

12196

No. _____

Supreme Court of Illinois

Bourlier

vs.

Hoyt, et al

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 said Cook County Court of
Common Pleas begun and held at the Court House in
the City of Chicago in said County and State on the first
Monday being the fifth day of February in the year
of our Lord one thousand eight hundred and fifty
five, and of the Independence of the United States the
Seventy ninth.

Present the Honorable John M. Wilson Judge
Daniel M. Hroy. Prosecuting Attorney
James. Audus. Sheriff
Attest. Walter Kimball Clerk

Be it Remembered that heretofore to wit on the
twenty first day of December in the year of our Lord
one thousand eight hundred and fifty four there was
filed in the office of the Clerk of said Cook County
Court of Common Pleas an Affidavit which affida-
-vit is in words and figures as follows to wit

State of Illinois }
Cook County S. S. } Heron T. Heape being duly
sworn deposes and says that he is agent for Stephen
Hoyt & George Freden who are copartners and doing
business at St. Louis in the State of Missouri under
the firm name of Stephen Hoyt & Co. and that Pierre
Bourlier is justly indebted unto the said Stephen Hoyt

and George Gordon Green in the full sum of Seven hundred and thirty nine dollars & twenty Cents for goods wares & Merchandise heretofore and at divers times from the 30th day of September A.D. 1854 to the 27th day of November A.D. 1854 that said goods wares and Merchandise were sold and delivered to the said Pierre Bourlier by the said Stephen Hoyt & Co. at the special instance and request of the said Pierre Bourlier & that the said Pierre Bourlier is now justly indebted to the said Stephen Hoyt & Co. in the full sum of seven hundred & thirty nine dollars & twenty Cents & that the same is now wholly due & unpaid deponent further says that the said Pierre Bourlier is not a resident of the State of Illinois but has as deponent is informed and believes property in this State liable to Attachment deponent therefore prays that a writ of Attachment may issue against the estate of the said Pierre Bourlier at the suit of the said Stephen Hoyt & George Gordon Green in pursuance of the Statute in such case

Subscribed & Sworn to before Heron T Hesse

me this 21st day of December 1854

Walter Kimball Clerk Cook

County Court Court Pleas

And afterwards to wit on the twenty sixth day of January in the year eighteen hundred and fifty five there was filed in the Clerk's office aforesaid by said plaintiffs their declaration in said cause which declaration is in words and figures as follows to wit.

Cook County Court of Common Pleas

February Term Anno Domini 1855

State of Illinois

Cook County ss

Stephen Hoyt and George G Green Co

-partners and doing business under the name and style of
Stephen Hayte & Co. Plaintiffs in this suit by Hayne & Miller
their Attorneys complain of Pierre Boublier Defendant
who has ~~been~~ summoned &c. in a plea of Trespass on the Case
on promises: For that whereas the said defendant hereto-
fore to wit on the twentieth day of December in the year of Our
Lord One thousand eight hundred and fifty four to wit at
Chicago in said County of Cook became and was indebted
unto the Plaintiffs in a large sum of money to wit the sum
of Two Thousand Dollars for goods, wares and Merchandize
before that time sold and delivered by said Plaintiffs to said
Defendant at his said Defendant's special instance and
request: and being so indebted said Defendant in consideration
thereof then and there undertook and promised to pay said Plai-
ntiffs the said sum of money when thereunto afterwards requested
and also whereas the said defendant afterwards to wit on the
day & year aforesaid at the County of Cook aforesaid accounted
with the said Plaintiffs of and concerning divers other sums
of money from the said defendant to the said Plaintiffs before
that time due and owing & then in arrear & unpaid and upon
such accounting the said defendant was then and there found
to be indebted to the said Plaintiffs in the further sum of Two
thousand dollars and being so indebted the said defendant
undertook & then & there promised the said Plaintiffs to pay them
the said last mentioned sum of money when thereunto afterwards
requested Yet the said defendant not regarding his said
promises & undertakings but contriving &c, although often
requested so to do, has not paid said Plaintiffs the said
sum of money above mentioned, or any part thereof, but so
to do, has hitherto wholly neglected & refused, and still does
neglect & refuse, to the damage of the said Plaintiffs of Two
thousand dollars, and therefore they bring this suit &c

Hayne & Miller

Attorneys for Plaintiffs

And thereafter to wit on the twelfth day of February A. D. eighteen hundred and fifty five the said Defendant by Harnsworth & Burgess his Attorneys filed in the Office of the Clerk of said Court his Pleas & Affidavit of Merits in said cause in words and figures as follows, to wit.

