

12476

No. _____

Supreme Court of Illinois

Cook

vs.

Shipman

71641  7

fol 1.

United States of America
State of Illinois.
County of Cook, ss.

Pleas before the Honorable
John M. Wilson Judge of the Cook County Court of
Common Pleas within & for the County of Cook and State
of Illinois, at a regular term of said Cook County Court
of Common Pleas, begun and holden at the Court House
in the City of Chicago in said County on the first
Monday being the second day of February in the year
of our Lord one thousand eight hundred & fifty seven,
and of the Independence of the United States, the eighty
first.

Present the Hon. John M. Wilson Judge
Daniel M. Abrey Prosecuting Attorney
John L. Wilson Sheriff
Walter Kimball Clerk.

Attest

Be it remembered that hitherto, to wit, on the twenty fourth day of November in the year of our Lord one thousand eight hundred and fifty six Elias Shipman plaintiff by Wilkinson & Mc Gilbra his Attorneys filed in the Office of the Clerk of the Cook County Court of Common Pleas his declaration against Isaac Cook which said declaration is in the words and figures as follows, to wit.

State of Illinois }
Cook County } p.

Elias Shipman }
vs } In the Cook County Court of Common Pleas.
Isaac Cook } at the January Term A.D. 1857.

Isaac Cook was summoned to answer Elias Shipman of a plea that he render to him the sum of one thousand dollars lawful money of the United States, which he owes to and unjustly detains from him, and thereupon the said Elias Shipman by Wilkinson & Mc Gilbra his Attorneys complains

For that whereas the said defendant hitherto, to wit, on the sixth day of February A.D. 1856 by his certain writing obligatory sealed with his seal, and now shown to this Court, the date whereof is a certain day, to wit, the day and year aforesaid stipulated and agreed to pay to the said plaintiff the sum of One thousand dollars lawful money of the United States of America, when the Common Council of the City of Chicago, ^{County} and State

aforesaid should have constructed and passed an order the provisions of which order should authorize or allow the said defendant as owner of Lot three in Block six in the old Town of Chicago aforesaid to excavate (under the direction of the City Superintendent) the earth in front of said lot lying and included between the dock lines to have been established by the said Common Council so as to run parallel or nearly parallel with and at a distance of forty feet south from the South line of said lot, and the centre of the Chicago River to the depth of twelve feet below low water mark. And the said plaintiff avers that on the fourteenth day of February A.D. 1856 the Common Council of the City of Chicago aforesaid passed the following Ordinance, viz:

An Ordinance establishing certain dock lines.

Be it ordained by the Common Council of the City of Chicago; That the dock line from the South line of East Kinzie Street, to the West line of North Franklin Street, in front of Blocks seven, fourteen, fifteen & six, in the Original Town of Chicago be, and the same is established as follows, to wit:

Commencing at a point in the South line of East Kinzie Street One hundred & seventy two feet West of the North West corner of said Block seven; thence in a straight line South Easterly to a point twenty feet West of a point in the West line of Lot five in Block fourteen, which is seventy four feet South of the North West corner of said lot five;

thence South Easterly to the South West corner of lot six in said Block fourteen; thence along the South line (produced) of said Lot six, One hundred & twenty eight and one half feet; thence North Easterly, in a straight line towards a point in the center line of Old North Water Street eighty eight feet West of the West line of North Franklin Street, five hundred & ten & one half feet (more or less) to a point whence a line perpendicular to the last mentioned line, will intersect the North line of Lot three, in said Block fifteen at ten feet East from the North West corner of said lot three in Block fifteen; thence North Westerly at right angles to the last described line, seventy nine feet (more or less) to a point in the West line (produced) of said Lot three, and twelve feet (more or less) North of the North West corner of said Lot three; thence North twenty eight feet (more or less) on said West line of Lot three, produced to the center of East Carroll Street; thence East on the center line of East Carroll and Old North Water Streets to the West line of North Franklin Street, as will more fully appear by reference to the map herewith submitted.

Be it Ordained that so much of any and all previous orders defining dock lines, as conflict or are inconsistent with this Ordinance be and the same are hereby rescinded.

Which said Ordinance establishes the said dock lines so as to run parallel or nearly parallel

with and at a distance of forty feet South from the South line of said Lot three in Block six in the Old Town of Chicago aforesaid as aforesaid owned by the said defendant as aforesaid.

And the said plaintiff further avers that on the twenty eighth day of February A.D. 1856 the Common Council of the City of Chicago aforesaid passed the following order, viz:

Ordered,

That the owners of property fronting upon the Chicago River in Block Six (6) fifteen (15) and fourteen O. T. be and are hereby permitted to do all the excavation in front of their respective premises: Provided it shall be done under the direction of the City Superintendent, and the precise amount reported to this Council properly certified by the said Superintendent, and that the same be done to the depth of 12 feet below low water.

Which said Order authorizes and allows the said defendant as owner of said lot three in Block six in the Old Town of Chicago aforesaid to excavate (under the direction of the City Superintendent) the earth in front of said Lot lying and included between the dock lines so established as aforesaid and the centre of the Chicago River to the depth of twelve feet below low water mark.

Yet the said defendant (although often requested so to do) hath not as yet paid to the said plaintiff

6
the said sum of One thousand dollars above demanded
or any part thereof, but hath hitherto wholly neglected
and refused, and still neglects and refuses so to do,
to the damage of the said plaintiff of five hundred
dollars, and therefore he brings his suit.

Wilkinson & Mc Gilver Plff. Atty.

Copy of Instrument sued on.

For and in consideration of the benefits accruing
to me, and the enhancement in the value of certain
real estate owned by me, arising out of certain services
rendered and to be rendered, and to be rendered by
Elias Shipman of the City of Chicago, to the Committee
on Harbor & Bridges of the Common Council of the said
City of Chicago, in and about the framing and drawing
of sundry Ordinances, Orders and other instruments,
relative to the settling of certain wharfing privileges
and the altering and establishment of dock lines of
the Chicago River &c.

