

which was properly done. That is the only material fact in the plea and presents a triable issue.

It is objected that the court allowed certain admissions of defendant made to one Winders to be given to the jury. Winders was acting as agent of the plaintiff to collect this claim, and presented a bill to defendant for payment. Defendant said it was right, and that he had a bill against the plaintiff which he wanted the witness to settle. This Winders refused, protesting that he had nothing to do with it, was not authorized to settle it—that he must see plaintiff's lawyer, and arrange the matter with him. From this it is contended, that defendant's admissions must be considered as admissions with a view to an amicable settlement of the differences between the parties, and by way of compromising those differences. They are nothing of the kind; they are full and distinct admissions and are to go to the jury with the further statement of the defendant made at the time, that he also had a bill against the plaintiff. All that was said at that time must go to the jury, but they are not bound to believe it all. They are not bound to believe, that although the defendant had a bill against the plaintiff equal or greater in amount to her bill against him, that such bill was just. It is for the jury to consider under all the circumstances, how much of the whole statement they deem worthy of belief, including as well the facts asserted by the party in his own favor, as those making against him, and this is the whole extent of the rule. 1 Greenleaf Ev., section 201. There is nothing in Winder's testimony to show the parties were on a compromise. He was the agent of the plaintiff to collect her bill, and when he presented it, the defendant had the honesty not to deny it, and from all the testimony, it would seem the plaintiff had maintained the defendant, at her own expense, for several years, and has a just claim on him for remuneration.

The evidence fully sustains the finding, and the judgment is affirmed.

*Judgment affirmed.*

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BRADLEY FOLLIOTT, Appellant, v. CARLTON C. HUNT,  
Appellee.

APPEAL FROM PEORIA.

If work is done under a special contract, the price to be paid must be governed by the stipulations of the contract, even where it is abandoned for justifiable reasons.

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## Folliott v. Hunt.

THIS was an appeal from the judgment of a justice of the peace in the county of Peoria, to the Circuit Court of that county.

There was a trial by jury, before POWELL, Judge, and a verdict and judgment for Hunt against Folliott for \$102.20, from which Folliott appealed to this court.

About the first of July, 1856, Folliott agreed with Hunt, that if he would carry the mail from Farmington to Burlington, for the period of two years, that Hunt should receive therefor, quarterly, from Folliott the post office and treasury orders, from the government to Folliott, for performing that service, Folliott being the contractor with the government. Hunt carried the mail for about four months, when not receiving the compensation quarterly therefor, as promised, he abandoned the contract, and sued Folliott on a *quantum meruit*.

On the trial, the court gave the following instructions at the instance of plaintiff below, which are excepted to:

1st. If the jury find, from the evidence, that the plaintiff rendered the services for the defendant, as charged, for an agreed price, they will render a verdict for such amount.

2nd. If the jury find the services charged, were rendered upon a contract for a longer time, and the defendant was to make quarterly payments for such services as a part of said contract, and failed to make such payment as stipulated, the plaintiff would then have a right to abandon the service, and collect of the defendant what his services rendered were really worth.

3rd. If the jury find it was the duty of the defendant under the contract, when he received the orders or drafts, to pay them over to the plaintiff, then the plaintiff would be excused from making any demand for the same, on the defendant.

A motion for a new trial was overruled.

It is assigned for error, that the court gave improper instructions at the instance of the plaintiff; that the verdict is contrary to law; that the verdict is clearly against the evidence, and that the court erred in overruling the motion for a new trial.

C. BONNEY, for Appellant.

E. G. JOHNSON, for Appellee.

CATON, C. J. The second instruction given for the plaintiff below was wrong. We have repeatedly decided that where work is done under a special contract, the price of the work must be governed by the stipulations of the contract, although the party may be justified in abandoning the contract, and bringing his action for the *quantum meruit* of the work. If under

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Smith, use, etc., v. Pries et al.

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the circumstances, the plaintiff has suffered damages by the breach of the contract, over and above the price of the work fixed by it, he must recover for such breach, but that cannot influence the price he shall recover for the work he has done.

The judgment is reversed, and the cause remanded.

*Judgment reversed.*

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FRANCIS W. SMITH, use of Alexander Allison, Plaintiff in Error, v. HENRY PRIES *et al.*, Defendant in Error.

ERROR TO PEORIA.

It is error in an action upon a replevin bond, to refuse to let the plaintiff prove that the property has not been returned, as the condition of the bond required.

THIS was an action on a replevin bond. The declaration contains two counts; several breeches are assigned, and among them, one that Pries, defendant in error, did not, nor would, make return of the goods and chattels to Allison, nor to any other person for him. On the trial, plaintiff below asked a witness if the property replevied, had ever been returned to Allison. And the court, POWELL, Judge, presiding, refused to allow him to answer, because it did not appear that a writ of *retorno habendo* had been issued and returned, in the case of *Pries v. Allison*.

H. GROVE, for Plaintiff in Error.

C. C. BONNEY, for Defendant in Error.

CATON, C. J. This was an action on a replevin bond. Condition, that the plaintiff in the action of replevin should return the property, if he should be so ordered by the court. He was ordered to return the property as was contemplated by the condition of the bond. In this state of the case, the plaintiff offered to prove that the property had not been returned according to the exigency of the bond, and the court refused to allow it. In this the court erred.

The judgment must be reversed and the cause remanded.

*Judgment reversed.*