

Tofferson County Circuit Court
Case Files - Civil
November 1868, NO. 213

Box

22 Folder 61

Burgess, Thomas, Jr.
vs

Greene, Michael W.

Breach of Contract

Defendant and E. F. Hoppe failed
to operate ferry at Sulphur
Springs for the two years
contracted; \$100 damages

Sulphur Springs April 2/67
Received of Mr. Thos. Burgess Jr.
the sum of One Hundred
dollars to be appropriated
to purchase a Ferry Boat
to belong to "The Sulphur Springs
Ferry Company" and to ply
between the Missouri and
Illinois shore from Sulphur
Springs to a point opposite.
Conditioned. That the
undersigned their assigns
or successors perform
the ordinary duties of a
Ferryman for and during
the term of two years.

\$100.00

C. F. Hoppe
W. W. Greene

This Boat to be a good
substantial Boat
capable of carrying
two Teams

W. W. Green
E. F. Hoppe

This Boat to be used
a horse or Steam Ferry
and provided we do
not fulfill our duties
as a Ferryman for the
Term of two years to
refund this money
to Mr Thos Burgess Jr -

E. F. Hoppe



Thomas Burgess Jr. - Plaintiff } In the Circuit
Against } Court of Jefferson
Michael W. Greene, - Defendant } County Missouri
November Term 1868

The Plaintiff states that on the 3rd day of April 1867, at the special instance and request of Defendant and E. F. Hoppe, the Plaintiff delivered to Defendant and said Hoppe, One hundred dollars, to be appropriated and used by them in the purchase of a Ferry Boat, to belong to the Sulphur Springs Ferry Company, - a Partnership Firm of which the Defendant was then a member. - Said Ferry Boat was to run and ply between the Missouri and Illinois shores across the Mississippi River to a point opposite Sulphur Springs. And Plaintiff states that he delivered said money to Defendant and said Hoppe at their request to assist them in establishing a Ferry across said river at said place, - but with this express condition, that the Defendant and said Hoppe and their successors and assigns should establish as soon as practicable a ferry across said river at said point, and should keep up and continue the same and perform the ordinary duties of a Ferryman across said river at the place aforesaid for and during the term two years. A memorandum of said agreement was made in writing on the 3rd day of April 1867, and signed by Defendant and said Hoppe, and which is herewith filed. And Plaintiff states that Defendant and said

Hoppe afterwards bought a Ferry Boat, and run the same across said river at said point, only a few trips, and then abandoned the enterprise entirely of keeping up a Ferry across said river at the place aforesaid. Plaintiff therefore states that the Defendant has failed and neglected to keep up a Ferry across said river at the place aforesaid for two years, and to perform the ordinary duties of ferryman during said time, as he contracted to do, and has therefore forfeited the conditions on which he received said one hundred dollars, - and that he is therefore liable to refund the same to Plaintiff according to the conditions of said Contract. Plaintiff therefore asks Judgment against Defendant for the sum of one hundred dollars.

Abner Green
} Attorney for Plaintiff

In Circuit Court
Jefferson County

Thomas Bingers, Jr.
vs.
Michael W. Greene

Petition
on Contract

Let summons issue
against
for Plff

Filed Sept 21st 1868,
E. H. Hines Clerk

THE STATE OF MISSOURI, }
COUNTY OF JEFFERSON. } ss.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon *Michael W. Greene*

if he be found in your County, that
he be and appear before the Hon. Judge of our Circuit Court, on the
first day of the next term thereof, to be begun and held at the town of Hillsboro,
within and for the County of Jefferson, on the ~~seventh~~ Monday after the
fourth Monday of September 1868 ~~and~~ then and there to answer unto

Thomas Burgess Jr.

upon *his* original petition, a copy whereof is hereunto annexed and
accompanies this writ, and have you then there this writ.

