No. 12620

Supreme Court of Illinois

Parmelee, et al.

VS.

Hambleton, et al.

71641

United State of America. State of Sleniois Ost. Pleas before the Honorable John W. Milson . Judge of the book County Court of Common Pleas . mishin and for the County oflows and State aforesain at a Special Terms of the book County bound aflommen Pleas, begun and held at the Court House in the billy of Chicago in said bounty in pursuance of an order of the findge Thereof, and to public notice given in accordance with the Statute in such case made and provided on the Second Monday being the ninth day of november in the year of our Lord one Thousand Eight hundred and fifty Siven and of the Independence of the Milet Hate the Cighing Second, · Prisent the Honorable Jahn Mr. Wilson Judge Carlo's Haven Presecuting attirucy John I. Wilson Theriff Alter Halter Buriball Click

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De il Remembered, that on the Smelfth day of August A.D. Eighteen Hundred and fifty siven. There was filed in the affice of the Obert of the book bounty Court of Common Theas, a Transcript of Record in the words and figures following to mis United States of America State of Illinois If. Monday book bounty Office 13th 1859. Thear before the Honorable Thorge Maniense Judge of the Sweath Judicial Circuit of the State of Illinois, and presiding Judge of the Circuit Court of book bounty in said State at a treat Term thereof begun and held at the lound House; in the City of Chicago in said bounty on the Second monday be ing the Thirteenth day of april, in the year of our Lord one thousand Eight hundred and fifty seven, and of the Independence of the United State the Eighty first. Tresent Honorable Deorgo Maniem John L. Wilson Sheriff of ear bounty Carlos Haven State allering Allest How Schurch bleck 1

And afterwards, to mis, on the Fifteenth day of april . The same being one of the days of the april trial term of oursais Court among other proceedings, the following Order my had and entered if Record, Jareph M. Hambleton . Franklin Parnieleo. Petro fir Mech Lieut. Sagi + Halter S. Jahuson This day come the said partie by their attorneys, and the bound having heard bounded on the said defendants Demunner . to the said Plaintiffe Petition, herein, and being well advised in the premises sustains the same . with leave to the said plaintiff to arriend: And afterwards, to mit, on the Shird day of guly in the year last aforeraid the same be meg one of the days of the Juni Special Time of our paid binail bound. The fallow in said bourd about had and entered of Record in this cause, to mit Joseph H. Hambleton -Petu for Mechi Giew Daniel Toodman Franklin Parmeler Liberty Rigelow David A. Tago and Walter S. Jahuson (In reading and filing the Petition of the said Defendant verified by affidacit, and on motion of M. M. Mcallisher this attorney it is. Ordered that the venue of this cause be changed from this bourt to the lovak loverty Court of Common Pleas. and that the Clinto Certify under the Seal of this Court, a complete Roard of the proceedings had herein to gether with the papers filed in this course, to the believe of the said book boulty bound aflorment Pleas, and it is further ordered that said defendants hay the costs of said Change of State of Illinois 4 Look County Oss. J. William & Church black of the Chicuit Court of the County of book in the State aforesaid do hereby artify That the above and foregoing is a drue and Complete transcript of all the orders of said lourd made and entered afterno in the

foregoing entitled cause, and I do purther arify that the accompanying papers lettered from A. to It inclusion are all the papers filed in our said bireuit bourt relating to the ifenes in raid Cause, In Witness Mureaf I have hereunto 60 det my hand and affixed the Brate deal of our said besound bound at my office in Chicago this 12th day of August SD. 1859 Man L Church blink And afterwards. to med, on the same day and year last aforesaid, there was filled in the office of the blink of said lovake County Court of Common Pleas a Vetetion, , Trucips, Summon of America - Mayoramore, Which said papers are in the moras and figures as fallows, to mit, State of Illinois South County Is.

Manierne Judge of the bircuit bourt of Look County, The Petition of Jaseph W. X Hambleton and Daniel Toodman respect fully shows unto your Amor. That your Pettiners are masons by trade and and 1/2120-37

partners doing business in the leity of Chica in said Dounty under the name of Hambleton That Franklin Parmeled, Likerty Bigelow. David A. Jugo and Walter S. Johnson on and before the 27th day of may 1856 hugerased and occupied a certain han al of land situate in Chicago aforesaid, and described as follows to mit. Bounded on the horth by Kundolph Street, on the West by State Street. on the South by the brick barn of Frank Parmeles ito, and by the lak lying next South of said barn, and on the East by said barn and by an alley, being about one hundred and houter four ful on State Street by about one sundered and fifty one fut on Randolph Street, which lands mere and are held by their under and by virtue of certain leases before then made by the owners of the above described presuited for a long tirm oficial. Which term well not expire for a mumber of years yes to come, Shat on or about the 12 you day of May, the said Parmeles, Bigelow, Sagean Jahuson by their Company name of Frank Samuelo No." made and entered into a contract in mriting misk your petitioners of which contract! the fallowing is a copy

These articles of agreement, made and lutino into this 27th day of May AD, 1826. between Hambleton Hoodman of the first hart building Contractors of the leity of Chicago, and Frank Parmele No. of the same place of the Decemb part Witnessith, That the said Hambleton Hordenew or Executed administrators and assigns for and in anxio eration of the payment hereintefter to bed made to them by the said IT Parmeled to, or their legal representatives, do on their hand contract and agree to build finish and complite in a careful, Skillful, and workmanlike manner, to the full and Complete Satisfaction of Mm H. Boyington or afectant Superinteis and and by and at the times mentioned in the foregoing specifications, The masons and Stonework of a five story and base ment block of store and office. That is to be exected on the corner of Randolf and State Street, As aforeraid, so as fully to carry out the designs of sair work, as it is set forth in the foregoing specifications. and the plans and drawings therein especially referred to. Said spicefications and pland and drawings being hereby declare hand t parcel of this Centract, And the said Frank Parnelle No. or their Executors administrators or assigns. そに000-利

for and in Consideration of the said Hamble ton and Toodman dost fully and faithfully Executing the aforesaid north, so as to fully carry out the design for the sauce, as set forth by the specifications, and accordingle the true spirit, meaning and willest thereof. and to the full and complete satisfaction of Man W. Boyington or his his assistant laker intendent as aforeraid, and at the lines men tioned in the foregoing apreifications doch hereby agree to pay the said the suin of Twenty Thousand Three Hundred and Sevente four doctars \$ 20.374.00 in the manier following viz. as the mork progresses, the Superintendent is to make out estimates from time to time, of the work and material immrought with the heidding, and whom presentation of a certificate frimes and Superintendent of lighty five per cent on said Estimate, The said trank Tarmeles of, or their legal representatives are to pay the a mount from time to time , and the balance fifteen per cent is to be paid . logither wish wing other balance that may be due to sais Hambleton & Goodman, whom the Completion of the contract as afersaid, provided the said Superintendent Shall certify in mitring that they are entitled thereto? In Witness Whencuf the

parties hereto have set their hands the day and year about mitten (Signed) Hambleton Hoodman Trank Parmeles 16. Shar the Specification mentioned in the said Contract is herete annexed and marked "Schidulo A." and is made a hart of this petition, Excepting however that the words in Daid Specifications Contained under the head of "damages" and relating to un avoidable delays, were added some for days after said 27th day of May, with the cousing and by the directions of the parties to such contract, and for the pupole of making sirch addition a hart of such Contract, And your petitioness buther Show that the premises first above descrileed, and which are herenibefore stated to have been possessed and occupied by the said Tarnelee Bigelow. Tage & Johnson are the same premises referred to in the said Contract and specification and are the same landis and premises , whom which your petitioned performed the north, furnished the materials and hub wh the buildings as hereinafter statet, And your petitioners further Show that immediately after making auch (اعده د مدل)

Contract. They proceeded to the performance of the same, on their paint, and did all the nork and furnished all the materials to be by them down and furnished according to the provisions of such Centract. and would have completed the north and the several parts thereof, westing the lenies specified in such Contract if they had not been prevented by causes of delay that were unavoidable outhin part, and if they had had been delayed said trank Tanneles to, and If they had not been abliged to main for certain ison nork and Castings which were to her fur wished and which were finally furnished by the said Frank Parmeles &C. That your petetiment were abliged to mais for lintets to be placed over the iron Columns, and for the sion mindow Caps and hills, and for the Some sill of the South tower . and for the Curpenter north to be dond and for the build mig to be shut up and warmed, so that the plastering would dry, Hour Petitiones further Show unto your Stonow. That by reason of the nighed of the said Frank Tarmele +6, in the particulars above mentioned, and by reason of the said delay consequent thereupon your petitioned were pris to great expense and suf pend great lass and damage inasmuch as

they could not Keep their new at work to adeaux age, and the men werd frequently idle for mant of mork, and your helitioned wereablight from time to time to discharge their men and then to hire again at higher mages. and Were able ged to Complete the fob when the days were short, and during the cold were ther of the Hall and Winter, when it near Davily cost them a much larger dun, than it would if they could have done such work at the time Contemplated whereauch Contract was made, which loss and daw age so Sustained by your petitioned amount in the aggingate according to the best fredgment of your petitioners to the sunof I'm Thousand Dallard, besides the suinaf \$8663 , a claim for money paid. as herein after mentioned, That your petitioned fre queuty conflained to the said Frank Parmeles No. and to their architect and agent, the said Horgington of such delay and notified them of the damage which your petitioned were sustaining in couse quence thereof. Your Petitioners further Show unto your Honor that at the requestral the said Frank Parnicle 40, and under the diriction of the said Superintendent they purnished material and herformed

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12 norto in addition to that which was specified in the contract , of the value of Five Hum died Dallang or thereabout. Your petitioned further show that they made an agreement with one Milliain Ford, by the terms of which agreement he was to lay. Employed a sufficient member of morking and would have completed his fob in the mouth of August if he had not become layed through the default of the said Frank Parmile of in the particulars above mentioned, That his men merefu quently without nork and he was on Leveral occasions obliged to dismiss a number of them. while nailing formuid in mork. That finally the said Frank Tarmile to, lither personally or by their said architicht. requested that the said For should retain his norkenew, and prome ised to huy thin mages for such time as they should thereafter remain idle for. mant of isonwork to to be furnished by said Frank Farmely of, that pursuant to such request, the masons and laborers, were relained and paid by paid Ford and your betitimens for time that they were idle. from the 22nd to the 26th of September, the sure of leighty six dollars and Sixty