I, Isaac Cook of the City of Chicago
aforesaid, hereby stipulate, promise and agree to well
and truly pay to the said Elias Shipman the sum
of Two thousand dollars with interest at ten per centum
per annum after due, in manner following, to wit,

The sum of One thousand dollars to become due
and payable to the said Elias Shipman when the

said Common Council shall have constructed and
passed an Ordinance which in effect shall change the
location of so much of the dock line (recently established
by said Council as lies in front of the lot of land here-
inafter described; and establish said dock line so that
it will run parallel (or nearly parallel with and at
a distance of forty feet South from the South line of a
lot of land by me owned, and being Lot three (3) in
Block six (6) in the Original Town of Chicago; thereby
giving said lot a water front.

The remaining sum of One thousand dollars to
become due and payable to the said Elias Shipman
when the said Common Council shall have constructed
and passed an Order, the provisions of which Order shall
authorize or allow me, as owner of said Lot three in
Block 6. O. T. to excavate (under the direction of the
City Superintendent) the earth in front of said lot,
lying & included between the dock line (to be established
as herein before mentioned) and the centre of the Chicago
River to the depth of twelve feet below low water mark.

In testimony whereof, I have hereunto set my hand
and seal this 6th day of February A.D. 1856.

(signed) I. Cook S.S.

And afterwards to wit, on the sixth day of January
in the year of our Lord One thousand eight hundred
and fifty seven, the said Isaac Cook, defendant filed
in the Office of the Clerk of said Court his ^{Plea &} Affidavit

of merits in this cause, which ^{Plea and} Affidavit is in the words and figures as follows, to wit:

~~Elias Shipman~~
~~vs~~ } In the Cook County Court of Common
~~Isaac Cook~~ } Pleas.

~~State of Illinois, County of Cook, ss.~~
~~Isaac Cook said defendant being duly~~
~~sworn says that he has a good defence upon the merits~~
~~in this cause as he is advised and verily believes.~~
~~I. Cook.~~

~~Subscribed & sworn to before me~~
~~this sixth day of January A.D. 1857.~~

~~S. S.~~

~~Charles A. Holden Notary Public~~

~~And afterwards, to wit, On the twenty ninth day~~
~~of January in the year last aforesaid, the said Elias~~
~~Shipman plaintiff, by his Attorney aforesaid, filed in~~
~~the Office of the Clerk of said Court his Similitur which~~
~~said Similitur is in the words and figures as follows,~~
~~to wit,~~

~~State of Illinois~~
~~Cook County, ss.~~

~~Elias Shipman~~
~~vs~~ }
~~Isaac Cook~~

In the Cook County Court of
Common Pleas of Chancery Term
1857.

Isaac Cook

acts
Elias Shipman

1 And the said defendant by
his Attorneys Farnsworth Burgess comes & defends the
wrong and injury when &c - and says that the said writing
obligatory in the said Declaration mentioned is not his Deed-
and of this he puts himself upon the Country &c

2 And for a further plea on his behalf he says Actis non.
because ~~that~~ he says that he does not owe and is not
indebted unto the said plaintiff in manner & form as the
said plaintiff hath above ^{thereof} declared against him and of this
he puts himself upon the Country &c.

3 And for a further plea in this behalf he craves oyer
of said writing obligatory and it is read to him as follows -
For and in consideration of the benefits accruing to me and
the enhancement in the value of certain real estate owned by
me arising out of certain services rendered and to be
rendered by Elias Shipman of the City of Chicago to the
Committee on Harbor & Bridges of the Common Council of
said City of Chicago in and about the framing and drawing
of Sunday Ordinances and other instruments relative
to the settling of certain Wharfing privileges and the altering
& establishment of Dock lines of the Chicago River &c. I
Isaac Cook of the City of Chicago aforesaid hereby

stipulate promise and agree to well & truly pay to the said Elias Shipman the sum of Two Thousand dollars with interest at ten per centum per annum after due in manner following to wit: The sum of one thousand dollars to become due and payable to the said Elias Shipman when the said Common Council shall have constructed & passed an ordinance which in effect shall change the location of so much of the Dock line (recently established by said Council as lies in front of the lot of land hereinafter described and established said Dock line so that it will run parallel (or nearly parallel with) and at a distance of forty feet south from the south line of a lot of land by one corner and being Lot three (3) in Block Six (6) in the Original Town of Chicago thereby giving said lot a water front

The remaining sum of one thousand dollars to become due and payable to the said Elias Shipman when the said Common Council shall have constructed and passed an order the provisions of which order shall authorize or allow one as owner of said Lot three in Block 6, C. T. to excavate (under the direction of the City Superintendent) the earth in front of said Lot lying and included between the Dock line (to be established as heretofore mentioned) and the center of the Chicago River to the depth of twelve feet below low water mark

In testimony whereof I have hereunto set my hand and Seal this 6th day of February A.D. 1856.

Signed

J. Cook *[Signature]*

and thereupon he says action because he says that the said is illegal and void in this that at once upon the making of said Bond one Elihu Granger was a member of the Common Council of the City of Chicago to whom with others the subject of certain wharfing privileges and establishing and altering Dock lines of the Chicago River including the privileges & Dock lines appertaining to said lot three in Block six Old Town have been by order of said Common Council referred to act upon and report to said Common Council & said Granger and was then pending before them as such Committee & also was at the same time an Alderman of said City and that to procure the assistance of said Granger in influencing the action of said Committee upon the matters there referred to them or aforesaid more favorable to the interests of said Cook as owner of said lot six than otherwise they would have done and in violation of his duty as an Alderman of said City. It was agreed between said Cook & said Granger that in the event ordinances were passed by said City of the character set forth in said writing obligatory said Cook should pay said Granger the said sum of two thousand dollars - and that said Granger should use his influence ^{both} as a member of said Committee & of said Common Council to procure the passage of ~~said~~ ^{such} ordinances but that to cover up the said agreement and make the same legal upon its face the contract should be made in the name of & between said Cook and said Plaintiff and the said defendant avers that said bond was made & delivered in pursuance of said

12

corrupt agreement to carry the same into effect and there was no other consideration whatever for the making of said contract than that hereinbefore stated and set forth - and that said Plaintiff well knew said promises when he received said bond and that this Suit is brought in the name of said Shipman for the sole use and benefit of said Stranger and not for that of said Shipman and that the defendant is ready to verify wherefore he prays Judgment &c)

Jamesworth & Burgess
for Deft (hook)

Elias Shipman
vs
Isaac Cook.

