

No. **12257**

Supreme Court of Illinois

Porter.

vs.

Boardman, et al.

Book Co Circuit Court

73.

W. H. Boardman et al

vs

Samuel S Porter

"

Transcript

Filed May 26, 1856.

S. Seland Clerk

State of Illinois,
County of Cook } ss

Pleas before the Honorable George
Mauierre Judge of the Seventh Judicial Circuit of
the State of Illinois and presiding Judge of the
Circuit Court of Cook County in Said Circuit at
a vacation term thereof begun and held at the
Court House in Chicago in Said County on the
fourth Monday (being the Twenty fourth day) of
March in the Year of our Lord one thousand eight
hundred and fifty six and of the Independence
of the United States the Eightieth
Present

His Honor George Mauierre Judge of 7th Judicial ^{Circuit}

Daniel McShoy States Attorney

James S Beach Coroner & officer acting Sheriff

Attest

Lucas S Hoard Clerk

Be it remembered that
heretofore to wit on the Thirtieth day of January
A.D. 1856 there was filed in the office of the Clerk
of the Circuit Court of Cook County in the State of
Illinois a certain Bond (security for costs) which
is in the words and figures following to wit
In the Cook Circuit Court

William W Boardman &

Malcolm D Boardman

vs

Samuel S Porter

I do hereby enter into
myself security for costs in this cause and
acknowledge myself bound to pay or cause to be
paid

paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the Laws of this State

Dated this 30th day of January 1856

Farnsworth & Burfess

And afterwards to wit on the Thirtieth day of January AD 1856 Was issued out of the office of the said Clerk the Peoples writ of Summons ^{directed to the Sheriff of Sagwell Co} clothed in the words and figures following that is to say

State of Illinois,

County of Cook } ss The People of the State of Illinois
to the Sheriff of Sagwell county

Greeting:

We command you that you Summons Samuel S Porter 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 William H Boardman & Malcom^d Boardman in a plea of trespass on the case on promises to the damage of the said plaintiffs as is said in the sum of twenty five hundred Dollars

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

Witness Louis D Hoard Clerk of our said Court and the Seal thereof at Chicago aforesaid this thirtieth day



of January A D 1856

L D Hoard Clerk

On the back of which said writ of Summons appears an endorsement in the words and figures following to wit:

Served by reading to the within named Samuel S Porter the 27th day of February 1856 Return \$1.00

Thos C Newes Sheriff

Jaywell County Ill

And afterwards to wit: on the 14th day of March A D 1856 there was filed in the office of the Clerk aforesaid a certain Declaration which is in the words and figures following to wit:

In the Circuit Court of Cook
County of March Term
A D 1856

State of Illinois 2

County of Cook 3 ss

William H Boardman and
Malcolm D Boardman plaintiffs in this suit
by Farnsworth & Burgess their Attorneys complain
of Samuel S Porter defendant who was summoned
&c of a plea of trespass on the case upon promises

For that whereas heretofore to
wit on the first day of May in the year of our Lord
one thousand eight hundred and fifty five at
Chicago in said County the said plaintiffs at
the special instance and request of the said defend-
ant bargained with the said defendant to buy
of the said defendant and the said defendant
then and there sold to the said plaintiffs a large
quantity of Wheat to wit: five thousand Bushels
of wheat at the rate & or price of one dollar & forty

five cents for each and every Bushel thereof ^{to be} delivered by the said defendant to the said plaintiffs on the fifteenth day of August one thousand eight hundred and fifty five in Chicago free on board vessel and to be paid for by the said plaintiffs to the said defendant on delivery thereof as aforesaid and in consideration thereof and that the said plaintiffs at the like special instance and request of the said defendant had then and there undertaken & faithfully promised the said defendant to accept and receive the said goods and to pay him for the same at the rate or price aforesaid & the said defendant undertook & then and there promised the said plaintiffs to deliver the said goods to the said plaintiffs as aforesaid —

And although the said term for the delivery of said goods hath long since elapsed another said plaintiffs have always been ready & willing to accept & receive the said goods and to pay for the same at the rate or price aforesaid to wit; at Chicago aforesaid wherof the said defendant always hath had notice yet the said defendant not regarding his said promise did not nor would within the time aforesaid or at any time afterwards deliver said goods or any part thereof for the said plaintiffs at Chicago aforesaid or else where free on board vessel or otherwise however but wholly neglected and refused so to do whereby the said plaintiffs have lost & been deprived of divers great gains & profits which might and otherwise would have accrued to them from the delivery of said goods to said plaintiffs as aforesaid to wit; at Chicago aforesaid by reselling said goods at much higher and