. hivo cents,

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And your petitioners further show unte your Honor. That your pelitioners has mig at length fully completed their fot, and having faithfully Kept and performed the said Contract on their part, did on or about the las day of march last past present to the archi telt and Superintendant, the said Mm of. Boynigton, their account and Clarin for the extra work and materials which they has so done and furnished as above mentioned, which account also included the items of the said Claim of \$ 86 700 bling for money hard at the request of the said Frank Parmelee NO. as above stated, That your petitioners and the said Boynington look over such account and made divis corrections in the same. and unitually agreed that the amount due Therew unto your petitioners for such extra Work and materials, was the sum of \$497. and that the said sein of \$86 for was also failly due to your petitioners. That thereupon your petitioners applied to the said Hornington to give Them advisal certificate for the balance due threw of the price mentines in said Con tract, and also for the amount due for such Extra mork and muticials I for sais money And your petitioned further show. That

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on the gthe day of march last past the said Boyington delivered with your petitioners a certif. icate of which the following is a copy, viz-Chicago March 9th 1859 Thereby Dertify that Shave Carefully examine all the variations from the contract by which Messes Hambleton Boodman on the 27th day of may AD, 1856, agreed to do the mason my and alter mort of furnish malerials for a block of stores and offices situated on the Corner of State or Randalph Streets for measons I Tannelee 10. I find that messes Dampleton Sandman are intitled to an allow and of four hundred and minely seven dollars for various Extra month +6, \$497.00 Amount of Contract 20,37 4.00 120.87 1.00 Messos Dambletin Goodman and also deficient in hours of not fulfilling Centrack , mork Charges, making some parts lef than was called for in the contract viz. For Brick mork ophetering omitted 6874 " brick arch side walks 50000 " Terrenty days delay in prinching the building as provided in contract 2000.00 2568,74 818.30 2.26 Jayments us her artificates from line to line 15,885,00 May It, Boyinglin Superintendent 82417.26

Jour petitioners further show that they at once aphealed from the decision of the said Boynigton, as well appear from the following notice which they served upon the said Frank Parmele to. and upon the said Boyangtin on the 12th day of march Gentleman having fully herformed on our hand the contract entered into on the 27th May of March 1856, with Frank Parmeler of medificial from the Royalow the Superintendent for a final certificate in order that me might obtain the balance due us, On the of the day of march instant, he delivered to us acentific Cate in which he, among other things profes set to decide and certify that me are deficient in point of not pulpilling antract and work Charged, making sonar harts less than was Called for in the Contract, to mist For brick arch side walks 500,00 I wenty days delay in finishing the building asprovided in Contract 2000000" Thereby leaving the balance due us only \$24 17.26 We claim that materin damage or lass may have been dustained in relation to the brick arch side walks. resulted from a deputie disign furnished by said Superintendary. and that whatever delay there was in fundhing the building was unavoidable on our hand ₹15r2r-<u>8</u>]

16 and may caused by you or by some of your. You will please later notice that we himly protest against the above mentioned decidion of the said Superintendent, and as howided for in said Contract appeal from such de asion to an arbitration, to be Chasen in def firently, and me propose as arbitration the following named herrows, to mis. Thomas Milner, Livi H. Hatenhouse is William H. Cartin , each of whom is , as me believed dis interested, and fully competered to act a such arbitration. If you are willing to submit to such arbitration please notify us or ound atterneys, hereinafter named of such welling mess. wishout delay so that me may if has sible again with you upon the hersens to act as arbitratois. Our attorneys above reparrie to are Medder Toodrick Farwell & Smith, mare affice is Hy Clark Street. If yours not on or before The 16th instant, notify us or our attiviers of your millinguess to submit to duch arbibration, me shall conclude that you repuse to arbitrate and me shall be Compelled to Commence Suit to enfince oun dann against said Frank Parmeler to. Natia march 11th 1859 Very Resply yours ob. To messon Frank Parmelle No. Hambliton Goodman her Han Margington

Your petitioners further show , that after such artificate was given by said Boyington as aforesaid, they called on him and inquired of him, why he had neglected to include in sais Certificate the said servaf \$ 86 700, and he admitted that it was omitted by mistake, and then gave them a seperate centeficate for that amount, which amount the said Frut Paraule No. afterwards haid to your petitioners. Your petitioners further show that it is true as was in said notice Stated, that whatever damage in lass was sustained in relation to the breek arch side walks" Nibultia from a defective design furnished by said Bayington. and that the mork down legg your hetetiniss was done well and in street compliance with the contract, and according to the designs furnished, that the said brick archiside malks There nearly completed. When they gave way and it was widend that anches built according to Suchdesign availed not be sufficient, and your petitioned nere directed not to complete then but mere tota that they must remove the ma devials forwided and used for such arches, politiment followed. Your peletionent further Show that although the rais Frank Parmeier . C. after recurring such notice , at first con Separa 9

selected to beech arbitration, and agreed with your petitioners upon person to act as ashitrations get the said Frank Parmele to, finally Concluded not to submis to such assistation that on the 25th day of march the said Parmelie called at the office of the said alterneys, and suformed them, that the persons whom they had named mere not milling to act, that they (the said Frank Parmelee No. meaning). That not been able to find suitable men who was act as asbitrators in the matter: that they has Concluded not to long any farther, and that they had rather leave the matter to the de asim of trulice new, than to any three men they would be abe to get. Your petitioners therefore Claim that the raid Strank Parmele A. are firstly indebut to your petitioners as follows, viz. The balance of the price mentioned in the Contract after deducting all payments, and also deducting the said dun of \$ 68700 for brick norto and plasting omitted, and also allowing for the malarials taken from the brick arch side malks and for the value of the month remaning to be done on the said side malks, when your helitioned

mere instructed not to complete them \$ 150, \$4260,26 For Estra north materials 19 497,00 For damages sustained through the default of said Frank Parsuslee Do, as above set forth, miloso,000 Your petitioners further show that the said Frank Parinelee No. repuse to hour to your he litement . The above mentioned sur, it any pay the sound, pay the sound, Your petitioners further show that as they are advised and verily believe they have a lien whom the said land and whom the leaschald interest of the said Frank Parmele Ho, in and to said land, and upon the said buildings for the serve de due them as aforesaid, and they ask the aid of this Honorable Court in the premises, and pray that such him may be enforced, and that a judgment or Deerer may be wade direct mig the valu of said leasehold interest, and of said buildings, and at all the right title and intested of the said Parmele, Phyllow, Tagrand Johnson in or to the said land and buildings, to hay the dum due to your betitioned as aforesaid, and that such others, further, or defficient order or decree may [1262011]

be made in the premises as to your Honor shall seem meit, and as shall bee agreeable to Your pelitioned pursher pray that a Dummond may if we from the bound dericted to the Thereff aflowed bounty, to summen the avid Franklin Parmeler . Liberty Bigelow Davia D. Jage und Haller S. Johnson, returnable to the next term of this Court, to cause their to appear and answer this petition Dans Toodman Sordnich Farwell Smith Jareph H. Hambleton Solo for Petitioners State of Illeriois & look County Oss. The above named Joseph H. Hambleton - David Toodman being severally duly affirmed . each for himself doch say that he has heard read the foregoing pelition, and Knows The Contents thereof, and the same is true according to the best of his Knowledge and belief Affinied to before me Jasiph M. Hambleton this 2nd day of april 1857 Dank Goodman Man Lohurch Cly

Sheifications for the Masons 21 Work and Materials required for the Exection and Completion of a Block of Pressed Brick store and affice that It Parmelee No are about to have built on the Corner of State and Randolph Ste, in front of and in Connection with the malls of the Omnibus Special Reference will be had bey the Contraction to the following . Specifications , and the accompanying design, as made by May A. Boyington, Architect, and which consists of the following drawings, viz. Han of Homedation , Vault suder walk " " Basement " " Main Hoon " Second " 11 " Third I Fourth floors will be the sauce as the second floor, fifth floors will be only finished in Towers, Duties of Contraction: He shall be shrilly held to make such Work, and to use such Materials, as is hereinafter described, and to nork up the Building to the given Design and in all cases when the drawings are figured, the pegines must der later by him. 1/2620-10

as the given dimensions, without reference to What the drawing may measure on its scale, 22 He will be further held to Submit, as to the Character of the Materials used, and the Hork done, to the judgment of the Superintendent wire to procure from him all necessary interpret ations of the Design, and all necessary artific cate hegarding his hayments. Superintendents and their Duties, Mornington Mhittock, or africations architects are declared to les the Superintendents of the Work for the Owner; Their dutie mill con Risk in giving on Demand, such interpret when , Either in language, meling or drawing as in their judgment the nature of the work may require, having particular case that any and all nort dono, and Material used for the Work, be such as is herewafter described, in giving, on demand any certificates that the Contractor may be entitled to, and in Settling all diductions of or addition to the Contract price, which may grow out of alterations of the design, after the same is de clased to ber contract, also determining the amount of damages which may account from any cause, and to particularly de cide when the fitness of all material uses and Hork done, The Contractor bling bound

in all cases, to remove all improper Honk on 23 Materials upon being desected 20 to do by the Superintendent, But the Contraction if after having been desected as above to hemore the Same, should refuse or night so to do. Shall not only suffer a deduction from the boutrast Price of the Difference in Value of proper and improper Thork and Materials, but shall also ber Liable for all Damages of Whalsoever nature of their that may rebult from such cause. The above provideing to apply in the same may to all materials or work used, made or fixed, without the Knowledge of the Superintendent, And it is hereby expressly provided, that in case the Austraction Shout feel aggrieved by the decision of the Super intendent. an appeal may be laken from such decision, to an arbitration Chasen midely firently, and whose decision in the matter shall be final and brinding mall harties. The owner reserves the right to alter or modify the Design, and to add to or diminish or the contract price , the differ luce to be adjusted as provided above, The owner being bound in all cases to recognize the act of his defer intendents. not only as regards extra north 2/21-20-13

but also to the Sufficiency of the Pasique. The Contractor being in no case responsible for any accident resulting to the nork from a defection design. Which fact must be artirmined, by an arbitration of Those disinterested men, chosen indifferently, and if found that the damages reduced from a many of firaper case on the hard of Contractor, then and in such case the dam ages and lass shall be haid for and made. good by him, but if found that the accident or damage resulted from an improper design, then and in such case, all down ages shall be sustained by owners, which in all cases must be treat, and in no case Constructive Damages to be allowed. All payments mude on the north during its progress are on account of the bontract and shall in no case ber construed as an acceptance of the work executed, but the Contraction. Shall be liable to all the condition of the bentract, with the mork is accepted as finished and Completed, Dimentions of the Building as represented by, and figures on the drawings, Heights, Basement Story 8 (bellar) mack) to be 6'- 6" feet Secure do do 13' 3" do