In the Cook County Court of Common Pleas

State of Illinois, County of Cook, ss.

Isaac Cook said defendant being duly sworn says that he has a good defence upon the merits in this cause as he is advised and verily believes.

I. Cook.

Subscribed & sworn to before me
this sixth day of January AD 1857.

G. S.

Charles N. Holden, Notary Public.

And afterwards on the twenty ninth day of January in the year last aforesaid the said Elias Shipman plaintiff by his Attorney aforesaid filed in the Office of the Clerk of said Court his similites and demurres to defendants plea to which said similites and demurres are in the words and figures as follows to wit.

State of Illinois
Cook County } ss.

Elias Shipman
vs
Isaac Cook

In the Cook County Court of Common Pleas, of the February Term AD 1857

And the said plaintiff as to the pleas of the said defendant by him first and secondly

above pleaded, and whereof he hath put himself upon
the Country, doth the like.

Wilkinson & McGilbra Plffs attys.

State of Illinois, }
Cook County, p. }

Elias Shipman }

vs
Isaac Cook }

In the Cook County Court of Common
Pleas at the February Term AD 1857

And the said plaintiff as to the said plea
of the said defendant by him thirdly above pleaded,
saith that the same and the matters therein contained,
in manner and form as the same are above pleaded
and set forth are insufficient in law to bar or preclude
him the said plaintiff from having or maintaining
his aforesaid action thereof against the said defend-
ant, and that the said plaintiff is not bound by law
to answer the same. And this he the said plaintiff
is ready to verify. Wherefore by reason of the insufficiency
of the said plea in this behalf, the said plaintiff prays
judgment, and his debt aforesaid, together with his
damages by him sustained on occasion of the detention
thereof to be adjudged to him &c.

And the said plaintiff states and shows to the
Court here the following causes of demurrer to the said

third plea, that is to say

1st Because the said defendant by his said third plea has admitted the execution of the Bond or instrument under seal sued on, and is therefore estopped from denying either the consideration thereof or that it was made with the said plaintiff as appears upon its face.

2nd Because the matter which operates as an estoppel; to wit, the execution of said instrument under seal appears on the face of the declaration; and the said defendant is therefore estopped from denying the consideration thereof or that it in fact was made with and run to the said plaintiff as appears upon its face.

3^d Because by the execution of said instrument the said defendant is estopped from pleading any of the facts set forth in said third plea, and is precluded from giving evidence to establish said facts.

And also that the said third plea is in other respects uncertain, informal and insufficient &c.

Wilkinson & McGilbra Plff. Attys.

And afterwards, to wit on the twelfth day of March in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

Elias Shipman
 vs
 Isaac Cook } Debt.

And now comes the said plaintiff by Wilkinson & McGilbra his Attorneys & the defendant by Farnsworth & Burgess his Attorneys also come, and the Court now after hearing the Argument of Counsel on said plaintiffs demurrer to said defendants pleas herein being fully advised in the premises over-rules said demurrer.

And afterwards, to wit, on the twelfth day of March in the year last aforesaid, the said plaintiff by his Attorneys aforesaid, filed with the Clerk of said Court his replication, which said replication is in the words and figures as follows, to wit.

State of Illinois }
 Cook County, } p.

Elias Shipman
 vs
 Isaac Cook } In the Cook County Court of Common
 Pleas of February Term A.D. 1857

And the said plaintiff as to the plea of the said defendant by him thirdly and lastly above pleaded, says procludi now, because he says that the said writing obligatory in the said declaration men-

-tioned was obtained fairly and honestly by the said plaintiff, and not illegally by the said plaintiff and one Elihu Granger or without a good sufficient and valuable consideration or for the use and benefit of the said Elihu Granger, or for an illegal consideration moving either from the said plaintiff or any other person, or that the same was made and delivered in pursuance of any corrupt agreement in manner and form as the said defendant hath in his said third and last plea above pleaded, alleged, and this the said plaintiff prays may be enquired of by the Country

Wilkinson & McGilbra. Plff. Attys.

And on the thirtieth day of March in the year last aforesaid, the said defendant by his Attorneys aforesaid filed with the Clerk of said Court his demurrer, which said demurrer is in the words and figures as follows, to wit,

In the Cook County Court of Common
Pleas of February Term A.D. 1857.

Isaac Cook }
 ads }
Elias Shipman } Debt.

And the said defendant, as to the said replication of said plaintiff to the third plea of this defendant, that the same is insufficient in law and he demurs thereto, and prays judgment &c.

Farnsworth & Burges, for Dft.

And afterwards, to wit, on the seventeenth day of March, in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit

Elias Shipman
vs
Isaac Cook } Debt.

And now again come said parties by their said Attorneys, and the Court after hearing the Argument of Counsel on said Defendants demurrer to said plaintiffs replication to Defendants third plea herein, being now fully advised thereon, sustains said demurrer, And doth order that said plaintiff reply to said plea by tomorrow morning.

And afterwards, to wit, on the eighteenth day of March, in the year last aforesaid, the said plaintiff by his Attorney aforesaid, filed with the Clerk of said Court his replication, which said replication is in the words and figures as follows, to wit,

X
Elias Shipman
vs
Isaac Cook } Cook County Court of Common Pleas
Feb'y T. 1857.

And as to the third plea of said Defendant above pleaded, the said plaintiff says

that said Bond was not made and delivered in
pursuance of said corrupt agreement or any such
corrupt agreement as that named in said plea, or to
carry the same or any such into effect, and that the
said Bond was not made, executed and delivered
in the manner and for the purposes named in said
plea, And that said suit is not brought for the use
and benefit named in said plea.

