

122267

No. _____

Supreme Court of Illinois

Miller

vs.

Miller

71641  7

State of Illinois }
County of Cook } S. S.

Pleas before the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of Illinois at a
regular Term of the Cook County Court of Common Pleas
begun and holden at the Court House in the City of
Chicago in said County on the second Monday being
the Eleventh day of September in the year of our Lord
one thousand eight hundred and fifty four and of the
Independence of the United States the twenty ninth.

Present The Honorable John M. Wilson Judge

Daniel M. May - Prosecuting Attorney

Cyrus P. Bradley - Sheriff

Attest

Walter Kimball

Clerk

Be it Remembered that heretofore to wit on the
fifteenth day of November in the year of our Lord one
thousand eight hundred and fifty three came Alvina E.
Miller Plaintiff by Goodrich and Scoville her Attorneys
and filed in the Office of the Clerk of the Cook County
Court of Common Pleas a precept for Summons against
Henry Miller Defendant which said precept is in
words and figures as follows, to wit.

Cook County Court of Common Pleas.

January Term 1854.

Alvina E. Miller

vs

Das

Henry Miller

\$1200.

The clerk will please issue summons
in Assumpsit to Eff of Cook Co;

Goodrich & Scoville

Plffs Attys

And thereupon a summons issued out of the Office
of the clerk of said Court in words and figures
as follows to wit.

State of Illinois

Cook County

J. S.

The People of the State of Illinois
to the Sheriff of said County, Greeting.

We command you that you summon Henry
Miller, if he shall be found in your County,
personally to be and appear before the Cook County
Court of Common Pleas of said County, on the first
day of the next Term thereof, to be holden at the
Court House, in the City of Chicago, in said County,
on the First Monday of January next to answer
unto Alvina E. Miller in a Plea of Trespass on the
case on promises to the damage of the said Plaintiff
as she says in the sum of Twelve hundred dollars

And have you then and there this Writ, with
an endorsement thereon, in what manner you shall
have executed the same.

Witness Walter Kimball, clerk of our said

Court, and the Seal thereof, at the City of Chicago
in said County, this 15th day of November
(L. S.) A. D. 1853.

Walter Kimball Clerk

Executed by reading to the within named Henry
Miller. Nov^r 29, 1853.

C. P. Bradley, Sheriff

By D. J. Wood. Depy.

And thereafter to wit on the twenty third day of
December A. D. one thousand eight hundred and
fifty three, the said Plaintiff by Goodrich and
Leoville her Attorneys filed her Declaration in the
Office of the Clerk of said Court, which said
Declaration is in words and figures as follows to wit.

State of Illinois } In the Cook County Court
County of Cook } S. S. of Common Pleas of the January
Term A. D. 1854.

Alvina E. Miller, Plaintiff in this suit by
Goodrich & Leoville her Attorneys complains of Henry
Miller defendant herein who is summoned &c of a
Plea of Trespass on the case upon promises. For
that whereas heretofore to wit, on the first day of
March in the year Eighteen hundred and fifty three
to wit, at the said County of Cook, the said
Defendant became and was indebted to the said
Plaintiff in the sum of Twelve hundred dollars
for the work and labor care and diligence of the
said Plaintiff before that time done performed and
bestowed in and about the business of the said
Defendant, & for the said Defendant, & at his special
instance and request; And also in the further sum

of Twelve hundred dollars for so much money before that time lent and advanced to & paid laid out & expended by the said Plaintiff for the said Defendant & at his like request, And also in the further sum of Twelve hundred dollars for so much money before that time had and received by the said Defendant to and for the use of the said Plaintiff. And being so indebted in consideration thereof the said Defendant then and there undertook and faithfully promised the said Plaintiff to pay her the said several sums of money when he should be thereunto afterwards requested. Yet the said Defendant though often requested so to do, hath not paid the said several sums of money, or any part thereof, but to pay the same or any part thereof hath hitherto wholly neglected and refused, & still doth neglect & refuse, To the damage of said Plaintiff of Twelve hundred dollars & therefore she brings suit &c

Goodrich & Scoville

Plffs Attys

Copy of afo sued upon.