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do 11-3'- do Third do. do 111 3' do Hoursh do do 151 0 .. do difth do For depth of foundation below the Cellar bottoms are sections i plans, This Building is intended to be Thorough in every harticular, and must be finished throughout as hereinafter described, and anything shown by the drawings and not hereinafter particularly reserved on describer which is nicessary to complete the masend materials and mork of the building, is to be done at the cost of the bontraction not michitaire. mig such omission Frado of Building Sap of first flow of foist to be fixed threuty one riches above the new grade afride walk. Execuration The entire area of the proposed Building as required by Plans, to be dug out to the require deepth for cellar or basement beottom by proposi eters. , Excavations for footings of walls to be deg by Contractor below the pish manied excusa tion. All other excavations for drains and asterns and for foundations of hiers, and for raults of water Closets in required by plans to beeder y by the Contractor, all the excavita Earth to be disposed of by the proprieting. Contrator to properly level of the earth about (262013)

the walls . 20 as to turn the water from the walls, 26 and refill the excavation for drains, after the same is put in and properly fixed, the draws will all be let with the Server that now hassen from the barn to State st. These drain pipes mill her furnished and laid key the proprietors after the truches are duy, and cerepavis properly arranged by the person hulting in the drain hipes . Is as to draw each Raseneux and Cellary under the walks Deferato. Kubble Stone Hork All walls shaded blue to be of stone, of Olimensions and heights friqued on the drawings, and composed of good quarry Stone, laid in the best manner, with mortan mucid of proper proportions of best line, and clean course sand, the whole to be well Bedded and Bonded together, and well faced on both sides, Dorant Walls to have stone foundations, Same Mind of north as above specified, between main hien. Same deepth and average twenty four wiches thick, laid in Cement mortan, all stone walls to be laid in cement mortan our food above the basement floor, outside walls to alland under the sidewalks mill be laid in coment full height Justing of wall for piers on fronts from the bottom of trenches to be composed aflange

Stone, and well be three feet high and five feet 6" mide, the first course or layer must, 27 not be less than trelvo wich thick by thirty but aguan surface, and must be will settled in the earth buy a heavy instrument of wood and laid in a mortan made of two parts sand to one of Water line upon the first street there will be too more courses 10" to 12" each 4' x 4' T 3' x 3' thoroughly fitted together, and bedded in fine mortar as above, the top of he lot stone will be dressed with square edges. Tiers in the Cellan for partition walls . 3 ft deep built of good square stones, and the top afeach to be covered with a stone at least 10" thick, Bearing Walls for the Suphort of the archeracio Dide walk will be as shown in places theetions, Toundations for support of the line Columns in the alband under walks will be compared of large stone, one stone to each layer or mell futted together, The same Kind of Stone well be used for the foundations of Iron lealures for the interior of basement, and laid in same may, all neessary hales to receive timbers and foists must becut in the brick and Stone mont of old walls by Contractor for masonry. Walls of areas to be of stone, for highes and thickness, see section and plan. The face of which must be laid in courses wish good 11200-14)

bonds, and crarse bush hammend face all 28 on plans, with return, stone fames or Strin Caps + dills , All proper hole left for draws and gas pipes at directed, or shown by Plans, Out Stone For the quality and Kind, reference mill be had to the accompanying description and drawings . Where the raine is plantly describe and shown, and must all be properly set, and after the walls are finished to be proper by . Cleaned aff and pointed up. all stone piers shown on basenus plant must be composed of good square blocks, well cut onall sides, medeine bush hammens with 12 wich borden, well daid in fine men lan to the right height to rist the columned upon, there will be no stone door sills. There will be a belting course of cut stone Quiches thick laid in connection with the Stone sills to the first tein of mendows above the stores, with a drip cut on under side. this held course will propiet 21/2 wiches and lay in the wall at least 6 unches , and at the mendows full widet for Sills of 8in fairly, under this belt of stine will be a Strip of sheet lead 8" will laid in the wall solid r furnished by the mason, projecting

out for the purpose of making water tight over cornie and baleany - The stone hiers dividing the store fronts on book Streets. will be formed in blocks thirteen wiches deep wite them with Justice faint, fine bushhammend face with fine miler borden, all nearly trimmed, and haid up with a fine fount of mortan what the right height for the lintel of store fronts. Drick Hork All Walls shaded red on the plans careto be of bricks of the thickness and size market on plans, laid in the best manner, with solid heads and bed faints, and blushed solid every two Courses. The alland under the walks will be formed with 12in Cross skewback brick archis: from which four wich brick when will be turned, and all daid in Coment mortan composed of two parts said, to one of Cement. The cross when will be anchored with I wich round iron, with much and the have mushers at each end. The masher on the area sile mill be four fut long , let into the face of the wall, sign 12 x 2/2 mith 3/4 ball at bottom through the wall, All brick used for facing the outside walls must be hard beunued, all soft brick to be refeeled from the north. The face will be hed pressed breck, on both Struts, close fourtes thech pointed. Jower malls to extend,

above the roof of main building on all sides. The 30 inner sides to each mill be commenced on brussed from the Ceiling of fourth Mary, these lower walls will be light in thick above the fourth slonge Owners will furnish of the time they are much ed in all cases where the roof is to be of fell and Composition. a sufficient amount of 2x4 inch stanting to surround the whale wont of build mig, and which much be be built in the fire walls by boutraction in such manner as the lower side of the peice mill be plush with the lot of the word bounds, All Chimney to bee built as Shown by draw rigs, and in all cases where the places has through the ploonings, the brick mork must proper out 4 wiches so as to form at least & inches between the timbers and smake pluces, all the flues to be Smoothly plastered on the sisside, and have above hipe throughles nich hin sloppers as directed, and her finished above the waf, at least one fout above the highest point. There will be brick arch muidow. Caps to all the muidows of the fourth story. Trasmed last to be morked in all the foints of the brick of the outside walls of the different. stries, one to each 12the course, Contractor to Execute all the marony and furnish all the materials necessary for Letting Bunk Hault in the Corner room.

and all necessary iron unchors and stine living for same! Iron grating for ventitation 31 8 x 12 miches, to be mirked in the outside walls wish Connecting flues to reach the basement under walks. The Contractor for the mason org will set all stone and from muidow capil + Sills in a horough manuel, Ohn Auchorg For each of the heing, and for atleast every ten fut of the dead walls to be care fully worked in the masonry, and secured to the timbers of each of the floors and nouf, Then will be 1/2 by 21/2 mought Inn auchors extending on tap of alone piers and let with the same on both fronts, and will extend the whole length of both fronts over ofenings exact when ball timbers are to der put in. These auchors will be all Tin auchons, made to mis, Tim Suiches long of 7/8° round iron, the Shank to be 24 wiches long property melded around the Pin, and will be far tends, to the tember with two spikes, bigs of Som 1/2 x 1/2, Those for the Stone drittet of Fronts to be bak of stone extra heavy, and must be long ennigh to reach the third joist from the stone or timber to be anchored Straps of 1/2 X 1/2 Som to be placed on the, limbers of all the floring wir

roof where the same lie upon and meet on 32 division walls, these straps must be 20 wishes long american Iron and have 4 Spikes each, with lude turned down into time lears. All main timbers that connect mit the ald wall, or every lew but of foists must have the same Kind of auchor extending through the wall, with a mit an inside of Mastering . All throughout the bhilding to be of the best quality Haster of Paris finish, All three Coat work, except the basement fourth and fifth Stories, which will be two coat, All Brown mortan must be com posed of suitable proportions of Clear Sharp sand quick fresh line and hair lach of which must be put on at proper proportions and times, The finishing coat must be thoroughly polished, with plumb angles and true Corners. In contractor for the masony will be held responsible for a perfect for of plaster sig , and all places that may have been dam aged or bruised by carpetles or otherwise must be made good by the maron without Charge . Finally the Whole fat to be fully confected in a careful Skillfulant

workmanlike manner, and wary material to be purnished therefore, and anything shown 23 leg the plans relating to, or is necessary to Complete the masonry of the building, and not hereinbifor particularly Rederved or described, is to be done at the cast of the Contractor notivishstanding such omussion · Dune Omner to give possession of the ground on or before the 26th day of may AD 1856 . Contraction must agree to build the walls and Chimneys ready for roof on or before Sept. Ist 1856, and fully Complete the plastering of the building. mother forly five dily after the same is declared by the Superintendent ready for lathing, and must . Complete the whole for of making mithis one hundred and fifty days after the first above mentioned time. Said nork in no case shall be considered as finished, mules the same is so reported to the Superintendent and accepted by him The owner hereby agreeing to have in reali ness all nicessary timber, I bunfulus morkathing many be wanted. Is that in no case the maxing shall be hindered for the mand of the same, and will fut on each floor of joist on all the Building . within days after the walls are made 312120-17

ready to receive the Sauce, and in case he abould fail to do so, then and in such case 34 he hereby agrees to extend the time for friends mig said mork, in a Tro. Kata proportion for such delay, and will also hay all dam ages resulting to the Contractor from such cause of delay, Provided, the Contraction shall at the time af such delay, notify the Superintendent in miling of the extent thereof, and the damages to him arising Therefrom, and if required by owner much prove the says. Damages And in order to seems the execution of the nork in the manner, and at the trices Spacefied, it is hereby districtly diclared, that the Damages arising from the non pulfillenent of the Centract, as regards time shall be one hundred dollars her day, for each and every day to work remains un finished, and which some af Damage shall be deducted from the boutrach price as Eliquidated damages. The abject of the above is to quard against delays that can be avoided. (but unavoidable delays excepted.) To be made on the work as maybe hereafter agreed.