And this the said plaintiff prays may be enquired
of by the Country.

By his Atty. Wilkinson & McGilora
And defendants doth the like.

By Farnsworth & Burgess.

And afterwards, to wit, on the same day and
year last aforesaid, the following among other procee-
dings were had in said Court, and entered of records,
to wit,

Elias Shipman }
vs } Debt.
Isaac Cook }

And now again come said parties
by their Attorneys aforesaid, and issue being joined
herein, It is ordered that a Jury come, and thereupon
come a Jury of good and lawful men, to wit.

Orson Felt, W. P. White, James Turner, Ira Reynolds,

Ethel Cummings, Christian Oleson, W^m Sawyer, J. A. Barker, N. K. Hamilton, J. Packard, H. A. Shepherd, & Asa Gaines, who being duly elected, tried & sworn well and truly to try the issue joined as aforesaid, after hearing the testimony adduced, argument of counsel & instructions of the Court retire to consider of their verdict, and afterwards come into Court and say we the jury find the issue for the plaintiff, and that the said defendant is owing and indebted to the said plaintiff as charged in his said declaration the sum of One thousand dollars, And we assess said plaintiffs damages by occasion of the detention of his said debt to the sum of One hundred & four dollars and nine cents.

And said defendant thereupon enters his motion herein for a new trial in this cause, which said motion is overruled by the Court and said defendant enters his exceptions herein.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his debt of One thousand dollars And also his damages of One hundred and four dollars and nine cents in form aforesaid by the jury here aforesaid, And also his costs and charges by him about his suit in this behalf expended and have execution therefor.

And thereupon said defendant prays an appeal to the Supreme Court of the State of Illinois which is

allowed on his filing an appeal bond in the sum of Two thousand dollars with security to be approved by the Judge of this Court, said Appeal Bond and bill of Exceptions to be filed in ten days from this day.

And afterwards, to wit, on the twenty fifth day of March in the year last aforesaid, the said Isaac Cook defendant filed with the Clerk of said Court, his appeal Bond, which said Bond is in the words and figures as follows, to wit,

Know all men by these presents, that we Isaac Cook as principal and W^m N Adams as surety are held and firmly bound unto Elias Shipman in the penal sum of Two thousand dollars lawful money of the United States, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally and firmly by these presents,

Witness our hands and seals this 25th day of March A.D. 1857.

The Condition of the above obligation is such that whereas a judgment was rendered in the Cook County Court of Common Pleas on the 24th day of March A.D. 1857 in favor - the said Elias Shipman against the above bounden Isaac Cook for the sum of \$1104.09 besides costs of suit, from which judgment the said Cook has prayed an appeal to the Supreme Court of the

State of Illinois. Now if the said Isaac Cook shall duly prosecute said appeal, and shall pay the said judgment together with all costs, interest and damages in case the said judgment shall be affirmed then this obligation to be void, but not otherwise.

I. Cook

Seal

W^m H. Adams

Seal

Approved

John M. Wilson Judge of the Cook Co. Ct. of C. Pleas

Instructions for Defendant.

1st The Jury are instructed that unless the plaintiff has proved that by the Ordinances of the Common Council of the City of Chicago, the defendant was given a River front to Lot 3 in Block C, and was permitted to excavate in front thereof, according to the conditions of the Bond in evidence they should find for the defendant.

2^d That if the plaintiff has not proved to the Jury that the conditions imposed by the Common Council which were to be performed by parties interested in the dock lines, before said lines should take effect, or the Streets vacated so as to give Water front to defendants lot have been performed, they should find for defendant.

3^d That if the Jury believe from the evidence that the Bond in question was given in fact to secure

Refused

the services of Elisha Granger, and to obtain his favorable action while a member of the Committee on Harbor & Wharfing privileges of the Common Council of Chicago and a member of that body, in getting Ordinances adopted, establish dock lines, &c as stated in defendant's third plea - and that such was really the consideration for the giving of said Bond they should find for the defendant.

Refused

5th That before the plaintiff can recover in this case, he must prove that the Mortgages mentioned in the Ordinance of 14th Feb. 1856, were executed as therein provided for, or that the said payments were paid to the City.

Instructions by the Court.

If the jury believe from the evidence that there was an agreement between the defendant & Elisha Granger, by which the said Granger was to procure the passage of a certain Ordinance & a certain order by the Common Council of the City of Chicago for the benefit of said defendant & others & that said Granger was at the time of such contract & the passage of said Ordinance & order a member of said Common Council & and if the jury believe further that the Bond in suit

24

in this case was given in consideration of the agreement of said Granger to procure the passage of said Ordinances & order, such agreement is illegal & void & the plaintiff cannot recover.

But if on the other hand you are not satisfied that the consideration of said Bond was not the agreement as set forth in the special plea in this case then the plaintiff is entitled to recover upon the issue joined upon such plea & the plaintiff is entitled to recover.

26

forty feet south from a the south line of a lot of land by me owned and being Lot three (3) in Block 64 (6) in the Original Town of Chicago thereby giving said Lot a Water front

The remaining sum of one thousand to become due and payable to the said Elias Shipman when the said Common Council shall have constructed and passed an order the provisions of which order shall authorize or allow me as owner of said Lot three in Block 64 O. T. to excavate (under the direction of the City Superintendent) the earth in front of said Lot lying & included between the dock line (to be established as hereinbefore mentioned) and the center of the Chicago River to the depth of twelve feet below low water mark

In testimony whereof I have hereunto set my hand and Seal this 6th day of February A.D. 1856

(Signed)

J. Levitt

The defendants learned object to said bond being read as evidence but the Court overruled the objection and allowed said bond to be read to the jury to which ruling of the Court the defendants counsel then & there excepted.

The plaintiffs counsel next read to the Jury as evidence the two following ordinances viz -
An Ordinance establishing certain dock lines.