Henry Miller

D^{to}

1853

To Almira C. Miller.

Moth 1.

For work and labor &c \$ 1200.00

" money lent & advanced &c 1200.00

" " had & received to }
Plffs use } 1200.00.

Which said Declaration was indorsed as follows, to wit,
" Executed the within by reading to the within named Henry Miller by his request and delivering to him a true copy of the within Nov^{br} 29th 1853.

C. P. Bradley Sheriff By D. F. Wood Depy.

And thereafter to wit on the sixth day of February
A. D. Eighteen hundred and fifty four the said
Defendant by P. Ballingall his Attorney filed, in the
Office of the Clerk of said Court, his Plea herein
which said Plea is in words and figures as follows to wit

Cook County Court Com. Pleas.

Henry Miller }
att } Asst.
Alvinia C. Miller }

Jan'y. 7. 1854.

And the said Defendant by P.
Ballingall his Attorney comes and defends the wrong
and injury when ye and says that he did not
undertake and promise in manner and form as the
said Plaintiff hath above thereof complained against
him And of this he puts himself upon the country
Plaintiff doth the like.

Goodrich Scoville
for Plt.

P. Ballingall
Defts att'y.

And the said Plaintiff will please take notice that
on the Trial of this cause the Defendant will give
in evidence and insist that the said Plaintiff before
the commencement of her said suit was and still is
indebted to the said Defendant in the sum of Ten
hundred and ninety dollars for the work and labor
care diligence nursing and attendance of the Defendant
in and about the business of, and upon the person
of the said Plaintiff at her request And in the
like sum of Ten hundred and ninety dollars for so
much money advanced to laid out and expended for
the said Plaintiff by the said Defendant, at said
Plaintiffs request And in the further sum of Ten
hundred and ninety dollars for Board lodging and

washing furnished and done by the said Defendant
to and for the said Plaintiff at her request
And in the further sum of Ten hundred and ninety
dollars for necessaries, medicines, medical attendance,
clothing, and goods and wares furnished by the said
Defendant to the said Plaintiff at her request, out of
which said several sums the said Defendant offers
to set off to the said Plaintiff the said damages of

J Ballingall

Atty for Deft

State of Illinois }
Cook County } S. S.

Henry Miller being sworn says
that he is Defendant in the above entitled cause
and that he has a meritorious defence therein.

Subscribed and sworn to

this 6th February A. D. 1854 } Henry Miller
W. Kimball Clk.

And also on the said sixth day of February A. D.
eighteen hundred and fifty four the said Defendant
filed with the clerk of said Court the particulars
of set off which is in words and figures as follows
to wit

Almond C. Miller Dr

To Henry Miller

1839		
Sept 1.	Attendance in sickness 8 weeks @ \$4 pr week	\$ 32 " 00
"	Paid Dr L. Kennickett	12 " 50
1840		
Jan. 1	Board for 16 weeks @ \$200 pr week	32 " 00
June 17	1 years board	40 " 00
Aug. 15	Absent 6 weeks	
Sep. "	Sick 6 weeks @ \$1400	214 " 00
" "	Paid Dr L. Kennickett	2 " 00