book lo. bir by 35 Davill Fordman Michanies Tien

Tranklin Parmeles

Liberty Bigglow

David A. Jage and Walter J. Jahuson The Colors will please ipue Sum, to Shift of book los, netob to next term of lovery rablige Fordrich Farwell Smith Sals for Petitioness County of Court 38. The People of the State of Illinois, to the Sheriff aspaid Country Freeling; He command you that you dure mon Franklin Parmelle. Liberty Bigelow, David A. Jage and Walter S. Jahuson. if they shall be found in your locally her simally to be and appear before the Cincuit down aflook lounty, on the first day of the next term thereof, to be holden at the Count House in Chicago in said County on the Second Monday of april sust, to answer unto Jaseph W. Hambleton r Daniel Toodman Stacac-18

in their Petition for a Muchanices Liew filed 36 in this louston And have you then and there this mit, With an endonsement thereon in what manner you shall have executed the same, Milness Hilliain & Shunt Clerk (Seal) of our said bourt and the Seal thereof at Chicago aforesaid this Second day of april AD. 1859. Endorsed: 0 Derved by reading to the mithin named Franklin Panuele . Liberty Bigelow, David A. Jage and Walter S. Jahuston, by delivering a copy hereaf to each of thew, the 20th day of april 1857. Jahn S. Wilson Shiniff By John De Dark Dehnly Cook County bricing Count The Answer of Franklin Parmelie Liberty Rigulow. David A Hage & Walter S. Jahusen, Defendant to the Petition of Jaseph M. Hambleton , Daniel Forder an Petitioners in the said Pelition against the defendants aforesaid, And the said defendants auswering laid Te litim say that they admit that on the 27th day of may. S.D. 1856, they were passessed of the said parcel of

Certain leases before their make by the owners thereof 37 to divers persons other than these defendants, which leaves have a dong heriod of time not to rend; but that on or about the 15th day of Sahlunder AD, 1856, these defendants by dud beroning that date conveyed all their interest in and to said premises to one -Daniel Laurence of the bily of Baston. Who is still the legal owner of said leasehald latate, which said Deed, on or about the 16th day of October 1856 mas duly recorded in the Recorders affice of said bounty aflerate, as by the said deed when produced . will more fully appear, And the said defendants further auswering very that on or about the 27th day of May aforesaid they entered into a contract in Whiting with said petitioned, Substantially the bane with the specifications as het forth in said petition, The said defind outs also say that Said Contract may made respecting the said lands + premises described in said petition. And the said defendant further say that They don't that the said Complainants, did all the work and furnished all the materials to be by them done and furnished, according to the provision ofsaid Contract, And they derry that the said belitiment mere howanted by causes of delay which were un avoidable on their hand from completing the said [12220-19]

land described in said Fettleon , as afriquees of

North or the several parts thereof methin the times sherified in such contract, and they also day that the said delay in fruithing said work , and fulfilling rais contract was occasioned by the defendants, or that they men prevented from Completing the same by the defendants neglect to furnish any of the materials provided in and by the said Contract or otherwise to be permished by them. And the said defendants allege that the delay of the said betilines wisted of bling occasioned by the default of the define ants, in the premises . marin fact occasions by The oneignin of the betitimend to prosecute the said nork when the meather was suitable , and by a bad and unprafin arrangement of said work by their subletting different portions thereof to different persons, one hortion to one man, and another hortion to another man, and thus requiring the defendants to bring forward the other north, which was not do be done by the pelitioners, all at the same time, and in a manner which it was not con templated or agreed that they should do. The defendants deny that the said petitioned have been put to great expense, or any exhuse, (Except that which was mentioned in said petition as amounting to Eighty six dollars and dixly two Cents, which deft hair) or that they have sustained any lofe or damage by reason of any

default is omifain of the defts to perform their part of said Contract, and that all the delays in said work (Except that above mentioned) on the hast of the said petitioners, or their sut Contractors, were their own fault in the arrange ment afraid morth, and the mant of proper Care arrangement or diliquico in pronecuting the same, And they further say that the said petitioned did not notify the soud Bayington, Wheelock or aprillant at the line of any alleged delay or the dama gus consequent thereupon nor aid they notify the defendant to the best of their Murul adar, information and belief, or lither of them of the same. Except as to that above mentioned, And the said defter denny that they delayed the said Ford or prevented him orang other of the subcentractors on said north from com pleting their Contract, And the said defendants further say that the Duid hetitioners failed to complete Their said Contract, and that the said building was so for infinished in respect to the said work to be done + herformed ley The said fetitioners, and therefore recipit to be used, fir the period of more than sixty days after the time appointed and fixed in said Contract for the Completion thereof, and they say that the sents of rais building . If furthed would have amounted to 42620,20

the sum of Fifteen Annasia Dollars her month, for said time, and it is provided in and by Daid Contract, that the said petitiones should pay the defts one hundred dollars perday for lack and every day the said north runaired un finished after the line specified in said Contract, which should be detherted from the Contract fried as highidated damages, (unavoidable) delays being excepted) and they further say that such delay was not unavoidable, and they shall insist on the said sum of one hundred dollars her day for said time, as the dancages austained as aforesaid, and which were due and owing by hitelimens at the commencement of this and is still due and owning, as a legal and proper affect to the claim afthe said petitioners, and which they hereby affects allow and have deducted from any sum which the said hetitioned may broad on the trial of this suit against these defendants And the said defts purther auswering, admix that the said Complainants. Chused to be served whom then the notice mentioned in said putition whereby they objected to so much ofraid Centificate af Month Is aggington ias related to the nonful fillment of said Contract, as sespects time and an allowance of two Thousairs dollars as damages for such nonfulfillment: - and to so much of raid Centificate as related to the brick

arch sile walk, Substantially as Stated in said pelition . 41 And there defindants having from that the. persons proposed as arbitrators in said notice would have an under hastiality towards the Complainants from the fact that said humans to mere, as these defts mere informed and believed to be true engaged in the same occupation as that of the Complainants: and direfure would be liable to lean strongly against these defined auts. did take the liberty to suterpose and fection to them, and to anggest other names and hurrous as they believed more suitable to decide such a controversing michartially, And with that been, thise dift within the time required in said notice Rent to the Completo salici lons, the following Communication, Chicago March 16th 1857. a Tordnich Farwell Brith Ergy " Tentemen In pursuance of a notice from Messes Hambliton Goodman, of a wish on this hart to arbitrate the deferences which have arisen between their and us respecting the north on Tarrett 19 lock and wishing ourselves to avoid letegation, and to arbitrate our differ ences providing me can agree on the artitra tors, and the terms of Rubnission, me say that me have made inquisies concerning the \$1200021

Then named by neesers Hambleton Hoodman 42 in their notice bearing dute March 11th wird, and although they are very reputable quittenen yet the fact that they all engaged in the same business with medses Hambleton & Goodman is sufficient we think to give them an under bias in their favor , and me therefore ful unwelling to accept either of them, and to avoid the bias which naturally arises from Similarity of occupation as in the hersons named me name Oyans Bears, William R. Loomis, and James &. Howo, as arbitration or as names to Choose from, and desire that you inform us mithin a reasonable timo whither nesses Hamblian Goodman, well accept there or sither or them to form the arbitrations between us " which arbitrators ought natito be less than three in number , all of which ought to be Chasen ley the parties. Joern Respectfully I Parmello NO. And these difts further say that the complain auts on their said dalicitors aspected to all the persons so named by the defts except the said byrus Beers. Whom they accepted that after considerable regaliation three arbitrates were agreed upon by the parties but on being notified of such selection, two of there as this definidants are informed and verily

believe to be true, keing the raid Beers and Mr Francis Sherman refused to serve, and the defendant Parmeter on being so informed and believing that it would be extremely difficult, if not impossible to ablain the Gervices of theree such gentlemen of experience, ability and integrity, as the importance of the differen ency lectivein these pasters required. ment to the Complainants Salicitor who had Charge of the matter and informed him af such conclu sin , and stated that he believed it wants be better for all Concerned to leave these matters to the decision of twelve ment than to try any more to have it down by arbitration, to which the said Salication also appended, Mut nothing near mar done in that behalf. Cha there defendants purther say that accord ing to the best of their Muowlidge or belief it is not true as stated in said petition that the damage resulting from the failure of said Brick arch side gralk , was occasemed by adefectivo design of said north, but the Dame was the result of the night gence of the petitooners in not building the same with proper season of the year and in praper and suitable meastern, and in a proper muner. That they were brequently re quested derving the fair weather and propen Deason to do baid word but hissisted in

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leaving the samo, till the season became met 44 cold and wholly unsuited to such norto, and by wasen thereof the work failed, That the design afraid work as they are in formed and believe has been much fallowed and when the work is well done has always proved sufficient and successful, And the said defindant say that they have Meht and herfurned the said Contract on their part except as to said short detention of a very few days and for that they settled with and hair the complainants . but that the complain auto have not herformed said contract on their part but failed so to do, and have thereby for the speriod of more than dixly days, with out any cause of prevention by these defts, or unavoidable accidents ordelays, deprived these defendants of the use of sail building und occasioned damaged to these defts, to a much larger sun than can or ought fristly to be claimed upon said contract on their past. Without this that any other matter or thing not herewheford confessed on avoided braversed or deneit in true to the test of their Murveledge or helist, and they pray that they may be hence dismissed, with their Costs Exhurses do, Franklin Pannelee M. So. Mc allester dibenty Bigalow Ser for Dalts, David A. Jage

Hos State of Merioris S. Jahuran County of Coak SS. On this 7th day of May AD. 1857, before me personally Can't Franklin Tarmelee one of the above Hamed defendants and made outh that he had read the fore going auxwer, and Knew The Centrals Thereof and that the same is true of his own Muoul edge - Except the mallers and things therein stated to be on the information and belief. of the said defendants, and aste those matter he believed it to be true, Calour DWalf-Justico of the Peace And afterwards to mit, on the direct day of

And afterwards to mit, on the First day of December in the year aforesaid baid day being one of the days of the Provender Speak Tours of said book County Court of benumer Theas, the following among other proceedings, was had in said bourt and latered of Record. to, mit

46 Jaseph H. Hambleton + Daniel Tordman Peter Michanics Lie Franklin Parmelee Liberty Regilow David A. Jager Halter S. Johnson And now at this day Come the said betitioners by Hoodsich Farwell and Smith their Solicitors, and the defendant by M. K. Mcallister their Salicition, when, upon reading and Juling of defendants affida vit on a motion for a continuous of this. cause and arguments of Coursel in support as well as in apposition to the same, the bound oversules the said motion. Therewhow the said defendants by their Salicitor. excepts to such ruling by the loast, Cond afterwards. to mit, in the dread day of December in the year last aforeraid the raid Detitionens by their said Salicitors filed in the office of the black of said bound thin Replications in the mords and figures follow mig, to mit

book County Court of Common Theas. Joseph W. Hambleton.