Be it ordained by the Common Council of the City of Chicago - That the dock line from the south

line of East Kinzie Street to the west line of North
Franklin Street in front of Block Seven. Fourteen, fifteen
or Six in the Original Town of Chicago be and the same
is established as follows to wit

Commencing at a point on the south line of
East Kinzie Street one hundred & seventy two feet west
of the North west corner of said block seven. thence in a
straight line south easterly to a point twenty feet west
of a point in the west line of lot five in block fourteen
which is seventy five feet south of the north west corner of
said Lot five. thence south easterly to the south west
corner of lot six in said block fourteen. thence along
the south line (produced) of said lot six one hundred
& twenty eight and one half feet. thence north easterly in
a straight line towards a point in the center line
of Old North Water Street eighty eight feet west of the
west line of North Franklin Street. Two hundred and
ten & one half feet. (more or less) to a point whence a line
perpendicular to the last mentioned line will intersect
the north line of lot three in said block fifteen at ten
feet ^{East} from the north west corner of said lot three in
block fifteen. thence northwesterly at right angles to the
last described line seventy nine feet. (more or less)
to a point in the west line (produced) of said lot
three and twelve feet (more or less) north of the north
west corner of said lot three. thence north twenty eight
feet (more or less) on said west line of lot three
produced to the center of East Carroll Street. thence

28

East on the center line of East Carroll and old North
Water Streets to the west line of North Franklin Street
! as will more fully appear by reference to the map
herewith submitted.

Be it further ordained that so much of any and
all previous orders defining dock lines as conflict or
are inconsistent with this ordinance be and the
same are hereby rescinded— Passed July 14th 1856

And thereafter the plaintiff resteth his case
The defendant then offered and read the following
Ordered
That the owners of property fronting upon the Chicago
River in Block Six (6) Fifteen (15) and Twentieth
P.T. be and are hereby permitted to do all the
excavation in front of their respective premises provided
it shall be done under the direction of the City
Superintendent and the precise amount reported
to this Council properly certified by the said
Superintendent, and that the same be done to the
depth of 12 feet below low water.— Passed July 28th 1856

And thereupon the plaintiff rested his case.
The defendant then offered and read to the Jury the
following ordinance of the City Council of Chicago viz
~~An Ordinance establishing certain dock lines~~
~~Be it ordained by the common Council of the City of~~
~~Chicago — That the dock line from the south line of~~
~~East Kinzie Street to the west line of North Franklin~~
~~Street in front of blocks seven, fourteen, fifteen, & six~~
~~in the Original Town of Chicago, be and the same is~~

Section 1. Be it ordained by the Common Council of the City of Chicago, That so much & such parts of East Water Street as lie in front of blocks seven & fourteen, in the Original Town of Chicago, & so much & such parts of old North Water Street as lie in front of blocks fourteen ~~and~~ fifteen ~~in the~~ in the Original Town of Chicago, and so much & such parts of East Carroll Street as lie in front of ~~blocks fourteen~~ lots two and three, in Block six, in the Original Town of Chicago, and only such parts of said streets as shall be mortgaged to the City of Chicago, as is hereinafter provided or the owners of which, or some other person or persons in their behalf, shall cause to be paid or secured to the said City, in such manner as shall be approved by the Mayor or acting Mayor of said City, the amount ~~Required~~ to be secured to the said City, by mortgage or otherwise, or paid to said City, as hereinafter provided, be and the same are discontinued and vacated

Section 2. Before the vacation or discontinuance (as herein contemplated) of any parts or portions of said streets shall take place, a mortgage of such parts or portions shall be executed to said City, by the respective owners of the various parts or portions of said or town Lots, in said Blocks, which are opposite to, or front on such parts or portions of said

struts as are herein proposed to be vacated, &
 secure the payment of the sums set opposite
 the following lots respectively, or in that propor-
 -tion for any part or portion of a lot fronting
 on said struts, for such sums as are herein
 more specifically hereinafter set forth; said
 mortgages to be drawn in such form & manner
 as shall be approved by the Common
 Council, or the Mayor or acting Mayor, &
 to be deposited with the Clerk of said City,
 within such time from the date hereof
 as shall be determined or agreed by
 the Common Council; and said mort-
 -gages to be so drawn as to contain in
 substance the provisions of the twelfth
 (12) section of the "Proposition for settling
 Wharfing Privileges on South Water Street
 and East Water Street fronts of Paulolph
 Street" passed February 14, 1848, or said
 sums shall be otherwise secured or paid to
 said City in such manner as shall be
 approved by the Mayor, ^{or acting Mayor} of said City to wit:

For lot two (2) in Block six (6) \$2000, for
 lot three (3) in Block six \$4000, for lot three (3)
 in Block fifteen (15) \$1,073; for lot four (4) in
 Block fifteen \$2,072, for lot eight (8) in Block
 fourteen (14) \$2,123, for lot seven (7) in Block
 fourteen \$1,587, for lot six (6) in Block fourteen

established as follows to wit, beginning at a point
in the south line of east Minnie Street one hundred &
seventy two feet west of the north west corner of said
block seven thence in a straight line south easterly to a
point twenty feet west of a point in the west line of
lot five in block fourteen which is seventy four feet south
of the north west corner of said lot six. thence southeasterly
to the south west corner of Lot six in said block fourteen
thence along the south line (production) of said Lot six
one hundred and twenty eight and one half feet thence
north easterly in a straight line towards a point
in the center line of Old north Water Street. eighty eight
feet west of the west line of north Franklin Street five
hundred & ten and one half feet (more or less) to a point
where a point perpendicular to the last mentioned line
will intersect the north line of lot three in said block
fifteen at ten feet east from the north west corner of
said ^{Lot} three in block fifteen. thence north westerly at right
angles to the last described line seventy nine feet
(more or less) to a point in the west line (production)
of said lot three and twelve feet (more or less) north
of the north west corner of said lot three. thence north
twenty eight feet (more or less) on said west line of
Lot three production to the center of East Carroll
Street thence east on the center line of East Carroll
and Old north water Street to the east line of
north Franklin Street, as will more fully appear by
reference to the map herewith submitted

[12476-17]

14/ p 400 & ~~for lot five in Block 10~~

Filed February 14th 1856

[12476-16]

34

~~Be it further ordained that so much of any and all previous orders defining dock lines as conflict or are inconsistent with this ordinance be and the same are hereby rescinded.~~ - ~~Passed July 14th 1856.~~

The defendant next called as a witness Elihu -
- Granger who testified as follows to wit.