2 Count

5

advanced prices and otherwise

And also for that whereas heretofore to wit on the first day of May A.D. 1855 at Chicago in said County the said plaintiffs at the special instance & request of the said defendant bargained for & agreed to buy of the said defendant certain goods to wit five thousand bushels of wheat upon the following terms that is to say such wheat to be merchantable and to be delivered for the said plaintiffs on or before the 15th day of August there next free of expense to him on board some vessel in the City of Chicago aforesaid and that the said plaintiffs should pay the said defendant for the said wheat at and after the rate of *one dollar* & forty five cents for each and ^{every} bushel thereof when delivered as aforesaid and thereupon in consideration of the premises and also in consideration that the said plaintiffs had there and there at the like special instance & request of the said defendant undertaken & faithfully promised the said defendant to accept a delivery on board of vessel in the City of Chicago of the said goods and to pay the said defendant for the same at the rate in that behalf aforesaid upon such delivery the said defendant on the day & year & at the place last aforesaid undertook & there and there faithfully promised the said plaintiffs that he the said defendant ^{would} on or upon the fifteenth day of August there next following procure to be delivered to the said plaintiffs in manner aforesaid the said goods, and although the time for the delivery of said goods as aforesaid hath long since elapsed, and the said plaintiffs were always during that time and until the commence

6 - ment of this suit ready & willing to have
accepted of a delivery of such goods as aforesaid
and to have paid the said defendant for the
same at the rate aforesaid to wit at Chicago
aforesaid whereof the said defendant then and
there had notice yet the said defendant not
regarding his said promise and undertaking
did not nor would although often requested
so to do on or before said 15th day of August A.D. 1855
or at any time since procure to be delivered
to the said plaintiffs in manner aforesaid or
otherwise the said goods but on the contrary
thereof hath hitherto wholly refused so to do
by reason & in consequence whereof the said
plaintiffs have been deprived of great gains
& profits which they might & otherwise would
have acquired to themselves by reselling the
said goods at much higher and advanced
prices to wit at Chicago aforesaid - and the
said plaintiffs aver that the contracts upon
which this suit is brought were specifically
made payable in the City of Chicago in the
said County of Cook -

To the damage of the plain-
-tiffs of twenty five hundred Dollars hence this
suit &c.

Furnessworth & Burgess
for plff

Samuel S. Potter

To Boardman & Boardman
To damages for breach of
Wheat Contract \$ 2500
Copy of &c Declared on
F & Burgess

And afterwards to wit: on the 24th day of March A D 1856 there was filed in the office of the Clerk aforesaid a certain Plea which is in the words and figures following that is to say

State of Illinois } In the Cook Circuit Court
Cook County } to the March Term A D 1856

Samuel S Porter

vs

William H Boardman

et al

And the said Samuel S Porter in his own proper person comes and defends the wrong and injury when he and says that this Court ought not to take nor will ^{the} cognizance of the plea of the said plaintiffs because he says that long before and at the time of issuing the said writ of the said plaintiffs he the said Samuel S Porter was and from thence hitherto hath been and still is a resident of the County of Tazewell and State of Illinois and not a resident of the County of Cook and State of Illinois and the said Samuel S Porter further saith that the said writ of the said plaintiffs was issued to the Sheriff of Tazewell County and State of Illinois and served upon said Samuel S Porter in said County and Samuel S Porter further saith that long before and at the time of issuing the said writ of the said plaintiffs they the said plaintiffs were and from thence hitherto have been and still are residents of the State of New York and not residents of County of Cook and State of Illinois and

Said Samuel S Porter further saith that the said supposed Contract upon which the said plaintiffs issued their said writ and brought their said suit was not specifically made payable in the said County of Cook and State of Illinois all of which the said Samuel S Porter is ready to verify whereupon he prays Judgment of the said Court if the said Court will or ought to take cognizance of the said plea against him the said Defendant &c

Samuel S Porter

State of Illinois?

Cook County 3rd Samuel S Porter the above named defendant in the above named cause maketh oath and saith that the foregoing plea is true in substance and fact
Subscribed & sworn to

Samuel S Porter

before me this 24th March 1856

L D Hoard Clk

And afterwards to wit: on the Tenth day of April A D 1855 there was filed in the office of the Clerk aforesaid a certain Replication which is in the words and figures following to wit:

In the Cook Circuit Court
William H Boardman?
et al

vs

Samuel S Porter }

And now comes the said plaintiffs by their attorneys Farnsworth and Burgess & say that the Court here ought to take further cognizance of & sustain their action aforesaid against the said defendant because

9 the said plaintiffs say that the said contracts upon which they issued their writ aforesaid, & brought this suit and counted upon in their said declaration were & each of them was specifically made payable in said County of Cook and within the Jurisdiction of this Court now here to wit at Chicago in said County and this they pray may be inquired of by the Country.