Daniel Goodman The Replication of the

South and John named plaintiffs to

Franklin Parmeles the answer of the defendants These Replants saving and reserving to theuseliers, now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said auswer for replication therewell say that they mil aver manitain and prove their said hetition to be true . Certain, and Sufficient in the law to be answered unto, and that the said ausever of the said defendants is uncestain, unland and insufficient to be replied unto by these replicants. wishout this, that any other matter or thing whatsvever in the said auswer Contained, material or effectual in the law to be replied unto, and not herein and here by well and sufficiently replied unto Confission and avoided traversed or denied is true, all which matters and things this replicant is and will be ready to avery manitain throne as this Honorable lound shall direct, and humblig hray as in and ley their said Tetetien they have already prayed. Tovarich Farwell ordnist Sals for plffs. <u> १२८२०-अम</u>ी

And afternards to mit in the same day and year last aforesaid, Said day being one of the days of the nounter Special Strung said Cook County Court of Common Pleas, the following amoung other proceedings mas had in said ledert and without afkered to min. Jareph M. Hambelon

+ Daniel Foodman

My Sh Much's Liew,

Franklin Paracle Scheng

Bigelow. David A. Jage

and Halter of Johnson And now at this day again Come the parties to this cause by this respective Salicitors, and whom spee being faired, let a Juny como, whereupon come to Junors of a juny of good and lawful men to mit. Snac L. Spien. R. S. Hick . H. M. Carting The P. White . H. B. Davis , S. P. Tutnam . F. Coleman. Samb Millard . G. H. Finn Geo. Pierson J. S. Palmer and H. J. Rugnolds, who beling well and truly elected tried and severn to try the your foined as aforesaid after heaving a part of the testiming adduced, the further having of this cause is hostporced mutil to mornow. morning to which time the Juny and permitted to seperate day agreement,

And afterwards to mit in the Third day of Drewber in the year aforesaid. said day be 49 mig also one of the days of the november special Throw of said bourt , the following among other proceedings. was had in said Could + entered of Record to mit. Jareph H. Hambutin of Daniel Goodman Stranklin Parmelu Stranklin Parmelu Shirt Rigelow, David A. Jahuren Janes Stranklin Stran Scherly Rigelow, David A. Gage Malter S. Jahuren And now at This day again como the parties to this cause by their respective Salicitors, and the Jury low hamilled in this cause also Como, and after hearing a part of the Mestimony addiced, The further heaving of this cause is postponed mutil lonemon morning, to which time the Jury are firmitted to definate by agreement. Chud afterwards, to mis, on the Fourth day of December in the year aforesaid, said day being also one of the days of the hounter special Town of said Coast . the fallowing among other proceedings was had in said lovers and entered aftero, to mis. 312000-25

Jaseph M. Hambleton Daniel Tordenan

Tranklin Parmele Liberty

Brighton David A. Gage

and Walter S. Johnson

And now again Coul now again at this day come the parties to this cause by their respective Salicitors. for a further heaving in this cause, and the Jury empanuelled in this cause also come, who after heaving the re manider of the testimony, arguments of counsel and instructions of the Count, relie to Consider of their verdich. And afterwards, to mit on the Fifth day of December in the year aforesais , baid day being also one of the days of the november special levue of said bound, the following, among other proceedings was had in said bound and lutered of Record, to mit Jariph N. Hambleton T Daniel Goodman ! Franklin Parmelu Liberty

Bigelow David A. Gage

and Halter of Johnson

That now at this day

again Come the said petitioners, by Goodsich Farwell and Smith their Saliotors, and also 01 the said defendants by M. M. M. allisten their Solicition, and thereupon relieved with lours, the jury empanueled for the trial of this cause and submitted their verdies, and Day me the Jury find the issues for the said petitioners, and me afeces the said petitioness damages, here in to the sum. of Four Thousand Orine Hundand and Seventy two Dollars and Menty Eight Centsi, And thereupon Come the said de fundants by W. K. M. allister their Solicitor and suter their medien herein for a new trial in This cause. And afternards to mig . on the Nineteenth day of Alcember in the year last aforesaid . The said day being also one of the days of the november Special Term of said lourd, the following among other proceedings. was had in said lovers and entered of Record to mit. Jaseph M. Hambleton - Daniel Toodman Franklin Parmeler The much Lieu. Sager Walter & Johnson And now at this day

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again come the said parties by their respective 02 Solicitos, and whom aparthin hearing of the motion of defendants for a new trial herein and arguments of Courses, the Court being now fully advised, overrules and denies said motion, and thereupon sais defendants enter their exceptions herein to the opinion of the bourd, and Thereupon it is Ording that Judgment be entered on the verdict of the Juny, It is therefore Ordered and Decreio by the Lourd, that the said petitioners have an nechaines described to petition in this cause. To mit. The Block of Prissed Brick Slove and affices, and Building Known as the Farrett Block, with the apportaneed, Excelet on the leased lot or parcel of land situate in Chicago and described as fallows . To wit, Bounded on the North by Randalph Street, on the West by State Street, on the South by the brick barn of Frank Parmele to, and by the los lyning next south of said barn, and on the East by said barn and by an ally being about one hundred and twenty four heet on Hate direct, by about one hundred and fifty one fut on Kandolph Street. And also when all the right, little and interest of the Paid Franklin Parmeler, Liberty Bigelin David A. Juge and Walter S. Jahnsen, in - and to suit Block of Buildings, with the ap-

purtenances thereunte belonging. And that said petitioned have and recover 53 of the said defendants the said sum of Foun Thousand Fin Hundred and Seventy two Dollars and twentyeight cents, in form afore said by the Jury apressed, and also there costs and Charges by them about their suit in this behalf exhended, and that they have a special Execution, against the herewiseford described premises to ratify the same. Mhineupon Come the said defendants by their Salection and pray an appeal to the Supreme louis of the State of Illinois, which is allowed by the bound, on their filing appeal Bond in the Aun of Bight Thousand Hallang, with Many Svonis, George N. Jage or Cyrenius Beens as security. and that thirty days time bee given said defendants to file their appeal Bond and Bill of Exceptions herein,

And afterwards, to mit, on the Fourth day of January AD, Bighter Shrudred and fifty Eight the said defindants by their sais Said Court, filed in the office of the Clerk of said Court, their appeals Bond in the words and figures following to mit.

How all new by these Tresents, That me Franklin Parmeleo, Liberty Bigelow, David A. Jage, Malter S. Johnson! William R. Loomis. and Ter. W. Hage, are held and firmly bound unto Joseph M. Hambleton - Daniel Toodman in the henal seem of Eight Thousand Dollars lawful money of the United States, for the pay ment of which well and touly to be made me build ourselves, our heirs and adminis traters, facility severally and firmily by these presents. Witness our hands and sials this 4th day of January AD. 1858. In Condition of the about afligation is such that whereas the said fasiph Mr. Hambleton and Daniel Toodman. did on the 19th day of December AD. 1857 in the book County Court of Common Pleas, in and for the Country of lovato and State of Allinois, nevvier a for against the above bounder Franklin Parmelee, Liberty Begelow, David A. Jage r Halter S. Jahuson. for the Sum of Found thousand Otive Dundred & Seventy two dollars

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and menty eight cents besides casts, from which fred greens the said abligors last named 56 have taken an appeal to the Supreme Court of Now if the said Franklin Parmelee, Liberty Rigelow. David A. Jago and Wallow I Johnson, appellants as aforesaid, Shall duly and diliquitty prosecute their said appeal and shall hay the pudgments, casts, interest and damages . Rundined, awarded and afaire against them in case the judgment aforesain Shall be affirmed in and by said Supreme Dourt, then the above obligation to be vid, otherwise to remain in full force reffect. Frank. Pannele Eal3 Liberty Bigelow Leads Walter S. Jahuson (Seat) D. A. Gago Geals Siv. M. Gago Geals Mrnp Loomis Feat And afterwards, to mit, on the Fourteenth day of January in the year last aforesaid, the said defendants. by their said Salicitors filed with office of the blesk of said bourd. Their Bill of Exceptions in The words and figures, following to mis.

Could County Count of Common Pleas. Franklin Parmellee ! Liberty Bigelow , David A. Glago & Walter S. Johnson & adi 57 Jaseph M. Hambleton) Be it remembered that on the 30th day of hovember AD, 1859 that being one of the days of the november Term of the said Court, The said defendants filed with the belest of said lauret an affi duit for a continuance of said cause, and thereupon by their alterneys moved the said Court that the said cause de continued, which said affidavit is in the words and figure following, to mix, Look leving bourt of onemon Pleas Frank Parmelle Liberty Rigelow David A. Gago what Comechanics Liew, Jaseph Hambleton & Mechanics Liew, Daniel Goodman State of Illivis & Strank Parmelee one of the defendants in the above entitled \$12620-23

Cause being duly swow deposes and says, that the said defendants . have fully and fairly stated 58 Their case in this cause, to Mr. So. Meallester of the City of Chicago, their coursel therein and that they have a good and substantial defence on the merits in this cause, as they are advised by their said Coursel after such statement, and which the said define ants verily believe to be true. And he further says that John Whitney, who resides in the leity of Chicago and Harmon Lauckton who is now residing in Brambridge Tranger County Ohis, are auch of hum necessary and material milnesses for the defendant on the trial of his cause. mithout whose testimony and that aflach of them. the sais defendants cannal safely proceed to the trial afthe sand, And deponent further says that the said Witnesses are each of their nichanies. and that they are competent origible and intelli quel persons, and that he expects that the defindants will be able to prove by the said John Whituney on the trial of this cause. That he the said. Whitney saw the progress if the north down under the butract of the petitioners set out in their petition in this cause nearly wery day, with some slight exceptions from the commencement of the sais petetioners with their said for until they quit.