That he was acquainted with the parties to this suit, that he was during the winter of 1853, & 1856, an Alderman of the City of Chicago and a member of the Common Council, and was also during said time the chairman of the committee on Harbor and wharfing privileges of said Council - That he reported to said Council the Ordinances which had been read to the Jury, as the chairman of said Committee. The witness further states that the plaintiff was his brother in law being the brother of witness wife. That plaintiff had lived in the City of Chicago since the Fall of 1853, and during that time the plaintiff had with his wife boarded with witness, living in witness's family and that he worked for witness from the time he came to the City until last Spring not steadily but taking care of witness books and doing his writing what he had to do, that it did not require all of his (plaintiff's) time and during that time plaintiff had done some writing for witness sons & did witness collecting. That since last Spring plaintiff had been at work in witness Office in the employ of the City, witness being City Superintendent & plaintiff a Clerk in the Office under him paid by the City. The witness

further stated that he had seen the bond ~~and~~ ^{but had not read it} ~~and~~ ^{that} from his best recollection Cook called him as he was going along the Street and gave him the bond saying "here is that bond" ("or paper") for Shipman and that he took it ^{signed it and saw it was signed} and carried it to plaintiff. That some time before that he had an interview with defendant at the Saloon of "Young America" at which interview he (Witness) and defendant talked about getting the proposed orders mentioned in the bond from the Council. That Cook proposed then to pay witness a sum of money if he would get such Ordinances passed - That the witness told Cook that he could not accept any money for that purpose. Witness further stated that he presumed he mentioned to defendant at that time the name of the plaintiff as a suitable person to assist in getting up the ordinances as it would require considerable labor. That he never saw or knew of plaintiff and defendant being together before the bond was given nor did not know as they were acquainted before that time. The witness further stated that the defendant had given his two Notes for \$500. each for the first \$1000. payment mentioned in the bond and that he (Witness) had those Notes that he gave Shipman credit for them on account - that Shipman owed him some for board and money which he had let him have but he did not know how much nor was there any account rendered against Shipman at the time he took said Notes - That no other person to his

knowledge paid anything for those Ordinances except
 Cook ^{and that by Cook} was apportioned on account of his lot as high
 as any other one in proportion to benefits to be received
 by his lot. An cross examination Witness states
 that he had not any interest in the bonds in question
 nor did he make any bargain in which he was to
 have any interest with Cook whatever. That since the
 time Plaintiff had been living with him he (Witness)
 had let Plaintiff have some \$400. in money to send
 East at one time and Plaintiff also sent one
 Witness for board. but he did not know how much he
 had never paid Shipman anything for his work for him
 that he took the notes of Cook before mentioned
 because Shipman was indebted to him -

The foregoing was all evidence in the case -

7 The defendant thereupon asked the Court to instruct
 the Jury as follows to wit - The Jury are instructed that
 unless the plaintiff has proved that by the ordinances of the
 Common Council of the City of Chicago ~~that~~ the defendant
 was given a river front to lot 3 in Block 6, and was
 permitted to excavate in front thereof according to the
 conditions of the bonds in evidence they should find for the
 defendant. That if the plaintiff has not proved to the jury
 that the ~~considerations~~ conditions imposed by the Common
 Council which were to be performed by parties interested
 in the dock lines before said lines should take effect
 or the Streets vacated so as to give water front to
 defendant's lot have been performed they should find

for defendant. That if the Jury believe from the evidence that the bond in question was given in fact to secure the services of Elisha Granger and to obtain his favorable action while a member of the Committee on Harbor & wharfing privileges of the Common Council of Chicago and a member of that body in getting Ordinances adopted establishing Dock lines &c as stated in defendants third plea, and that such was really the consideration for the giving of said bond they should find for the defendant. That before the plaintiff can recover in this case he must prove that the Mortgages mentioned in the Ordinances of 14th Feb. 1854 were executed as therein provided for or that the said payments were paid to the City & which the Court refused to give and marked the same "Refused" to which ruling of the Court in refusing said instructions & each of them the defendants learned then & there excepted. Thereupon the Jury retired & returned a verdict for the plaintiff of Debt \$1000. Dam. \$104.09 &c &c

Whereupon the defendant by his counsel moved the Court for a new trial - and also that the Judgment be arrested - which motions the Court overruled & rendered Judgment - to which ruling of the Court in overruling said motions and each of them the defendants entered at the time excepted.

And now pray that this his bill of exceptions may be signed which is done.

John M. Wilson

State of Illinois
County of Cook

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 true transcript of all the papers, proceedings and record of said Court as the same are now on file in my Office, in the Case of Elias Shipman Plaintiff against Isaac Cook Defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago this 21st day of April A.D. 1857.

Walter Kimball, Clerk



In the Supreme Court

Isaac Cook

Appellant

vs

Elias Shipman

Appellee

of April Term A.D. 1887

Appeal from the Cook
County Court of Common Pleas

And the said Isaac Cook by his
Attorneys Farnsworth & Burges his Attorneys
comes & says that in the Record judgment
and proceedings aforesaid, there is manifest
and material error appearing of record is
this

1st - That the court allowed the bond to be read
in evidence to the jury -

2^d That the court allowed improper
& insufficient evidence to go to the jury -

3^d That the evidence before the jury was
insufficient for their finding -

4th That the instructions refused by the
court should have been given -

5th That the court should have granted
a motion for a new trial -

6th That the court should have annulled
the judgment

^{that the judgment was for Appellee when it should}
^{have been for Appellant} Wherefore the Appellant prays judg-
ment that the judgment of the court
above be reversed and he restored to all
things that he hath lost &c

Farnsworth & Burges
for App^t

Isaac Cook

vs

Eliza Shipman

} Sup. Court
} Appeal

We do hereby enter ourselves security for
costs in the within cause and above entitled
cause
Francisworth & Bury

161

Supreme Court

Isaac Corie

18

and Shipman

Grant

App. for

Corie Phas

Filed Apr. 25. 1857

L. L. Laid

Clerk

James Smith & Bur

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paid by. Acft. \$17.00

McKimball cl.