Oct. 7	Board &c	3 weeks	@ \$2 ⁰⁰	\$ 6 " 00
Nov 20	Absent	3 weeks		
Dec 28 1841	Sick	3 "	" \$4 ⁰⁰	12 " 00
Jan'y 3	Nursing after injury by a fall	3 weeks	@ \$3 ⁰⁰	9 " 00
April 3	Board &c	8 weeks	@ \$2 ⁰⁰	16 " 00
June 17	One years cloathing			40 " 00
" "	Measles	3 weeks	@ \$4 ⁰⁰	12 " 00
1842	Jewelry			11 " 00
June 17	One years cloathing			40 " 00
Sept. 1	Sick	4 weeks	@ \$4 ⁰⁰	16 " 00
" "	Paid Dr. bar			10 " 00
1843	One years cloathing			40 " 00
Oct. 15	Injured by a fall	11 weeks	@ \$3 ⁰⁰ pr wk	12 " 00
Dec. 1 1844	Sick	8 "	" 4 ⁰⁰ " "	32 " 00
Jan. 1	Board &c	4 "	" 2 ⁰⁰ " "	8 " 00
Oct 20	Sick	5 "	" 5 ⁰⁰ " "	25 " 00
Nov "	"	4 "	" 4 ⁰⁰ " "	16 " 00
" "	Paid Dr. bar			30 " 00
" "	One years Cloathing			40 " 00
1845	Putrid sore Throat	2 "	" 3 ⁰⁰ " "	6 " 00
" "	Paid Dr. bar			3 " 00
June 17	One years cloathing			40 " 00
Aug. 15	Lockjaw	4 weeks	@ 4 ⁰⁰	16 " 00
" "	Paid Dr. bar			8 " 00
1846	One years cloathing			40 " 00
1847	" " "			40 " 00
1848	" " "			40 " 00
Aug. 10	Cholera	2 weeks	@ \$3 ⁰⁰	6 " 00
Oct 8	Rheumatism	5 weeks	" \$5 ⁰⁰	25 " 00
Dec. 15 1849	"	4 weeks	" \$4 ⁰⁰	16 " 00
Mar. 1	Board &c	10 "	" \$2 ⁰⁰ pr wk	20 " 00
June 17 1850	One years Cloathing			40 " 00
June 17	" " "			40 " 00

Oct	13	Sick	4 weeks	@ \$ 3 ⁰⁰	\$ 12 " 00
Dec 30	"	"	3 "	" 3 ⁰⁰	9 " 00
1851	Feb 7	"	3 "	" 3 ⁰⁰	9 " 00
June 17	One year	Cloathing			40 " 00
1852	Mar. 1	Sick	2 weeks	" 3 ⁰⁰	6 " 00
	July 7	"	3 "	" 4 ⁰⁰	12 " 00
"	"	Medicine			5 " 00
Aug. 23	Paid Dr Livingston				5 " 00
Oct. 1	Board	8 weeks	@ 2 ⁰⁰		16 " 00
" 21	Sick	3 "	" 5 ⁰⁰		15 " 00
"	"	Paid Dr. Poorman			12 " 25
Nov. 16	One year and five months	Clothing			50 " 00
"	"	Cash			19 " 00
"	"	1 Trunk			4 " 50
1853	April 15	Paid G. Ferguson board	8 weeks @ \$2 ⁰⁰ per week		16 " 00
"	"	" Mrs. Hot			2 " 00
					\$ 1083 " 25

And afterwards to wit on the twenty second day of September being one of the days of the September Term of said Court A. D. eighteen hundred and fifty four the following proceedings were had in said Cause and entered of Record to wit

Alvinia E. Miller
 as } Absumpst
 Henry Miller . . . }

And now comes the said Plaintiff by Gooding and Scoville her Attorneys and the Defendant by F. Ballingall his Attorneys also comes and issue being joined herein His Ordered that a Jury come and thereupon come the Jurors of a Jury of good and lawful men to wit

B. Reitchman - John Connelly - O. A. Cravy - John McGovern,
 N. A. Barker - Wm. C. Macy - F. D. Roford - Saml. J. Grannis

A. B. Kellogg. J. P. Knott. H. C. Ruxford & Stephen Sporr
who being duly elected tried and sworn well and
truly to try the issue joined as aforesaid, after hearing
the evidence adduced, argument of Counsel and
Instructions of the Court retire under charge of an
Officer of the Court to consider of their Verdict, and
afterwards come into Court and say we the Jury find
the issue for the Plaintiff and we assess the said
Plaintiffs damages to the sum of Twelve hundred
dollars.