Farnsworth & Burgess
And the Defendant doth the like &c &c

And afterwards to wit on the 24th day of April A D 1856 it being one of the days of the April Special Term of said Court the following among other proceedings were had and entered of record in said Court to wit

William A Boardman }
& Malcolm Boardman }
vs }
Samuel S Porter }

On motion of Farnsworth & Burgess plaintiffs attorneys It is ordered that the plaintiffs have leave to file an amended declaration in this cause

And afterwards to wit on the 9th day of May A D 1856 it being one of the days May Term of said Court the following among other proceedings were had and entered of record to wit

William A Boardman }
& Malcolm S Boardman }
vs }
Samuel S Porter }

And now at this day come the said parties by their respective attorneys

and issue being joined in this cause it is submitted to the Court for trial without the intervention of a jury by agreement and the Court having heard the testimony adduced as well on the part of the plaintiffs as of the said defendant and arguments of counsel and being now fully advised in the premises finds the issue for the plaintiffs and assesses their damages at the sum of one thousand Dollars

Thereupon the said defendant enters his motion for a new trial of this cause and the Court being now fully advised on said defendants motion for a new trial overrules the same to which ruling of the Court the said defendant by his attorneys excepts

Therefore it is considered that the said plaintiffs do have and recover of and from the said defendant their damages of one thousand dollars in form aforesaid assessed together with their costs and charges by them in this behalf expended and have execution therefor

And afterwards to wit: on the 21st day of May A.D. 1856 there was filed in the office of the Clerk aforesaid a certain Bill of exceptions which is in the words and figures following to wit-

Samuel S. Porter

ats

William H. Boardman

Malcom D. Boardman

} In the Circuit Court
} of Cook County of the
} May Term A.D. 1856

Be it remembered that on the trial of this cause which was submitted to the Court by consent of all parties on the issue joined on the plea in abatement filed by the defendant the following evidence^{was} introduced on the part of the plaintiffs to sustain their issue by them joined upon said plea. Rufus S. King being sworn said my place of business is Chicago that as the agent of the plaintiffs he made a contract for the plaintiffs with the defendant for five thousand bushels of white winter wheat to be delivered in Chicago Ill on board a vessel free of charge on the 15th day of August 1855 at one dollar and forty five cents per Bushel to be good merchantable wheat and to be paid for on delivery I was on the day above named in Chicago ready to receive and pay for the same and gave notice to that effect to Porters agent here and in consequence of its non delivery I bought and paid for other wheat of other parties The wheat contracted for was not delivered at any time The quality of the wheat above named was on the 15th day of August 1855 worth in Chicago one dollar sixty five cents per Bushel delivered on board a vessel free of charge

12

that was the market price at that time I was in the produce business at the time and acquainted with the market price It was admitted on the part of the plaintiffs the plaintiffs resided in the State of New York and that the defendant resided in Tazewell County Illinois The foregoing was all the evidence given upon the trial of said issue whereupon the Court found the issue upon said plea in abatement for the plaintiffs and assessed their damages at one thousand Dollars To all of which the Defendant at the time excepted and now prays that this bill of exceptions may be signed and sealed by the Court which is accordingly done

George Manierre *(Real)*
Judge of 4th Judicial
Circuit Ill

And heretofore to wit on the 13th day of May A D 1856 there was filed with the papers in this cause in the office of the Clerk afore-said a certain Stipulation which is in the words and figures following to wit

In the Supreme Court of the State of Illinois
for the 3rd Grand Division
Samuel S. Porter
vs }
William A Boardman } heretofore to Cook Circuit
v Malcolm Boardman } Court from Judge of May
Term A D 1856
between said Parties

It is Stipulated that this cause be entered on the Docket of the Supreme Court for hearing at the next June Term thereof the Defts. entering their appearance & waiving

issuing & Service of Sci Fa That no execution issue
on the judgment rendered below unless upon
motion to the Court either Circuit or Supreme
on affidavit filed when the said Samuel S
Porter may stay the same by filing bond
with security & usual condition of appeal bond.

May 13th 1856

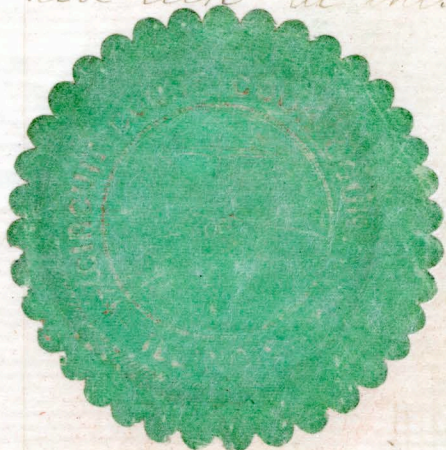
Clements & Roberts
for Samuel S Porter

Jarusworth & Burgess
for Defts

State of Illinois

Cook County } ss

I Louis D Board Clerk of
the Circuit Court in and for
said County Do hereby certify that the forego-
ing contains a full true and perfect Transcript
of all the proceedings and papers filed in my
office in a certain suit wherein William A Bo-
ardman & Malcolm D Boardman are plaintiffs
and Samuel S. Porter is defendant And I
further certify that the amendments to the
declarative in said cause are written in
red ink in this Transcript