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Supreme Court.

ISAAC COOK,
VERSUS APPELLANT,
ELIAS SHIPMAN,
RESPONDENT.

APPEAL FROM COOK COMMON PLEAS.

FARNSWORTH & BURGESS for Appellants.

ABSTRACT.

NARR.

IN THE COOK COUNTY COURT OF COMMON PLEAS,
At the January Term, A. D. 1857.

[fol. 1] Isaac Cook was summoned to answer Elias Shipman of a plea that he render to him the sum of one thousand dollars, lawful money of the United States, which he owes to and unjustly detains from him, and thereupon the said Elias Shipman, by Wilkinson & McGilvra, his attorneys, complains—

[fol. 3] For that, whereas the said defendant heretofore, to wit: on the sixth day of February, A. D. 1856, by his certain writing obligatory, sealed with his seal, and now shown to this court, the date whereof is a certain day, to wit: the day and year aforesaid, stipulated and agreed to pay to the said plaintiff the sum of one thousand dollars lawful money of the United States of America, when the Common Council of the city of Chicago, county and State aforesaid, should have constructed and passed an order, the provisions of which order should authorize the said defendant, as owner of lot three in block six, in the old town of Chicago aforesaid, to excavate (under the direction of the city superintendent) the earth in front of said lot, lying and included between the dock line to have been established by the said Common Council so as to run parallel or nearly parallel with and at a distance of forty feet south from the south line of said line of said lot, and the centre of Chicago river, to the depth of twelve feet below low water mark. And the said plaintiff avers that on the fourteenth day of February, A. D. 1856, the Common Council of the city of Chicago aforesaid passed the following ordinance, viz:

[fol. 4] “An Ordinance establishing certain Dock Lines.—Be it ordained by the Common Council of the city of Chicago: That the dock line from the south line of East Kinzie street to the west line of North Franklin street, in front of blocks seven, fourteen, fifteen and six, in the original town of Chicago, be and the same is established as follows, to wit: Commencing at a point in the south line of East Kinzie street, one hundred and seventy-two feet west of the north-west corner of said block seven; thence in a straight line south-easterly to a point twenty feet west of a point in the west line of lot five in block fourteen, which is seventy-four feet south of the north-west corner of said lot five; thence south-easterly to the south-west corner of lot six in said block fourteen; thence along the south line (produced) of said lot six, one hundred and twenty-eight and one-half feet; thence north-easterly, in a straight line toward a point in the centre line of old North Water street, eighty-eight feet west of the west line of North Franklin street, five hundred and ten and one-half feet, (more or less,) to a point whence a line perpendicular to the last mentioned line will intersect the north line of lot three in said block fifteen at ten feet east from the north-west corner of said lot, three feet in block fifteen; thence north-westerly at right angles to the last described line, seventy-nine feet (more or less) to a point in the west line (produced) of said lot three, and twelve feet (more or less) north of the north-west corner of said lot three; thence north twenty-eight feet (more or less) on said west line of lot three produced to the centre of East Carroll street; thence east on the centre line of East Carroll and old North Water streets to the west line of North Franklin street, as will more fully appear by reference to the map herewith submitted.

“Be it ordained that so much of any and all previous orders defining dock lines as conflict or are inconsistent with this ordinance be and the same are hereby rescinded.”

[fol. 5] Which said ordinance establishes the said dock lines so as to run parallel or nearly parallel with and at a distance of forty feet south from the south line of said lot three in block six in the old town of Chicago aforesaid, as aforesaid owned by the said defendant as aforesaid.

And the said plaintiff further avers that on the twenty-eighth day of February, A. D. 1856, the Common Council of the City of Chicago aforesaid passed the following order, viz:

“Ordered, That the owners of property fronting upon the Chicago river in blocks six (6), fifteen (15) and fourteen, O. T., be and are hereby permitted to do all the excavation in front

of their respective premises: *Provided* it shall be done under the direction of the city superintendent, and the precise amount reported to this Council, properly certified by the said superintendent, and that the same be done to the depth of twelve feet below low water."

Which said order authorizes and allows the said defendant, as owner of said lot three in block six in the old town of Chicago aforesaid, to excavate (under direction of the city superintendent) the earth in front of said lot, lying and included between the dock lines so established as aforesaid and the centre of the Chicago river, to the depth of twelve feet below low water mark.

[fol. 6] Yet the said defendant (although often requested so to do) hath not as yet paid to the said plaintiff the said sum of one thousand dollars above demanded, or any part thereof, but hath hitherto wholly neglected and refused, and still neglects and refuses to do so, to the damage of the said plaintiff of five hundred dollars, and therefore he brings this suit.

WILKINSON & MCGILVRA, Plff's Att'ys.

PLEAS.

[fol. 9] 1st. Non est factum.
2d. Nil Debet.

On these issue to the country.

3d. Sets up illegality in consideration of Bond declared on.

[fol. 18] Replication to 3d plea and issue to the country.

March 18, 1857.

[fol. 20] Jury trial—Verdict for plaintiff, \$1000 debt and \$104 damages. Motion for new trial, overruled and exceptions, and final judgment, appeal allowed, &c. Bond filed, &c.

[fol. 25] BILL OF EXCEPTIONS.

On the trial of the cause, plaintiff offered in evidence the Bond in words and figures following:

For and in consideration of the benefits accruing to me, and the enhancement in the value of certain real estate owned by me, arising out of certain services rendered and to be rendered, and to be rendered by Elias Shipman, of the city of Chicago, to the Committee on Harbor and Bridges of the Common Council of the said city of Chicago, in and about the framing and drawing of sundry Ordinances, Orders, and instruments relative to the settling of certain Wharfing Privileges and the altering and establishment of Dock lines of the Chicago River, &c.