Pierre Bourlier

vs

Stephen Hoyt &

George L. Green

Cook County Court of Com. Pleas.

February Term A. D. 1855.

} And the said defendant Pierre Bourlier by Harnsworth & Burgess his Attys comes & defends the wrong & injury when &c and says that he did not undertake & promise in manner & form as the said Plaintiffs have in the said declaration alleged against him & of this he puts himself upon the Country &c

And for a further plea in this behalf the said Defendant says action non &c because he says that after the making of the said several supposed promises and undertakings in the said declaration mentioned, and before the commencement of this suit to wit on the first day of December A. D. 1854 at St. Louis to wit at Cook County aforesaid, he the said defendant made & delivered to the said defendt Plaintiff his the said defendants Bill of Exchange directed to one Emile Bourlier at Chicago, and in favor of the said Plaintiffs and payable days after the date, for the sum of And the said Plaintiffs then & there accepted and received the same of and from the said defendant in full satisfaction and discharge of the said several promises & undertakings in the said declaration mentioned, and of all damages and sums of money thereupon due and owing, or accrued.

And this the said defendant is ready to verify &c

Harnsworth & Burgess

Attorneys for Deft.

Pierre Bourlier

vs

Hoyt & Green

State of Illinois

Cook County S.S.

Cook Com: Pleas.

Feb 1. A. D. 1855.

J. H. Farnsworth being sworn on Oath
deposes & says that he is Attorney for the said Defendant
Pierre Bourlier, and that he believes the said Defendant
has a good defence upon the merits, in said cause.

Sworn to & subscribed before me

this 12th day of February A. D. 1855

J. H. Farnsworth.

D. C. Beattie J.P.

And thereafter to wit on the first day of March in the
year last aforesaid the said Plaintiffs by their said Attorneys
filed in the Office of the Clerk of said Court their replication
& demurrer in said cause in words & figures as follows to wit.

Cook County Court of Common Pleas.

Stephen Hoyt and

George L. Green

Pierre Bourlier

And the said Plaintiffs as to the plea
of the said defendant by him first above pleaded and
whereof he hath put himself upon the country doth
the filer.

Hopier & Miller

Pliffs Attys.

And the said Plaintiffs as to the plea of the said
defendant by him secondly above pleaded say that the
same & the matters therein contained in manner & form as
the same are above pleaded & set forth are not sufficient in
law to bar or preclude them the said Plaintiffs from having

or maintaining their aforesaid action thereof against the said defendant, and that they are not bound by law to answer the same, wherefore the said Plaintiffs pray judgment & their damages for the not performing of the said several promises & undertakings in the said declaration mentioned to be adjudged to them.

Hopm & Miller

Pliffs Attys.

And thereafter to wit on the ninth day of March in the year last aforesaid the said Plaintiffs by their said Attorneys filed in the Office of the Clerk of said Court their replication to said defendant's second plea in said cause, in words and figures as follows, to wit.

Cook County Court of

Common Pleas . . .

Stephen Hoyt et al)

F. Bourlier . . .)

And the said Plaintiffs as to the Plea of the said defendant by him secondly above pleaded hath precluded non because they say that the said defendant did not deliver to the said Plaintiffs the said drafts or bills of exchange in said second plea mentioned in full satisfaction & discharge of the said several promises and undertakings in the said Declaration mentioned in manner & form as the said Defendant hath above in his said plea in that behalf alleged. And this the said Plaintiffs pray may be enquired of by the Country &c.

Hopm & Miller

Pliffs Attys.

And afterwards to wit on the thirty first day of March being one of the days of the February Term of said Court A. D. Eighteen hundred and fifty five, the following proceedings were had in said cause, and entered of Record in said Court, to wit

Stephen Hoyt and

George L. Green

- v -

Peter Bourlier...

} Attachment.

And now upon this day come the said Plaintiffs by Hoopes & Miller their Attorneys and the said Defendant by Farnsworth & Burgess his Attorneys also come & issue being joined herein this cause is submitted to the Court for Trial, without the intervention of a Jury, and the Court after hearing the proofs, and argument of counsel, being now fully advised in the premises finds the issue for the Plaintiffs and assesses their damages to the sum of Seven hundred and fifty three dollars and eighty cents.

