

13740

No. _____

Supreme Court of Illinois

Cook

vs.

Shipman

Supreme Court.

ISAAC COOK,
VERSUS APPELLANT,
ELIAS SHIPMAN,
RESPONDENT.

APPEAL FROM COOK COMMON PLEAS.

FARNSWORTH & BURGESS for Appellants.

ABSTRACT.

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

NARR.

[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 where 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, Pl'ff'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

Cook

or
Shipman

Abstracts

18-

Filed May 4th 1887

to Seal and
Clerk

161

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[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:

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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.

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

161
Supreme Court

Cooper
vs
Shipman

Abstract

Filed May 1st 1857
L. S. Clark
Clerk

13740

[101 201]
 The first of these is the right of the citizen to be free from unreasonable searches and seizures. This right is secured by the Fourth Amendment to the Constitution. It is a right of great importance, and one which has been the subject of much litigation. The courts have held that this right extends to all places where a person has a reasonable expectation of privacy. This includes the home, the office, the hotel room, and the automobile. The government may search a person's home or office only if it has a warrant supported by probable cause. It may search a person's automobile only if it has a warrant, or if the search is incident to a lawful arrest. The government may search a person's hotel room only if it has a warrant, or if the search is incident to a lawful arrest. The government may search a person's automobile only if it has a warrant, or if the search is incident to a lawful arrest.

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