Witness, ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereunto affixed, at office in Hillsboro, this
Twenty first day of September A.D. 1868,

Elias F. Honey
Clerk Circuit Court.
By *Thos. Horine Deft*

2912
Mo 213

TO

JEFFERSON CIRCUIT COURT.

Nov Term, 1865.

Thomas Burgess Jr.

= vs =

M N Greene

original

John Williams
Sheriff-fee

\$1.00

Oct 21

I executed this writ in Jefferson County Mo, on the
21st day of October 1865 on M N Greene by delivering
to him a true copy of this writ and petition

John Williams
Sheriff

Thomas Burgess Jr. Plaintiff) In the Jefferson
M. W. Greene, Defendant) Circuit Court

Now at this day comes said defendant and for answer to the petition of the Plaintiff heretofore filed in this behalf admits that on or about the 2nd day of April 1867 the Plaintiff delivered to defendant on demand \$1000, one thousand dollars to be appropriated and used for the purchase of a Ferry boat to belong to the Sulphur Springs Ferry Co. which boat was to ply between the Missouri & Illinois shores on the Mississippi river at the point mentioned in said petition but he denies that it was at his special request or instance that said money was delivered to him. He avers that in the Spring of 1867 the Citizens of Sulphur Springs desiring of whom Plaintiff was then one being desirous to establish a ferry across the Mississippi river at Sulphur Springs held out inducements to defendant to embark in the enterprise: that Plaintiff and others advised him to establish said ferry by purchasing a boat to be run by horse power and promised defendant to

donate considerable sums of money to purchase
the same: that by the advice and relying
upon the promises of Plaintiff and others
he & said Kappel did purchase a
ferry boat at a great outlay of money, which
boat was brought to Sulphur Springs, was
run by horse power across the said
river at said point for some two
months but it was soon ascertained
that said boat was utterly unfit for
the purpose of opening a road across
a river and which was in July 1867 or
August 1867 sunk by the violent action
of said river without any fault or
negligence on part of Defendant or
his partner or their employees.

Plaintiff avers positively that he bought
such a boat as was recommended by
Plaintiff and the others who continued
to purchase the same and that
the same was bought at their special
instance & request, it being well known
at the time that it was an enterprise
of very doubtful success and that it
was utterly out of his power to run a ferry
boat across said river for two years
without spending thousands of dollars
yearly, which was not contemplated by

Plaintiff or any one else at the time the
boat was bought. He says that the
said boat was sent by a power over
which he had no control without
any negligence or fault on his part.
He therefore alleges that he has used
all reasonable means to run said boat
for two years but he was prevented from
doing so for the reasons set out above.
He therefore says he is not liable
to pay Plaintiff the said one hundred ^{dollars},
or any part thereof & asks to be discharged
with his costs.

John Thomas
Atty for Defendant.

Thomas Burgess Jr.

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M. H. Greene

Answering Sept.

Filed April 10th 1869

Elias F. Honeycutt

COUNTY OF JEFFERSON,

The State of Missouri,

To *H. W. Parker, James Burgess & Paul McAmer.*

YOU ARE HEREBY COMMANDED, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *18th* *day of June* at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *James Burgess* Plaintiff, and *M. M. Green* Defendant, on the part of *Plaintiff* and herein you are in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said

Court, with the seal thereof hereto affixed, at office

this *25th* day of *Oct* A. D. 186*9*

Clerk.

E. F. Honey

SUBPOENA

To Jefferson Circuit Court.

Thomas Burgess

vs.

Wm Greer

Wm Parker Jas Burgess,

John Madam

for Ref

P & H 27

B at Nov 11

Sheriff

Fees \$1.50

Served within Jefferson on Wm Parker
and John Madam in Jefferson Co Mo on the
27 Oct 1869 by reading it in their presence & hearing
and I did serve the same on Jas Burgess
in Jefferson Co Mo on the 11 Nov 1869
by reading it in his presence and hearing
of such persons
Jas off all at Kansas City
Jas off all at Kansas City

COUNTY OF JEFFERSON,

The State of Missouri,

To, *Wm Moore & Sons*

YOU ARE HEREBY COMMANDED, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *19* day of *March* *1869* at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *James Burgess* Plaintiff, and *Wm Moore* Defendant, on the part of *both* and herein you are in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said

Court, with the seal thereof hereto affixed, at office

this *25* day of *Oct* A. D. 186*9*

Elias F. Honey Clerk.
Ey. S. H. H. H. H. H.