I, Isaac Cook, of the city of Chicago aforesaid, hereby stipulate, promise and agree to well and truly pay to the said Elis Shipman the sum of two thousand dollars, with interest at ten per centum per annum after due in manner following, to wit:

The sum of one thousand dollars to become due and payable to the said Elias Shipman when the said Common Council shall have constructed and passed an Ordinance which in effect shall change the location of so much of the dock line (recently established by said Council) as lies in front of the lot of land hereinafter described, and establish such Dock line so that it will run parallel (or nearly parallel) with and at a distance of forty feet south from the south line of a lot of land by me owned, and being lot three (3) in block six (6) in the original town of Chicago, thereby giving said lot a water front.

The remaining sum of one thousand dollars to become due and payable to the said Elias Shipman, when the said Common Council shall have constructed and passed an Order, the provisions of which order shall authorize or allow me, as owner of said lot three, in block 6, O. T. to excavate (under the direction of the City Superintendent) the earth in front of said lot, lying and included between the Dock line (to be established as herein before mentioned) and the centre of the Chicago River to the depth of twelve feet below low water mark.

In testimony whereof, I have hereunto set my hand and seal this 6th day of February, A. D. 1856.

[Signed,]

I. COOK. [L. S.]

[fol. 26] Defendant objected—overruled; Bond read and exceptions taken.

The plaintiff's counsel then read to the jury the two following Ordinances, (those set out in Narr).

And then rested his case.

The defendant then offered and read to the jury the following Ordinance of the City of Chicago:

SECTION 1. Be it ordained by the Common Council of the City of Chicago, That so much and such parts of East Water street as lie in front of blocks seven and fourteen, in the original town of Chicago, and so much and such parts of old North Water street as lie in front of blocks fourteen, fifteen and six, in the original town of Chicago, and so much and such parts of East Carroll street as lie in front of lots two and three, in block six, in the original town of Chicago, and only such parts of said streets as shall be mortgaged to the city of Chicago, as is hereinafter provided, or the owners of which, or some other person or persons in their behalf, shall cause to be paid or secured to the said city, in such manner as shall be approved by the Mayor, or acting Mayor of said city, the amount required to be secured to the said city, by mortgage or otherwise, or paid to said city as hereinafter provided, be and the same are discontinued and vacated.

[fol. 30]

SECTION 2. Before the creation or discontinuance (as herein contemplated) of any parts or portions of said streets shall take place, a mortgage of such parts or portions shall be executed to said city, by the respective owners of the various parts or portions of land or town lots, in said blocks, which are opposite to, or front on such parts or portions of said streets as are herein proposed to be vacated, to secure the payment of the sums set opposite the following lots respectively, or in that proportion for any part or portion of a lot fronting on said streets, for such sums as are more specifically hereinafter set forth; said mortgages to be drawn in such form and manner as shall be approved by the Common Council, or the Mayor, or acting Mayor, and to be deposited with the Clerk of said city, within such time from the date hereof as shall be determined or required by the Common Council; and said mortgages to be so drawn as to contain in substance the provisions of the twelfth (12) section of the "Proposition for settling wharfing privileges on South Water street and East Water street, North of Randolph street," passed February 14, 1848, or said sums shall be otherwise secured or paid to said city in such manner as shall be approved by the Mayor, or acting Mayor of said city, to wit:

For lot two (2) in block six (6) \$2,000; for lot three (3) in block fifteen (15) \$1,043; for lot four (4) in block fifteen, \$2,072; for lot eight (8) in block fourteen (14) \$2,123; for lot seven (7) in block fourteen, \$1,587; for lot six (6) in block fourteen (14) \$400. Passed February 14, 1856.

[fol. 34]

The defendant then called Elihu Granger, who testified as follows:

He knew parties; was a member of Common Council 1855 and 1856, and Chairman of Committee; denied all knowledge of the transaction for or of the making of the Bond.

[fol. 36]

On cross-examination, said he had no interest in suit.

The foregoing was all the evidence in the case. The defendant thereupon asked the Court to instruct the jury, as follows:

INSTRUCTION 1st. The jury are instructed that unless the plaintiff has proved that by the Ordinances of the Common Council of the city of Chicago, the defendant was given a River front to lot 3 in block 6, and was permitted to excavate in front thereof, according to the conditions of the Bond in evidence, they should find for the defendant.

2d. That if the plaintiff has not proved to the jury that the conditions imposed by the Common Council, which were to be performed by parties interested in the dock lines, before said lines should take effect, or the streets vacated so as to give water front to defendant's lot have been performed, they should find for defendant.

[fol. 37]

3d. That if the jury believe from the evidence that the Bond in question was given in fact to secure the services of Elihu Granger, and to obtain his favorable action while a member of the Committee on Harbor and Wharfing privileges of the Common Council of Chicago, and a member of that body, in getting Ordinances adopted, establish dock lines, &c., as stated in defendant's third plea—and that such was really the consideration for the giving of said Bond, they should find for the defendant.

4th. That before the plaintiff can recover in this case, he must prove that the mortgages mentioned in the Ordinance of 14th Feb., 1856, were executed as therein provided for, or that the said assessments were paid to the city.

Which instructions were refused by the Court and the defendant excepted.

161
Supreme Court

Coon

v s
Shipman

Abstract

Filed May 7th 1857
So. Ireland
Club

[601.31]

At which instructions were returned by the Court and the defendant answered that the said statements were true to the best of his knowledge.

1st. That before the hearing was made in this case, he must have first the mortgage and should first for the defendant's third plea—and that such was really the correspondence for the giving of said plea.

2d. That if the fact before him the evidence that the Board in question was given to have been performed, they should first for defendant.

3d. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

4th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

5th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

6th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

7th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

8th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

9th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

10th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

11th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

12th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

13th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

14th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

15th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

16th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.

17th. That if the hearing was not made in this case, then the conditions imposed by the conditions of the Board in evidence, they should first for the defendant.