The samo. And that from the Connuencement aforesaid to the time fixed in said contract for the completion of said fat by the petitioned There mene materials and work always in readiness for the use of petitioners in their Daid for Sufficient to have enabled them by procuring reasonable and adequate Supply of laborous and they prosecuting Said work with proper delique to have competited said for within the time fixed in Said Contract for the completion thereof, and that this deponent in the month of august AD, 1856 at the place of said north requested and urged the petitioners to procure more help, he as to Complete said for methin said trice Mating to thew that their money was ready to have them as fast as needed if they would do so and more particularly that deponent unged and requested them to proceed at that time and make the brick arches under the Side walks upon State r Randolph Mreets, to support the flagging in front of said building on said streets as provided by the centract, (to which contract as set forth in the said pelition deponent refers as a part of this affiducit,) and he expects to be able to prove by said Whitney, that the said petitioners during the gredeer hard of the time of doning said work had an insuf-

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ficient Supply of men, for said work. and that they neglicità to prosecuto the same with dili gence and fidelity, and that they wholly omitted and neglited (though requested to do the same at the proper time by deponent) to Commence the building of said arches and mork under the side walks until late in the fall, when the season was cold and met, and that the same in hast felling, for that reason and for mand of proper construction, soon after they were built bey petitioned. and that the said for of the petitiness for and during the period of about two months after the time fixed for the Completion thereof may be for unfinished as to render said build my sutirely unternautable during that time, and That the defendants sustained heavy dam ages by loving the use of said building du buig such time as aforesaid, and he fun Ther expects to be able to prove key said Whitney that such delay as aforesaid in Completing said for mas not the result of any unavoidable accident, nor of the default of the defendants in furnishing the materials required to be farmished by them or otherwise, but mas the result of a want of dikingued and fidelity on the part of petitioners in the prosecution of the same rand furnishing The requisite mine ber of laborers, And he further says that

he expects to be able to prove by the said Lauckton on the trial of this cause, that he Witness . morted upon the said brick archy during their construction, under the direction of the petitioners. And that the meather may cold enough at the time of said work to freeze the mortan and that sustead of making the mortan rich and using a small quantity of it and hutting the breck, aforesaid close together , a large and unpraper amount of mortar was used, which on thawing neces sanily gave away and displaced the bricks and thus weakened, the arches for the reason of such use of mortan and the coldness of the meather, and by the occurrence of a thour, fell in, aux also that said milness has worked at the masens trade for agreat many years and has known many arches builtriper the plan of these in question; and that if prop enly Constructed. They are good and durable archer, And definent further says that on the

Induly fifth day of hovement suish he caused the said John Whiling to be duly served with a subpoend in his cause ifants by the blish and the said bourt requiring his offer sarance (among others named therein) in said bourt on the said bourt instead himsen instead the day of sound in said the sa

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on the part of the defendant. 62 And he further says that the said Jahr Whitney Since the dervice of said duppoend on him as aforeraid, and one the 6 o'clock train in the morning on the 26th day of houseless inst. without the hermission, privily or consent of the daid defendants on lither of them, left the bily of Chicago to ge to Rochester in the State of New Hook to be absent for the heriot of about three muks. That the said Whitney has and is interested in a large Clause against the Delroit and Milmankie Rail Road Company amounting as defound is suborned and believes to be true to fifteen hundred dollars Thich is past due and which said Whitney greatly beared he abouted lose: That during last much he received a communication from the agent of said Company. That if he said Whitney would be in Altroit on the 30th hovember inst the said Clavin Cauld be settled and haid, that raid Whitney also had the sellement of a rail road Contract to build posteous of a road in Canada in Connection wish one Orsen Tousley, Charles Harrington and Everhed, which required his presence at the loily of Rochester new York the middle of the present meek . Ley appointment by his said Co-Contractor as deponent is informed and believes to be true. Ou a that his interests in said matters nould

· greatly suffer unless he went there as required, and he would unless personally present, mall probability lose said debt of \$1500. and deponent further say, the said Harran Dauckton was at the time he so worked out the said arches as aforesaid, in the Employ of and under an engagement with one B.C. Howard . a master builder in Chicago, and was hirmited to more on said arches under the derection afraid hetitioned for their accommodation, and on account of some mightorly dealings between said Howard and petitioness, but was haid but the said works by the said Arward, which facts were until The 25th of hovember wish, wholly unknown to the said defendants or lither of thew. That neither of the defendants had any acquaintance with the Dais Lanckton of mutil the 28th inst. Ruew his name, That deponent has indeavored in order to hachase for the trial of this cause to ascertain the facts concerning the sauce. and the names of hersons employed by enquining of was different comployees of the petitioners but has been unable from the prefudice or suwillinguess of each employees to obtain any information solicited. And on the 25th novelular wist while causing the witnessed in this cause to be subpossied he accidentally and for the first hime ascertained

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the facts aforesais, which he could prove by 64 the sand Lauckton and immediately applied to the said Showard for the name wis residence of the said nituess! but the said Howard has forgalten his Christian name and was musble to find out the vaine, and where the rais Lauck. In had four to. the using every reasonable iffort by looking over hapers and neaking unquinees with the 28th wist, When for the finist time deponent ascertained the name and residence of the said mitness, and that he had left Chicago, about dix meeter ago for Brainbridge afresaid to remain there during a month or two of the Coming Winter, and how return to Chicago! Deponent further saige that said mitruss as he has learned since ascertaining his name is about To years at age, and a very candid intelligent mason by trade, of a long and extensive experience in the difficult branches of his said trade in Eastern Cities, and at the time of northing on the said arches as aforesaid he was not in the employment of Either of the parties to this suit, and is therefor a reliable Witness, and that defend ants do not Know of any metries by whom they can so fully and satisfactorily prove the said facts as the said Whiterey and the acid Lancker

And deponent further says that this applica. Calin for a continuance of our cause is made 6.5 in good faith and for the mene and sole hur. pose of securing to the defendants in this cause on the trial thereof , their neights in the premises, And he further sugs that he has no doubt but that the defts. com ablain the lestimony and the attendance of said matriesses for the trial of this cause at the next team of this bound, Smore this 30th day of Strank. Parmelee november AD 1/859 before mo. Jahn Forseyth Indany Ruslie The Coursel for the Istitiment in apposition to such motion called the attention of the Court to centurin statements Contained in the deposition of Patrick Merlihan. a milness on the hand of the petit rouers. Which Depostion had been taken on The 19th day of October AD. 1859, but the consent of Coursel and was then on file. The fallow. mig Intervogatories had been fuch to the witness viz. Have you mistin the last few days had any conversation with the defendant frank Parmele with reference to the claim of Hambleton Moodman, against him . If so state when and where such Conversation look place. and what was said by either of you on the sutfeed! To which he auswered as follows, wy-2(2420-03)

"The Thave! The convensation, was last Salurday hurning on the Corner of State or Randolph Obrects; I asked him when the trial of Mer. Hambutons was coming off. He answered that perhaps next munth. but probably notwerted shring Jasked him if he meant to put the trial back L'e said . "If Shassibly can" Ithink this is what he said according to the best of my opinion, I nor fust leaving ". The meading of which on the hearing of said motion , the defendants by This Coursel then and there objected, which objection was overruled by the bourd, and the Daid ansever was read on the heaving afrais motion i do which vulering of the bound the De fendants by their Coursel then and there ex afted, And the Coursel of the petitioned also Stated to the Court and the Coursel for defend auts admitted John Whitney one of the persons named in the foregoing affedavis of Parmelee was in fastier in law afacio Parmele. And the said Court Then and these denied the said application for a continuance of rais Cause. And the defendants by their coursel to said derial thereof by the Count, then and That on the 3d day of Dicember AN. 1857 Acid Cause Cami on to be truid. before the said lovery and a gury, and there when the said petitioners for the purpose of

Sustaining the ipsues in said Cause on their hard, affired in windence the Contract between the said hetitioners and the said defendants referred to in said hetition, and a copy of which is thereto attached.

And for the purpose of further sustaining the expues in said cause on their frank the said Petitioners by Witnesses introduced and smorn on said trial gave loidence showing that they look possession of the ground described in said Petition and Contract and Commence this exeauctions for foundation malls of the builderigs to be exceted thereon. by there on or about the 27th day of may AD. 1856, and that they mere engaged in and about the exection and completion of said building of February AD. 1857. Said Petitioners affered further evidence tending to show. that they mere delayed in the prosecution of thun north mineral upon said Building in the months of august September of October 1856, for mant of timber lintels, and the cast sim Window Caks and mindow Sills, and the Stone Bills for one of the Towers, That there mater

rails were furnished by the defendants but were

not furnished in due and proper season as

they were required, And that the defendant

paid the plantiffs the sum of \$ 86.62 heing

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the wages of the men who remained idle while mailing for the From Caps and sills as mentioned in the petition. That said delay occurred at defferent times during the months aforesais, and that in Consequence Thereof the Petetioners Could not employ to good advantage somany men upon said Bulding as they otherwise might have down, and could not proceed with the work ain more rapidly than they did. Further evidence was given on the part of the pulitioners tending to show that they commenced the laying of the front. Walls of the Building on State and Randolph Mouts on the 11th day of August 1856, That for the purpose of laying the outside tien of brick, a scaffold was necessarily used next mig upon upright hale four or five but ditand from the wall, and that said from walls were finished and the scaffoldings removed, on or about the final day of however 1856, That in the month of October AD, 1856. The petitioners at the request of the said defendants communeed the excavations under the side walks in State and Randalph Street and were getting ready to build the brick arches for the variets which were to be construct ed, beneath the side walks, and on a level with the basement story or cellar of the Building, and intended for the use of the

building . That the masonry afound vaults mas built up to and connected the front walls of said Building on State and Randolph Streets and extended out from said walls Distern or Eighteen fut, That the petitioners having built all the side walls of the vaults and the supports for the archy, connecied the Construction of said archy on or about the 5th day of novimber 1856, and in the Course of three cor four days had put up all of said arches on State struct and a few upon Randolph Street, and the defendants had begun teplace whom the arches the flagging stone for a side walk when the arches commenced falling in, and very soon all the arches on State Street and all butters orthogon (Rundolph Street had given may and fallen, And at the nequest of the Superintendent the remaining where mere taken down and the Brick of the arches that had fallen were le moved by the said petetines and no more arches meno built, but in place afthe thick archer and flagging stone, the defendants afterwards constructed a plank sidewalk around the building. Petitioners further affere evidence tending to Show that the Plan of he archer intrinced to suffert the side walks Was defective and that they fell because of the

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defects of the plan. Estitement mitroducio funther 70 evidence tending to show that they were de layed in the completion of the plastering of said building by the cold reather and in procuring stoves for heating the rooms in which the plastering was to be done, and for mant of senie cut stine north for Door dills which were to be pursushed bey the defendants and without which the building cuild not be completely enclosed, That the roof could not be put on mutit the front walls were up. and that the wiside wark Could not be done until the soof maion I that after the roof was on the Petitioners fallowed up the Carpenters without delay and finished the suride work as soon he practicable. The petitioners also introduced in willence the antificate of the architect Mill Boying ton repensed to in the petition and a capy of which is therein contained and also gave evidence showing the truth of the Statement in the petition as to the interest and little of the defendants in and to the fremises and showing that the defendant neve inpos Desirio of the premises as described and mentioned in the petition. The petitioners further gave evidence tending to show the amount and value afestra work done by them in counced tion with said fob a and mentioned by them in their cause.