And thereupon said Defendant puts his Motion herein for a New Trial in this cause, which Motion after being heard is overruled by the Court, and the said defendant puts his Exceptions herein to the ruling of the Court, and time is given him to 1st day of May next to file his Bill of Exceptions herein.

Therefore it is considered that the said Plaintiffs do have and recover of the said defendant their damages of seven hundred and fifty three dollars & eighty cents in form aforesaid by the Court here assessed and also their costs by them in this behalf expended and have execution therefor.

And thereafter to wit on the twelfth day of April in the year last aforesaid the said Defendant accordingly filed in the office of the Clerk of said Court his Bill of Exceptions in words & figures as follows, to wit

In the Cook County Court
of Common Pleas.

Stephen Hoyt and
George L. Green

v-

Pierre Bourlier

Attachment

Be it Remembered that on the Trial of this cause the Plaintiff introduced & read in evidence the following paper writing, that is to say,
Cook County Court of Common Pleas
Stephen Hoyt and George L. Green

v-
Pierre Bourlier

It is submitted that the following facts will be sworn to by Plaintiffs Witness Herman J. Hefel and the same are received in evidence in the case.

That the goods in the annexed Bill were purchased from the Plaintiffs by defendant & received by him at the times named in said Bill & for the prices therein named. That they were purchased under an original understanding that all goods purchased of the Plaintiffs by the Defendant were to be paid for on the first day of every month succeeding the purchase. That three or four days prior to the second day of December A. D. 1854 Plaintiffs by their Agent Herman J. Hefel (the witness) called upon the defendant & demanded payment for the amount then due and presented a Bill of items similar to the one annexed, and left the same with Defendant.

that Deft said he was not able to pay them, and proposed to give the Plaintiffs his two several promissory Notes payable each for one half the amount due and to mature one on the seventh day of December A.D. 1854 and the other eight or ten days after. The Agent then upon consulting with the Plaintiffs declined receiving the Notes unless satisfactorily indorsed. Afterwards and on the second of December A.D. 1854 the Plaintiffs Agent again called upon Deft and demanded payment for the Goods. Defendant repeatedly said he could not pay them, Plaintiffs Agent then told him they wanted the amount secured by Goods. Deft said he had sent his Goods all to Chicago, & the only way he could settle the amount was by his drafts on his brother E. Bourlier at Chicago, the Agents instructions not allowing him to take the Drafts. He again consulted the Plaintiffs & received instructions from them to take the Defendants drafts as collateral security. Then the Agent went to Defendant & told him what his instructions were, then the Agent went to Dfts Office & got blanks & filled them & dated them according to Dfts wish. Deft remarking that excluding them that far payment would be made for certain then according to his instructions, the Agent took the drafts and gave the Deft a receipt stating that they were received as Collateral security for payment of Goods bought of Plaintiff then due and also stating the amount of each Draft its date & then signed the same "Stephen Hoyt & Co per Hope". And it is also admitted that the two Bills of Exchange hereto attached are the same which were given by Deft and that the same have remained in the possession of the Plaintiffs ever since. The above evidence is admitted for the purpose of dispensing with the personal attendance of the Witness who resides at St Louis. It is also stipulated that said cause may be tried by the Court at the present term of said Court. Hoynes & Miller Dfts Attys.

Hannoworth & Burgess. Defts Attys.
 State of Illinois
 Cook County S.S.

Herman T. Hefner being duly sworn doth
 depose & say that the statements set forth in the foregoing
 are true so far as he can remember the same and
 according to his best recollection.

Sworn to and subscribed before me this 10th of March A.D. 1855

L. J.

H. H. Adams

Notary Public

St. Louis - 1854.

P. Bourlier

Bought of Stephen Hoyt & Co.

Sep. 30	1 Doz. S. Ale			3.00
	1 " A "			3.00
Oct 19	1 Bbl 25 S. S. Almonds	123. 116	@ 12 1/2	14.64
	1 " Mackerel #3			10.50
20	1 Box Herrings			1.25
23	5 " Pepper Sauce		" 1.25	6.25
	1 Case Sardines 8 1/3 doz. gr.		" 3.35	27.92
	11 do do hoes		" 14.50	18.00
	1 Box Olive Oil gr.			5.50
	1 " do pts.			6.50
	1 " 25 S. Candles	40	" 25	10.25
	2 hf ch. Black Seal	98 24 74	" 40	29.60
	2 " " do	97 24 73	" 40	29.20
	1 " " Imported do	78 14 64	" 45	30.72
	1 " pure United pure Brandy			
		\$4. 80 gts.		
292		do		
	\$22 42 2			
	\$21 43 2			
		86 - 166 gts \$350. - 581 -		
1	" " Sutton Brandy.			