And thereupon said Defendant. Enters
his Motion herein for a New Trial in this
cause.

And afterwards to wit on the nineteenth day of
October as yet of the said September Term of said
Court at, D. one thousand eight hundred and
fifty four, the following, further proceedings were
had in said cause and entered of Record to
wit.

Alma E. Miller
vs } Apt
Henry Miller . . . }

And now again come the said parties by
their said Attorneys and after argument of counsel
heard on the said Defendants Motion for a New
Trial in this cause heretofore entered herein, the
Court being now fully advised in the premises
overrules said Motion.

Therefore it is considered that the

said Plaintiff do have and recover of the said Defendant her damages of Twelve hundred dollars in form aforesaid by the Jury assessed and also her costs and charges by her about her suit in this behalf expended and have execution therefor,

And thereupon the said Defendant enters his exceptions herein to the opinion of the Court in overruling said Motion and prays an Appeal to the Supreme Court of the State of Illinois which is allowed upon his filing Bond with the usual conditions to be approved by the Judge of this Court said Bond and Bill of Exceptions to be filed within ninety days from this day.

And thereafter to wit on the tenth day of November A. D. eighteen hundred and fifty four the said Defendant filed with the Clerk of said Court his Appeal Bond herein, which said Bond is in words and figures as follows to wit,

Know all Men by these Presents that We Henry Miller of the County of Lake Thomas Allison Jr and Lyander E. Miller of the County of Cook in the State of Illinois are held and firmly bound to Alvina E. Miller of said County in the penal sum of Two thousand five hundred dollars, which sum well and truly to be paid to the said Alvina E. Miller her heirs executors and administrators we bind ourselves our heirs executors and administrators jointly and severally by these Presents Witness our hands and seals this sixth day of November A. D. 1854.

The Condition of the above obligation is such that whereas the said Alvina E. Miller at the September Term A. D. 1854 of the Cook County Court of Common Pleas, in said State, in a certain suit then herein depending against the said Henry Miller wherein she was Plaintiff recover a Judgment against the said Henry Miller for the sum of Twelve hundred dollars besides costs from which said Judgment the said Henry Miller prayed an Appeal to the Supreme Court of said State Now in case the said Judgment shall be affirmed by the said Supreme Court, the said Henry Miller shall pay the said Judgment, costs, and interest and damages, and if the said Henry Miller shall duly prosecute his said Appeal then the above obligation to be void.

Signed sealed and delivered } Henry Miller (S)
in presence of } Thos Allison Jr (S)
Lyander E. Miller (S)

And thereafter to wit on the seventeenth day of November A. D. eighteen hundred and fifty four the said Defendant by P. Ballingall his Attorney filed in the office of the Clerk of said Court his Bill of Exceptions, which is in words and figures as follows, to wit,

Henry Miller } Cook County Court of Common
 at } Pleas September Term 1854
Alvinia E. Miller }

Be it remembered that upon the Trial of this cause the Plaintiff to prove the issue on her part called the following witnesses namely,

Mr. Rounselle, who testified that he is acquainted with the Plaintiff and the Defendant. That he is son in law to the Defendant; and that he married a daughter of the Defendant's second wife. That he has known the Plaintiff a little over four years, that he first became acquainted with her at her father's in Wheeling in this County where she lived. That the Defendant is married to a second wife. That the witness is thirty two years of age. That he lived at the house of the Defendant at Wheeling first about four years ago and left the next spring. That during the time he lived there he saw the Plaintiff do household work, and thinks she did pretty much all the work. There were three children, the two old folks, & three hired men, including myself, in the family.

On cross Examination, he stated that he was at work for the Defendant, while he lived there - that he generally went away from the house immediately

after Breakfast, and did not return till dinner, and then left after dinner and returned at Supper, and sometimes he worked near the house - that he does not know whether in his absence Mrs Miller did any of the Household work, that the Plaintiff sat down to her meals with the rest of the family - That he went to work for the Defendant in October 1850 and left in June 1851.