The Petitioners also offered to give in dene to show that they had sustained the spice ial damages mentioned in the helition, but the defendants Coursel abjected to seach widered on the ground that if such damages were in fact sustained they could not be allowed in this proceeding and that there could not be any lein when the premises for such Damages, which officion was sustained bey the loans, and the Petitioners were not allowed to give any widered as to such alleged damages.

where the petitioness gave evidence to sub-Montials the allegations as above states, such evidence consisted of the testimony of abliant two nitnesses.

The defined auto for the purpose of sustain sing the ifaces in said cause on their part thereupon by mituesses introduced and smoon gave testimony tending to show that the petitioned did not prosecute their morkon said building deliquetty, hasticularly in the early part of the season, and that they consumed a disproportionately large part of

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the Brason in the construction of the foundation and partition walls, That they were not de layed to any Considerable extent for many of the iron and Cut stone work, and that if they had prosecuted the nork diliquiting and vigorously after the last of the soon and cut Alone was on the ground, they might have finished their portion of the work on said Building by the sat day of December AD, 1856. When in fact they did not finish the plantening of the building until about the 20th day of February 1857, Indifindants further affered loiduce tending to show that it was not neces sary to have outside scaffoldings in the put ting up of the front walls and that said walls might have been laid up from the unsido and that the petitioners might have Commenced their work upon the arches for the side malker much earlier in the season than they did and have fruithed them during the manul measter of the summer or autimus. That when they commenced building said archy the meather was cold so that the mor dan from ledleven the bricks, That the season may very unfavorable for the Construction of such arches and that the hetitioners had notice from the Superintendent of the Build. sing not to build the archy at that time, and

that in going on with them at that time they assumed the responsibility of making their states, that the arches new not properly built by the petitioners according to the plan, and that they mene so informed by the Superintendent Doon after they commenced building them. That the plan of the arches was a good one and suitable for the purpose intended, and if prop. whey built so as to carry out the hear huy are strong and find That other archy built upon the same plan and property Constructed have stood firm for years. without any indication of settling or give ing way . That in warm neather is the propert time to build such archy. The defendants purther gave evidence Showing That they had haid to the said Te tetimes for north done and materials fur nished by them on said Building the Sum of Fifteen Thousand Eight Hundred and Eighty five dollars. It further appeared from the evidence introduced by the defendant that the excavation for the brick arche, and the archis Constructed in said excavations mere made and Constructed outside of the line of the lat, described in the pelition, and in the Public Streets of the leily of Chicago.

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The Planitiff Coursel, thereupon asked the Court to instruct the Jung as fullows. 14 The plunitiff are not to be charged with delay in doneing their north, if such delay was caused by the defindents or was du mig to the want of materials which the de findants were to furnish. 2. The planitiffs are not treportible for the failure of the arches, if such failure mas on wig to a defective design, 3. There is no exice made by the pleadings as to the Location or description of the premises upon which the most was to be done If the Jury bellieve from the localines . That the work was done upon the harmises mentioned in the Petition, then the plaintiff have a lieu whom the premises if anything is due them for such north. If It the gury fried anything due the planit iffs they will allow interist at the rate of. dix her cent per amerin from march gt 1859, Which said Instructions sa asked for by the Coursel for the said peletioners, mene gener by the bound and to the geoing of said Sustructions and lack of their Separate ly by the Course the Defendants by This Coursed then and then excepted.

The Course for the defendants then asked the lound to instruct the jury on the hard aforia defendants as follows, to wit. I If the Jung find from the widered that the brick archerin question, and the excavatrons in which they were placed mene made methin the Street or Streets of the leity of Chicago, and were not in fact whom the lat or land described in the petition in the Cause the Jury will as to all itoms clanned by the plaintiffs for that work find for the defindants. 2 That if the jung fuid that the Claim of the planitiff in this cause, michades a portion of nork done and performed within the Sheets of the leity of Chicago and nature the lot or land described in the helition, which and nort to down aff from said lot or Land together with that which was done on said Tot or Land, mas performed under one and the same Contract, and the Con tract in evidence. The Clarin for the whole norto is not divisible, or to be apportioned, and the plaintiffs having no lien for the north done within the shreets and not whom the hand described, cannot beg reason of the indivisibility of the Demand have a dim for any part of the same. 3 That under the contract and sheefications

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between the parties and read in widered the plaintiff are Thomselves bound to purnish all the Stone and Soon mindow Cahr and sills and also the cut stone to her used in donig the work on the building under said contract and specifications! And if the jury shall believe that there was any delay of said nork on account of said materials or any of them not being furnished at the line they were wanted by blanchity on raid fot. Dich delay is no legal excuse for the planet iff in not completing said for within the time specified in Baid Contract for such Completion, and they well bind for the defindants_ That the parties in this case have fixed on a certain neede by which the amount to be haid under the Contract in question shall be ascentance, and having

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fixed on a certain mode by which the amount to be hair muder the contract in question shall be ascertained, and having done so the party secking an enforcement of the agreement much show that he has done everything on his part to carry it into if fact, and he cannot complet this hay much af the amount Claimed unless he have by the contract or show that by time or head the contract or show that by time or head find that a certificate of the amount due has been given by the architect, the

plaintiff cannak take hand afit as evidence of extra north done and refeet the other part of et. but the sauce must be taken logethin in all its parts as to amounts if one part is taken, 5 Of the gung find from the widered that the plaintiff failed to make the brick archeting question in accordance with the Contract and Aprecipications between the parties respecting them, or if the architect assaid work gave them directions as to the manner of doing said work, and the plaintiffs failed to comply with such directions, or if they performed Buil work in an unskilfull summerman like and improper manner, then the plant iffy failed to complete their said Contract and cannot recover in the suit. Whether the design for such arches was good and sufficient or not," Of which said Instructions . The first second . third , fourth mere refused, and the last was given by the bound, and to the ruling and decision of the Court in repussing suit first second think frust Instructions and each of . Them so asked for by the said defendants, as ofereraid, The defindants by their Courses then and There excepted, and the lang having letined to consider of their verdies 12620-29

returned into bound with the following verdiet to mit. He the Jury find a Verdick for the plaintiffs to the amount of Four Thousand Nine Hundred and Swenty two and 28/100 Dollars. R. S. Hicks Foreman Which said verdick included the surpaid balance of the contract price, the amount of the extra month, and interest on the same from the 9th day of march A.D. 1859. And the said defendants by their Coursel Then and there moved the leour to Det aside the verdict of the funy, and to grant to the said defendants a new trial, which motion was overvuled by the bourts To which decision of the bound in overruling said nestin . The defendants by their come Del then and there excepted, and prayed and appeal to the Supremio Court, and that this his bill of exceptions. might be sealed by the lound, which is accordingly done. Jahn Mr. Wilson Grad

State of Illeriois & County of Coats Des. J. Walter Stimball Olenk of the look bounty lours of Common Meas, mithin and for said County, do hereby Centify. That the above and foregoing is a full and true trans cript of the papers on file in my office, and the proceedings entered of Record in said bound in the case in which fasiph The Hambleton and Daniel Toodman and plaintiff and, Franklin Parmeles, Liberty Bigelow, David A. Jago and Walter S. Johnson Defrudants, On Sentenny Whereof Sheneunte 2 Subscribe my name and affix the Teal of said bound at the billy of Chicago in said bounty this 13 the day of march, SD. 1858 Walter Vinball.

Suprem Couch Franklin Parmelu Siberty Byelow David Alage to Walter & Johnson Coppellants April Term & 1888 Joseph It Hambleton i Daniel Goodmand pelles and now come the Said appellants by Scales Mallity lewitt & Reabody then attorny, and say that in the Record and proceeding, aforesaid and also in giving the Judgment in manner and fru aforesard then is manfest Erra en this that the Said magnest declares a lien upon and authorizes a dale of the appentenens to the premies described, Else then is Enw in overreling the motion for a continuance, and also in persuetting & ordere to be read on the heaving of said motion, Also in giving the instructions ar the furthof the appellees Defresing instructions asked in the part of the appellants. All so the Land judgment is rendered infavor of the oppole, Whereas by the law of the land this ame should have bene given for the appellants, Whenfen the appellants Jeany that the find green aferenced feether Error aferenced and for other Error undard record spewerdays heary be revered aurulled and altogether held for Mangh of they be, sestence to all things to by recasion afthe daid Judgatuch & Cates Me allestingwort & Rabady at the said he feellant and her for the said means as worker - any fine for difts (Faurle

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SUPREME COURT.

FRANK PARMELEE,
LIBERTY BIGELOW,
DAVID A. GAGE &
WALTER S. JOHNSTON,
vs.
JOSEPH W. HAMBLETON &
DANIEL GOODMAN.

Appeal from the Cook County Court of Common Pleas.

MECHANICS' LIEN.

Abstract of Record.