* 114.

43.1.

42.

\$5.50.

231 " "

24 40 drums figs 50 20 " "

12 Boxes Prunes 1.15 13 " 80

25 1 Box Olive Oil pts 6 " 50

1 " do gr 5 " 50

Nov 3 10 Gallons Port Wine \$2.00 20 " 00

1 Box Body Cherries 6 " 00

6 2 hf & 11 gr. Boxes Raisins 7 " 50

4 2 " Boxes Raisins \$2.00 4 " 00

4 gr. do 1. 4 " 00

2 Boxes Herring 1.10 2 " 20

12 20 drums figs @ 50 10 " 00

Carried over \$1107.63

Brought forward \$1107.63

Nov 27 1 Box 21 Almonds 32 @ 20 6 " 65

3 cans Peaches 7.30 1 " 89

1 Box filberts 20 " 12.2 2 " 75

4 gr Boxes Raisins 93 3/4 3 " 75

4 hf do 1.872 4 " 50

1 Can Mustard 6 @ 20 1 " 20

1 Box Raisins 4 " 25

\$1135.62

By

Nov. 16. By Merchants 360 " 00

Dec 2 " do 36 " 42 396 " 42

\$739.20

Dolls 369 ⁷⁰/₁₀₀.

St Louis November 2^d 1854

Ninety days after date pay to the Order of myself Three hundred sixty nine dollars ⁷⁰/₁₀₀ value received and charge the same to the account of your obedt servant

To Emil Boulier

E Boulier

Chicago, Ills.

Indorsed " E. Boulier "

Dolls 369 $\frac{7}{100}$.

St Louis Oct 13, 1854

Ninety days after date pay to the Order of myself
Three hundred sixty nine dollars $\frac{7}{100}$ value received
& charge the same to the account of

To

Your Obedt. Servant

Emil Boulier

P. Boulier

Chicago Ills.

(Endorsed) "P. Boulier"

Which was all the evidence introduced in the cause &
the Plaintiffs thereupon rested their case and the cause
being submitted to the Court upon this evidence the
Court found the issues for the Pls and assessed their
damages at Seven hundred and fifty three dollars
and eighty cents to which decision and finding of the
Court the Defendant then and there excepted which
exceptions were duly noted and the said defendant pro
forma moved for a new Trial and afterwards on the
said Thirty first day of March 1855 during the
February Term 1855 said Motion came on to be heard
and was dismissed by the Court to which decision
the defendant then & there excepted and tendered this
his Bill of Exceptions in the cause to be signed and
sealed by the Judge of the Court and form part of
the Record under the Statute and it is done accordingly
this twelfth day of April 1855 in open Court.

John M. 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 said
County and State Do hereby Certify that the foregoing is
a full true and correct Manuscript of the Original papers
Bill of Exceptions, and also of the Order entered of Record
in said Court now on file in my Office in the case of
Stephen Hoyt and George C. Spear vs Pierre Boulton.
In testimony whereof I have hereunto
subscribed my name and affixed the
Seal of said Court at Chicago
in said County this twenty eighth
day of June A.D. 1855.

Walter Kimball Clerk



Supreme Court - State of Illinois

June Term A. D. 1855.

And now comes the within named Peter Boulton
by his Attorneys Hainsworth & Burges, and assigns
for error in the within Record,

- 1 The Court erred in finding for the said plffs
upon the evidence
- 2 The Court erred in overruling the motion
for a new trial -

Hainsworth & Burges -

And the defendants join in error

Hoyne & Miller

for defects in error.



~~427~~ 39½

Jesse Bantier

Stephen Hoyt and
George Gordon Green

Appraisal

Filed July 19. 1855.
S. Seland CLK.

Appraisal of property of the
Trust for the Poor of the City of New York

39½

Pierre Bourlier

vs

Stephen Hoyt et al

1855

39½

1855

12/96