Mrs Rounselle testified that the Plaintiff is Thirty six years of age - that the Plaintiff has worked in the family ever since she can remember; and that the Plaintiff generally did the hardest of the work. That the Defendant, her father, kept Tavern at Wheeling nine years; and the Plaintiff did cooking and washing; they had not a hired girl for more than a year during the whole of that time, that sometimes they were very late up, on account of Travellers, she should think such work as her sister did to be worth a dollar and a half to two dollars a week, that she the witness went to school and did not work - that Plaintiff left fathers house a year last Spring.

On cross examination she stated that the Plaintiff was her half sister - she the witness was a daughter by fathers second wife - that she was eighteen years of age when she married Mr. Rounselle. That she was married in the summer of 1851 when she left her fathers house, - that the Tavern stand was on the farm - that her Brothers worked on it and lived in family. That there were two sisters older than the witness who lived at home till they were married off - that they worked also - that when Plaintiff was sick sometimes they had a Doctor but mother and

considered herself a good Doctor. That when she the witness came home from School she helped in the work but did none of the hard work. That father clothed the Plaintiff. The clothing was such as farmers daughters in the country usually wear.

Eliza Mitz. testified that she has known the Defendant 13 years. That she saw Alvina (Plaintiff) at work in Defendants house, when she the Witness went there to do washing. and has seen her do some washing. That she should judge the Plaintiffs services worth a dollar & fifty cents per week. That she went to the Defendants to do washing some three or four times she went to work when Alvina was sick, did not go when she was well.

Joseph Filkins. testified, that he knows the parties to the suit, that the Defendants Tavern and farm were near his, that he the Witness resided at Wheeling but now in Chicago, knew the parties some fourteen years ago when they first came to the country. Has frequently seen the Plaintiff at work in her fathers house. When the Defendant was hunting up a location for his family, when they first came, the Plaintiff worked for me, and I considered her a good girl to work, I paid her per week. I should judge her services at her fathers to be worth from Fourteen shillings to Two Dollars per week.

On Cross Examination. he testified that how he came to see the ~~Defendant~~^{Plaintiff} at work at her fathers, was that the Defendant sometimes lent money to the neighbours, and he went down in his capacity of Justice of the Peace to take acknowledgments of papers, and while thus there saw the Plaintiff.

round the house at work

John Buckmaster, testified that he worked at Defendants in 1845, more or less till about four years ago, that he saw the Plaintiff at work while he was there - she did most the heavy work.

And this was all the testimony offered in the case on either side.

During the course of the closing argument of the Plaintiffs Attorney to the Jury, the Attorney took from the files the Bill filed with the Defendants' Plea of offset and was about to read therefrom and comment thereon, to the Jury, to which the Defendants' Counsel then and there objected; but the Court stated that the said Bill was a part of the Record, and he could not controul the Attorney in remarking on it, and overruled the objection; to which the Defendant then and there excepted. The Plffs Attorney then remarked to the Jury "this (the Bill) goes to show as I infer that the Plaintiff and Defendant 'did' keep an account and told the Jury that the 'amount of the Defendants' Bill was \$1083," and read several items of charges, for doctoring - clothing - cholera &c. - to all which during the Defendant excepted then and there.

The Court then gave the following instruction on the part of the Plaintiff, to which the Defendant then and there excepted.

It is the duty of the Plaintiff to prove the facts alleged in the complaint.

If the Jury shall believe from the evidence that the Plff was treated differently from the other girls in the family, & did the work of a servant, & was treated as a servant, these are circumstances which the Jury may take into consideration in determining whether the parties expected that compensation should be made for Plaintiffs services and labor in Dffs house.