In witness whereof I have
herewith set my hand and
affixed the seal of said Court
at Chicago in the County



aforesaid this 22nd day of
May A.D. 1856

L. D. Howard
Clerk

State of Illinois } per term October
Supreme Court } 1856

Samuel S. Porter

vs.

William H. Boardman et al.

} In Error

And now comes the said Samuel
S. Porter the plaintiff in error in
the above cause by James Roberts his attorney
and says that in the record and proceedings
aforesaid there is manifest error in
this to wit;

1st the Court erred in ~~rendering~~
finding the issue on the plea in
abatement for the plaintiffs ^{judgment} ~~plea~~
and in ~~rendering~~ ^{judgment} upon said find-
ing.

2^d the Court erred in finding the
issue upon said ^{plea in} ~~abatement~~ for the plain-

deeds below and ⁱⁿ rendering judgment
thereon for said plaintiffs, and in
not finding the issue on said plea
and rendering judgment thereon

for the defendant below. wherefore for
the errors of record and other manifest
errors in said record and proceedings
apparent, the ^{YA said} Samuel S. Porter prays
that the said judgment may be
reversed and the said Porter restored
to all things which has lost thereby.

Samuel Roberts
Attorney for plaintiff in Error

And the said Defendant come and
say that in the said record & proceedings
there is not error in manner & form
as above stated,

Samuel S. Porter
Atty

Samuel S. Porter

vs.

Wm. H. Boardman et al.

In the Supreme
Court of the
Territory of Idaho, 1876

1st The only question in this case is whether this contract, within the meaning of the practice act of 1845, was specifically made payable in Chicago.

1st It is contended that the statute means by the "terms specifically made payable", that the parties shall specify the place where the money which is sued for shall be paid. That the parties must expressly agree, by the terms of the contract, that the payment shall be at some place specified in the contract, and that the suit must be brought for the money thus agreed to be paid.

That in order to sue a defendant out of the county where he resides, and out of the county where the plaintiff resides, the defendant must agree to go to the county where the suit is brought, to pay the money for which he is sued.

That merely agreeing to perform ~~a contract~~ a contract in a certain county, does not thereby make that contract specifically payable in that county, but that thereby a cause of action accrues to the plaintiff in that county, upon which he can sue if he resides in that county but not otherwise.

The Statute makes a distinction between cases when the contract is "specifically made payable" and when the cause of action accrues in the county of the plaintiff.

In the one case the parties must agree that the money for which the defendant is sued shall be agreed to be paid in the county where the suit is brought. In the other case it only requires a breach of an agreement to perform some act in the county of the plaintiff. The cause of action cannot accrue in the county of the plaintiff, unless the defendant agrees to perform some act there and fails to do it.

Such is this case precisely. The cause accrued in the county where the suit was brought, but was not specifically made payable there.

2^d. Even the contract of the Boardman's to pay for the grain, was not specifically payable in Chicago - it was to be paid for upon delivery - that is the day of delivery - specifying the time - namely ~~the~~ the day of delivery but not the place: then according to the common law, which is not altered by the Statute, the money was payable where the creditor Porter resided. *Smith vs. Smith*, 25 Wend. Rep. 405.

3^d. Moreover this suit was brought upon an implied contract, that if

Porter did not outline the intent in
Chicago, he would pay Broadman's
damages whatever damages Broadman's
might sustain, by reason of such
failure, and under the terms of this
contract, Porter agreed to pay such
damage in Chicago this suit could
not be sustained, for otherwise there
is no agreement to pay that contract (the
contract and upon) in the county in
which the suit is brought.

The statute must mean that the
contract upon which the suit is brought
shall be made specifically payable,
where the suit is brought. Then under
this implied contract (the damages was
specifically payable in Chicago this
suit cannot be sustained, and
our bill contains that the damages
were by Porter, agreed to be paid in
Chicago

James Roberts
Attorney for plaintiff in error

Roberts.

1 Iowa 96
25 Mend 405
20 Maine 275

Farmers & Th

Samuel S. Porter
vs.
W. H. Boardman et al.

points & authorities

Filed June 12, 1856.
S. Leland
Clerk

73

Samuel S. Porter
vs
William H. Boardman ^{Ad}

12257

1856

///