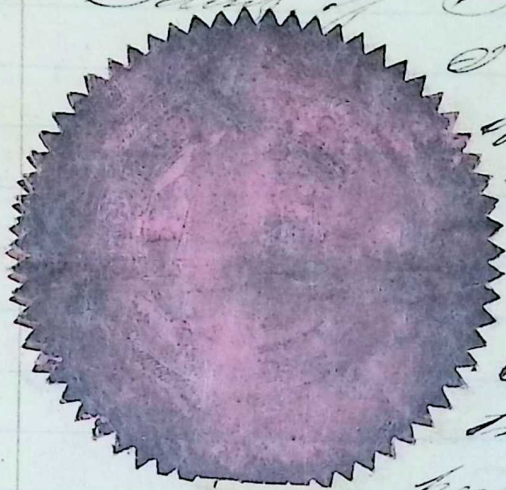
Franklin Parmelee

It is hereby
Stipulated by the Attorney
of the above Plaintiff That the
bond filed in this Cause for
the perfecting the Appeal to
the Supreme Court shall be
deemed & taken as Compliance
with the Order of Appeal made in
said Cause & that no new bond
need be filed

Eastman Benson & Landon
Attys for Plffs

34

State of Illinois
County of Cook



I William L Church Clerk
of the Circuit Court of
Cook County in the
State of Illinois do
hereby Certify that the
above and foregoing
transcript is a True
perfect and complete
copy of the files as well as the Orders
made and Entered of Record in
said Court in a certain case
now pending therein wherein Kate
Austin was Plaintiff and Frank
Parmelee was Defendant and of
the whole thereof as appears from
of Record

In witness Whereof I have
hereunto set my hand and affixed
the Seal of our said Court this
Eighth day of January A.D.
1857.

William L Church
Clerk

35

Supreme Court

Frank Parmelee -
Plff in Error

Appl Term
A.D. 1858

vs

Kate Austin Deft in Error

And now comes the said plaintiff
in error by W R McAllister his attorney
and says that in the Record and proceedings
aforesaid there is manifest error in this
to wit:

1st The Court erred in overruling the said
motion to exclude & suppress the Deposition
of J M King.

2nd The Court erred in excluding the same
from the Jury.

3rd The Court erred in refusing the
instructions asked by deft & giving
the same as amended

4th The Court erred in refusing a new
trial.

5th The Judgment was rendered for the
plff whereas by the law of the land the same
should have been for the deft below

And the said Frank Parmelee prays that
the Judgment aforesaid for the errors aforesaid
and for other errors in the said Record
and proceedings being may be
reversed annulled and altogether holden
for naught and that he may be restored
&c

W R McAllister

Atty for Plff in Error

And the said Appellee by his
Attorneys Burges & Fairbank
comes & says that ⁱⁿ the said
record proceedings & judgment
there is no error

Fairbank Burges
for app^t -

SUPERME COURT

FRANK PARMELEE
Plaintiff in error.
vs.
KATE AUSTIN,
Defendant in error.

Error to Cook Circuit Court.
Hon. GEO. MANIERRE, Judge

2-10-41
17
27-28
28
This action was brought in justices court and taken by appeal to the Cook Circuit Court.

Austin the plaintiff below sued out of the Clerk's office of the Circuit Court a commission to take the evidence of one Jane M. King of the city of New York.

On the 2d March 1857 the said commission was returned with the deposition of said witness, duly filed with the clerk and opened. The commissioner to whom it was directed and before whom taken did not certify that the deposition was signed by the said witness. (See page .) Whereupon the defendants below filed a motion in writing to exclude said deposition on the ground, among others, that the commissioner did not certify that said Jane M. King signed the same. *this not*
(See page). *perused*

29 not perused -
That on the 23d day of May, at the April term A. D. 1757, of said court the said motion was heard by the said court and overruled. To which the defendant then and there excepted.

24
Afterward and on the said 23d day of May the said cause was tried before the said Judge and a Jury. The plaintiff Austin read in evidence on said trial the deposition of Jane M. King aforesaid, which is as follows:

24

1st. To the first interrogatory on the part of the plaintiff, she answering, says. "my name is Mary King. My age is 28 years. My residence is New York."

24

2d. To the second interrogatory, she answering says. "I know the plaintiff Kate Austin, do not know the defendant."

24

3d. To the third interrogatory, she answering, says. "The plaintiff was in Chicago during the latter part of November and fore part of December last. I went there with her and saw her while there."

24-25

4th. To the fourth interrogatory, she answering, says. "Upon the arrival of the plaintiff at Chicago in November last we had between us three trunks, one belonging to plaintiff, one wholly belonging to me, and I had a hat trunk which contained articles of clothing of both plaintiff and myself. I had the three checks for all three trunks, and I gave the checks to an agent of Parmelee's Omnibus Line on the arrival of the cars at Chicago. The hat trunk was never delivered by the Omnibus Line to us or either of us, nor the check for the same returned to us."