29150

SUBPOENA

To Jefferson Circuit Court.

Burgess

v.

M W Green

for Debt

D. J. Allen

J B Moss &

Wm Burgwold

27

703 N - 27

Sheriff's fee \$1.50

Fees \$1.50

J. J. Thompson Sheriff
By the Clerk of the Court

Served the within Subpoena in Jefferson Co. Mo. on the 27th of Oct. 1869, by reading it in the presence and hearing of J B Moss D of Allen, and Wm Burgwold

COUNTY OF JEFFERSON,

The State of Missouri.

To *Wm Parker, James Burgess*
John Melme

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *3^d day* of *February* *1860* at *Hillsboro*, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *Thomas L. Burgess*

Plaintiff, and

Wm A Green

Defendant, on the part of *Plaintiff* and herein you are in no wise to fail.

WITNESS, Elias F. Honey, Clerk of our said Court, with

the seal thereof hereto affixed, at office, this *14* day of

May *A. D. 1860*

E F Honey

Clerk.

By L. H. Anderson

2912 ~~290~~
July Term 1870

James Burgess
vs
W W Green

for Ref't

H M. Parker - 27
James Burgess - 27
John Wilmer - 27

served the within by meeting the same to the within
named H. M. Parker and James Burgess and
John Wilmer in there hearing and presence
this 27th day of January 1870 at Jefferson County
Mo.

fee \$1.50

Fred Lusk Temager Sheriff
By Fred Wolman
Deputy

COUNTY OF JEFFERSON.

The State of Missouri,

Joel Hager

To William H. Nicolet, St. Hallenman Treasurer

Richardson & Co. v. Richardson, V. C. F. Hager

YOU ARE HEREBY COMMANDED, That setting aside all manner of excuse and delay, you appear

before our Circuit Court for the County aforesaid, on the

third day of February

1870

at Hillsboro, then and there to testify, and the truth to say in a certain

matter of controversy, now pending in our said Court, wherein

Thomas Burgess

Plaintiff, and

M. W. Greene is

Defendant, on the part of

Plt.

and herein you are in no wise to

fail.

Witness, ELIAS F. HONEY, Clerk of our said

Court, with the seal thereof hereto affixed, at office

this 26 day of January A. D. 1870

Elias F. Honey

Clerk.

A. L. Hager

SUBPOENA.

To Jefferson Circuit Court.

Term, 186

Burgess
to
Greene

The within named Parties can not be found in my Census
of Jefferson this 23^d Day of January A D 1890 I
find \$175 also around the same up to our Register & Jefferson & then
I find no more.

Thomas Burgess, Jr. Plaintiff } In the Circuit
vs. } Court of Jef=
M. W. Greene, - Defendant } ferson County,
Mo. Feb. adj. Term 1870,

The Plaintiff for replication to De=
fendants Answer, avers that he promised to
donate said ^{sum} of one hundred dollars, ~~or~~ any
other sum to the said Sulphur Springs Ferry
Company to enable them to purchase a Ferry
Boat, & carry on said enterprise, - and avers
that said Ferry Boat was sunk by defend=
ant without any negligence on his part, and
avers that if it was not, lost by any neg=
ligence on the part of the defense, it is
no defence to Plaintiff's action, - And
Plaintiff avers that whether said Boat
was lost by a power over which he
had no control, it is no defence to
this action. And Plaintiff therefore
prays judgment as in his original
petition