The court gave the following instructions on the part of the Defendant

1st That if the Jury shall believe from the evidence that the Plaintiff is the daughter of the Defendant, and resided with him from the time of her birth until the Spring of 1853, and that he clothed her, and did by her as by his other children, and she continued working for the Defendant after she became of age, then it is incumbent on the Plaintiff, before she can recover in this suit, to satisfy the Jury by evidence, that at the time of so working, it was expected by both parties that she should receive compensation; or that the circumstances, under which the services were performed, were such, that such expectation was reasonable and natural.

2nd That if the Jury shall believe from the evidence that the relation of Parent and child subsisted between the Plaintiff and Defendant while she worked for him; and that while so working for him she lived with him as his other children did; and that the Plaintiff has not given any evidence to the Jury of an express hiring by the Defendant

of the Plaintiff to work for him nor of any circumstances from which an express hiring may be inferred - except the mere fact of performing labor - then the Law, while said relationship of Parent and Child existed, raises no implied contract between them and the Plaintiff ought not to recover."

and refused to give the following instruction asked by the Defendant

3 "That the Plaintiffs counsel by stating to the Jury some of the items in, and the amount of, the Defendants offset, and stating to them that he inferred from such items that there was an account between the Plaintiff and Defendant, and that they (the Jury) could look at it, - has thereby made the account of the Defendant evidence for the Defendant and the Jury are bound so to regard it" To which refusal the Defendant then and there excepted -

The jury rendered the following Verdict

"We the Jury find the issue for the Plaintiff and we assess the said Plaintiffs damages to the sum of Twelve hundred dollars."

The Defendant moved the Court for a New Trial for the following reasons.

1st. Because the Verdict was contrary to the Law governing the case.

2. Because the Verdict was against the Law and the evidence.

3. Because it was contrary to the evidence.

4. The Court erred in giving the instruction asked for on the part of the Plaintiff.

5. Because the Court permitted (contrary to the objection of Defendants' Atty) the Pliffs Atty to remark upon and argue to the Jury regarding the effect filed with Defendants plea. The Defendant not having offered any evidence under either.

The Court overruled the Motion and rendered Judgment on the Verdict, to the overruling of which Motion and rendering the said Judgment the Deft then and there accepted, whereupon the Defendant prayed the Court to sign and seal this Bill of Exceptions which is done in open Court.

John W. Wilson. (Seal)

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk
of the Cook County Court of Common Pleas within
and for the County and State aforesaid do hereby
Certify that the foregoing is a full true and
Correct Transcript of the Original papers and
also of the Orders and proceedings entered of Record in
Said Court and now on file in my office in the
Case of Stevens E. Miller vs. Henry Miller.

In Testimony Whereof I hereunto
Subscribe my Name and affix the
Seal of said Court at the City of
Chicago in said County this 4th day
of June A.D. 1855.

Walter Kimball, Clerk

Henry Miller

vs

Alonza C. Miller

In the Supreme Court of the State of Illinois
Third Grand Division Of the
Term of June A.D. 1855.

And now comes the said appellant by his attorneys
and says that in the record of the proceedings and
in the rendition of the judgments aforesaid
manifest error hath intervened to his prejudice
in this, to wit,

1. The said Cook County Court of Common Pleas
erred in permitting the counsel of the said appellee
upon the trial before the jury aforesaid to read and
comment upon the bill of particulars annexed to
the plea of the said appellant.

2. The said Court erred in the instruction asked
by the said appellee.

3. The said Court erred in refusing the instruction
of the said appellant numbered 3.

4. The said Court erred in overruling the
said appellant's motion for a new trial.

5. The said Court erred in rendering judgments
for the said appellee, when by the laws of
the land said judgments ought to have been
rendered for the said appellant.

And thus the said appellant is ready to verify
&c. Wherefore he prays judgment &c.

Blackwell, Ballingall & Woodward
attys for appellant.

And the said defendant in error comes away then an no such
error in the proceedings or records as a Court supposed
or she prays the said judgment may be affirmed

Wm. Goodrich

for said in error

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Alma C. M.

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Transcript

1855

Filed Monday June
13. 1855.

Leland Clark

Court Tax

12227

Filed Monday June
13. 1855.