25

5th. To the fifth interrogatory, the witness answering, says. "The agent did give me a memorandum of the checks when he took the same, the last I saw it was at the trial of this case before Esq. DeWolf, in the possession of Mr. Lombard."

Proof of delivery of a Rail Road check for baggage
to an omnibus line is prima facie evidence
they were to carry it somewhere.

These

3

Scates asks particular attention to this

25-26

68
25
93
10
597

6th. To the sixth interrogatory, she answering, says. "The hat trunk which was lost contained three articles belonging to the plaintiff, one winter hat which was worth eighteen dollars, one summer hat worth twenty-five dollars, one bracelet worth twenty-five dollars, one pair of undersleeves worth ten dollars. Two collars worth five dollars each, three handkerchiefs, one worth five dollars and the others two dollars each, and some other articles which I cannot describe."

26

7th. To the seventh interrogatory, she answering, says. "We were detained in Chicago some two or three weeks trying to have the defendant either find or pay for the baggage--the other two trunks were delivered." (See pages)

29-30

The said deposition was all the evidence given on the said trial, and when the plaintiff rested her case defendant's counsel moved the court to exclude the same from the jury which was overruled and defendant's counsel excepted.

* no evidence showing the hat trunk was joint property of counsel might be refused -

30

The defendant's counsel then asked the court to instruct the jury as follows:

"That if the jury believe from the evidence that the plaintiff and the witness, J. M. King, were the joint owners of the hat trunk in question and as such made a special agreement with defendant's agent for the custody or conveyance of the same and the contents, then the law is for the defendant."

30

Which instruction the said court refused to give as asked for but gave the same amended as follows: "That if the jury believe from the evidence that the plaintiff and witness J. M. King were joint owners of the hat trunk in question and the goods therein contained, and as such made a special agreement with defendant's agent for the custody or conveyance of the same and the contents, then the law is for the defendant."

31

To the refusal to give the said instructions as asked and giving the same with the addition aforesaid, the defendant's counsel then and there excepted.

31

Points for Sept. in Error

1. "Three" to be read there
2. No evidence that trunk was joint property and in the firm right
3. Noting any subjoined page 27 of Revised
4. Proving existence of an unbroken line
shows they were Criminals -

31

The jury found for plaintiff and damages \$97.00

The defendant moved for a new trial which was overruled and exception.

35

Errors assigned.

1st. The court erred in overruling the motion to exclude the deposition of J. M King. *See page 27 of record*

2d. The court erred in refusing to exclude the evidence from the jury.

3d. The court also erred in refusing a new trial.

4th. Also in refusing to instruct the jury as requested.

APPELLANT'S POINTS

I

The motion to exclude the deposition of J. M. King should have been granted on the ground that the commissioner did not certify that she signed the same as required by the Statute.

See page 27 of record - "Subscribed her name"

II

The evidence did not show any cause of action against the defendant below.

There was no evidence that defendant was a common carrier.

And more than all there is no evidence as to what was to be done with the trunk. Was he to keep it as bailee, or was he to take it to any place? Nor is there any evidence that he ever had possession or control of it.

Therefore it is an error in law to render a judgment on such evidence, and the motion for a new trial should have been granted.

Angelina Camins, Secs 461, 462, 3, 4

III

The instruction asked for on the part of the defendant below should have been given, because if another should have been joined as plaintiff, and that appeared, the plaintiff suing alone could not recover.

But the court added a condition which was improper, viz: that the plaintiff and witness must be joint owners of the goods therein contained. If there was a joint special contract for the care, custody or conveyance of the property in question, neither could she alone.

Angel 462

Sup Court

William K. Parmelee

vs

Kate Clouston

Abstract &c

12692

Filed 1 April 22 1888

To be returned

here

Submitted May 4

170

W. K. Parmelee
for Plaintiff

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 answer to the Subpoena in a certain Ex parte
State signed by J. M. King filed in the office of the clerk of said
certain cause lately pending in said Court on the
_____ side thereof, wherein Kate Quaker
as Plff and
_____ defendant, wherein an appeal was taken

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 20th day of May A. D. 1858

Wm L Church
Clerk.

60) To the Sixth Interrogatory she
answering says, "She had
trunk which was last contained
these articles belonging to the
Plaintiff. one winter hat
which was worth Eighteen
dollars One Summer hat
worth Twenty five dollars
One bracelet worth twenty
five dollars one pair
undersleeves worth Ten
dollars Two collars worth
five dollars Each. Three
handkerchiefs one worth
five dollars and the others
two dollars Each and
some other articles I
cannot describe