Abner Green
Atty for ~~Defendant~~ Plaintiff

Thos Burgess.
vs
M W Greene,
— " —

Replication
— " —

Filed July 5th 1870
Eftner CK

Thomas Burgess, Jr. - Plaintiff }
vs. }
M. W. Greene, - Defendant }

The Plaintiff asks the Court to
declare of the above Case as follows;

1- If the Court sitting as a jury, finds
from the evidence that the Defendant, Hoppe,
and Waldeman entered into a partnership
in 1867, under the name of the Sulphur Spr=
ings Ferry Compay, for the purpose of estab=
lishing & running a ferry & boat across the
Mississippi River opposite Sulphur
Springs, - and that the Plaintiff advan=
ced one hundred dollars to said Com=
pany to be applied in the purchase of
a ferry boat for said purpose, Con=
ditioned that said Company would
establish and keep up a ferry across
said River at said place for two years,
- and that said Company failed to
perform said Condition by keeping up said
ferry for two years, then the Defendant
~~is~~ is bound to refund said \$100,
and the finding should ^{be} for Plaintiff.

Filed Feb. 5th/870
E. J. Hower
Clk

2 - If the Court believes from the evidence that Hoppe, Waldeman & the Defendant were Copartners in running a Ferry Boat across the Mississippi River opposite Sulphur Springs, and that they received from Plaintiff ^{one} ~~thousand~~ dollars to aid them in buying a Ferry Boat, upon the condition that they should keep up a Ferry at said point two years, and that afterwards they used said Ferry Boat for other purposes besides that of ferrying across the river at such point, ^{that} and the Ferry Boat was lost by deviating from its course as a Ferry Boat and by being used for other ^{than} ~~a~~ ^a Ferry Boat purposes, - and that this happened before the Boat had run two years as a Ferry Boat, then the finding should be for the Plaintiff

Filed Feb. 5th 1870.
C. F. Haven
clerk

Bumpus vs Greene.

If the Court find from the evidence that the Plaintiff understood fully what kind of boat Defendant was to run across the Mississippi river at Sulphur Springs and that Defendant used the money furnished by Plaintiff and others in the purchase of a boat as agreed upon and that it would require an ~~substantial~~ sum of money not at all in the contemplation of the parties to run said boat, then the Defendant should be relieved from the condition of the writing sued on, & the judgment should be for Defendant.

According to the contract sued on Plaintiff is not entitled to recover as for money had and received, but if at all only for breach of the contract for damages. and the Plaintiff having sued for money had and received cannot recover in this action.

Filed Feb. 5th 1870
E. F. Hawley
clerk

Thomas Burger Jr., Plff

v
M. W. Greene, Deft

In the Jefferson Circuit
Court.

- Now at this Comes said Deft
and moves the Court to arrest the Judgment
in this Cause for the following reasons,
1. Because the facts set forth in Plaintiff's
petition does not entitle him to recover
in this action.
 2. Because there being ^{no} agreement to refund
the \$100. received by Defendant under the
Contract sued on, the Plaintiff has no
right to recover the money as for money
had and received, but if entitled to
recover at all he is only entitled to
damages for breach of the Contract.
 3. The Plaintiff has misconceived his action.

Thomas & Pipkin

Attys for Defendant

Burger
v
Greene

Motion in arrest
of judgment

Filed July 5th 1870
E. H. Hines att

Thomas Eugene W. Plaintiff } In the Appellate
M. W. Greene, Defendant } Circuit Court.

Now at this day comes said Defendant and moves the Court to set aside the finding and judgment of the Court in this Cause & grant him a new trial for the following reasons.

1. Because the Court admitted improper evidence offered by Plaintiff
2. Because the Court excluded proper evidence offered by Defendant.
3. Because the Court gave improper instructions asked for by Plaintiff
4. Because the Court refused proper instructions asked for by Defendant
5. Because the finding and judgment should have been for Defendant instead of Plaintiff.

Pepkin Thomas
Atty for Defendant.

Thomas Burgess Jr.

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M. W. Greene

Motion for new
trial.