This suit was commenced by filing a petition, to April term, A. D. 1857, of the Cook county Circuit Court, for the enforcement of a Mechanics Lien, under the statute. At the June special term of the Circuit Court, the said cause was transferred to the Cook county Court of Common Pleas. And the petition, answer and other papers in the case duly filed in said Court of Common Pleas. The said petition is as follows:

STATE OF ILLINOIS, SS.

To the Honorable George Manierre, Judge of the Circuit Court of Cook Co .:

The petition of Joseph W. Hambleton and Daniel Goodman respectfully shows unto your honor, that your petitioners are masons by trade and are partners doing business in the city of Chicago, in said county under the name of Hambleton and Goodman.

That Franklin Parmelee, Liberty Bigelow, David A. Gage and Walter S. Johnson, on and before the 27th day of May 1856, possessed and occupied a certain parcel of land situate in Chicago aforesaid, and described as follows, to wit: Bounded on the North by Randolph street, on the West by State street, on the

South by the brick barn of Frank Parmelee & Co., and by the lot lying next south of said barn, and on the east by said barn and by an alley, being about one hundred and twenty-four feet on State street, by about one hundred ond fifty one feet on Randolph street. Which lands were and are held by them under and by virtue of certain leases before them made by the owners of the above described premises for a long term of years. Which term will not expire for a number of years yet to come. That on or about the said 27th day of May, the said Parmelee, Bigelow, Gage and Johnson by their company name of "Frank Parmelee & Co." made and entered into a contract in writing with your petitioners of which contract the following is a copy, viz..

These articles of agreement made and entered into this 27th day of May, A. D., 1856, between Hambleton and Goodman of the first part, building contractors of the city of Chicago, and Frank Parmelee & Co., of the same place of the second part witnesseth,

That the said Hambleton & Goodman or executor's administrators and assigns, for and in consideration of the payments hereinafter to be made to them by the said F. Parmelee & Co., or their legal representatives, do on their part contract and agree to build finish and complete in a careful, skillful and workmanlike manner, to the full and complete satisfaction of Wm. W. Boyington or assistant super intendent, and by and at the times mentioned in the foregoing specifications, the masons and stonework of a five story block and basement of stores and offices, that is to be erected on the corner of Randolph and State, as aforesaid, so as fully to carry out the designs of said work as it is set forth in the foregoing specifications and the plans and drawings therein especially referred to. Said specifications and plans and drawings, being hereby declared part and paicel of this contract.

And the said Frank Parmelee & Co., or their executors administrators or assigns, for and in consideration of the said Hambleton & Goodman doth fully and faithfully executing the aforesaid work, so as to fully carry out the design for the same, as set forth by the specifications. And accordingly to the true spirit, meaning and intent thereof, and to the full and complete satisfaction of Wm. W.

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Boyington, or his assistant superintendent as aforesaid, and at the times mentioned in the foregoing specifications doth hereby agree to pay the said

the sum of Twenty Thousand Three Hundred and seventy-four dollars \$20,374 in the manner following viz.: As the work progresses, the superintendent is to make out estimates from time to time, of the work and material in-wrought into the building and upon presentation of a certificate from said superintendent of eighty-five per cent on said estimate. The said Frank Parmelee & Co., or their legal representatives are to pay the amount from time to time, and the balance fifteen per cent is to be paid together with any other balance that may be due to said Hambleton & Goodman, upon the completion of the contract as aforesaid, provided the said superintendent shall certify in writing that they are entitled thereto.

In Witness whereof, the parties hereto have set their hands the day and year above written. (Signed)

HAMBLETON & GOODMAN. FRANK PARMELEE & Co.

That specifications mentioned in the said contract is hereto annexed and marked schedule A, and is made a part of this petition, excepting, however, that the words in said specifications contained under the head of "damages" and relating to unavoidable delays, were added some few days after the said 27th day of May, with the consent and by the directions of the parties to such contracts and for the purpose of making such addition a part of such contract.

And your petitioners further show that the premises first above described, and which are hereinbefore stated to have been possessed and occupied by the said Parmelee, Bigelow, Gage and Johnson are the same premises referred to, in the said contract and specifications and are the same lands and premises upon which your petitioners performed the work, furnished the materials and put up the buildings as hereinafter stated.

And your petitioners further show that immediately after making such contract

they proceeded to the performance of the same, on their part, and did all the work and furnished all the materials to be by them done and furnished according to the provisions of such contract, and would have completed the work and the several parts thereof within the times specified in such contract if they had not been prevented by causes of delay that were unavoidable on their part, and if they had not been delayed said Frank Parmelee & Co. And if they had not been obliged to wait for certain iron work and castings which were to be furnished and which were finally furnished by the same Frank Parmelee & Co. That your petitioners were obliged to wait for lintels to be placed over the iron columns, and for the iron window caps and sills, and for the stone sills of the south tower, and for the carpenter work to be done, and for the building to be shut up and warmed so that the plastering would dry.

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Your petitioners further show unto your honor, that by reason of the neglect of the said Frank Parmelee & Co., in the particulars above mentioned and by reason of the said delay consequent thereupon your petitioners were put to great expense and suffered great loss and damage, masmuch as they could not keep their men at work to advantage, and the men were frequently idle for want of work, and your petitioners were obliged from time to time to discharge their men and then to hire again at higher wages, and were obliged to complete the job when the days were short, and during the cold weather of the fall and winter, when it necessarily cost them a much larger sum, than it would if they could have done such work at the time contemplated when such contract was made. Which loss and damage so sustained by your petitioners to the sum of Ten Thousand Dollars, besides the sum \$86,62, a claim for money paid as hereinafter mentioned. That your petitioners frequently complained to the said Frank Parmelce & Co., and to their architect and agent, the said Boyington of each delay and notified them of the damage which your petitioners were sustaining in consequence thereof.

Your petitioners further show unto your honor that at the request of the said Frank Parmelee & Co. and under the direction of the said superintendent they furnished materials and performed work in addition to that which was specified in the contract, of the value of Five Hundred Dollars or thereabouts.

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Your petitioners further show that they made an agreement with one William

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Ford by the terms of which agreement he was to lay up the front wall of the building, and he employed a sufficient number of competent workmen and would have completed his job in the month of August if he had not been delayed through the default of the said Frank Parmelee & Co., in the particulars above mentioned, That his men were frequently without work, and he was on several occasions obliged to dismiss a number of them while waiting for said iron work. That finally the said Frank Parmelee & Co. either personally or by their said architect requested that the said Ford should retain his workmen and promised to pay their wages for such time as they should thereafter remain idle for want of iron work so to be furnished by the said Frank Parmelee & Co. That pursuant to such request, the masons and laborers were detained and paid by said Ford, and your petitioners for time that they were idle from the 22nd to the 26th of September the sum af eighty six dollars and sixty two cents.

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And your petitioners further show unto your honor, that your petitioners having ta length fully comp'eted their job, and having faithfully kept and performed the said contract, on their part, did, on or about the 1st day of March last past, present to the architect and superintendent, the said Wm. W. Boyington, their account and claim for the extra work and materials, which they had so done and furnished, as above mentioned, which account also included the items of the said claim of \$86 12-100, being for money paid at the request of said Frank Parmelee & Co., as above stated. That your petitioners and the said Boyington looked over such account, and made divers corrections in the same, and mutually agreed that the amount due thereon unto your petitioners, for such extra work and materials, was the sum of \$497, and that the said sum of \$86 12-100, was also justly due to your petitioners. That thereupon your petitioners applied to the said Boyington to give them a final certificate for the balance due them, of the price mentioned in said contract, and also for the amount due for such extra work and materials, for said money paid.

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And your petitioners further show that on the 9th day of March last past the said Boyington delivered unto your petitioners a certificate of which the following is a copy, viz.:

Chicago, March 9th, 1857.

I hereby certify that I have carefully examined all the variations from the

contract by which Messrs. Hambleton & Goodman, on the 27th day of May, A. D. 1851, agreed to the masonry and stone work, and furnish materials for a block of stores and offices situated on the corner of State and Randolph streets for Messrs, F. Parmelee & Co. I find that Messrs. Hambleton & Goodman are entitled to an allowance of four hundred and ninety-seven dollars

for various extra work &c	\$497,00 \$20,374,00
	\$20,871,00
Messrs. Hambleton & Goodman are also deficient in point of not fulfilling contract and work charged, making some	
parts less than was called for in the contract, viz.: For brick work and plastering omitted, "brick arch side walks, "twenty days delay in finishing the building as provided	\$500,00
in contract\$200,0	00 2,568 74
Payments as per certificate from time to time,	\$18,302,26 \$15,885,00
	\$2,417,35
WM. W. BOYINGTON,	
Supe	rintendent.

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Your petitioners further show that they at once appealed from the decision of the said Boyington, as will appear from the following notice which they served upon the said Frank Parmelee & Co., and upon the said Boyington on the 12th day of March.

GENTLEMEN,

Having fully performed on our part the contract entered into on the 27th day of March, 1856, with Frank Parmelee & Co., we applied to Wm. W. Boyington the superintendent, for a final certificate for the balance due us. On the 9th day of March instant, he delivered to us a certificate in which he among other things professes to decide and certify that we are deficient in point of not fulfilling contract and work charged. Making some parts less than was called for in the contract, to wit,

For brick arch side walks,.....\$500,00

We claim that whatever damage or loss may have been sustained in relation to the brick arch side walks, resulted from a defective design furnished by said superintendent and that whatever delay there was in finishing the building was unavoidable on our part and was caused by you or by some of you.

You will please take notice that we hereby protest, against the above mentioned decision of the said superintendent, and as provided for in said contract appeal from such decision to an arbitration to be chosen indifferently. And we propose as arbitrators the following named persons, to wit, Thomas Wilner, Levi H. Waterhouse and William H. Carter, each of whom is, as we believe disinterested, and fully competent to act as such arbitrator. It you are willing to submit to such arbitration please notify us or our attorneys, bereinafter named, of such willingness without delay, so that we may if possible agree with you upon the persons to act as arbitrators. Our attorneys above referred to are Messrs. Goodrich, Farwell and Smith, whose office is 47 Clark street. If you do not on or before the 16th instant, notify us or our attorneys of your willingness to submit to such arbitration. We shall conclude that you refuse to arbitrate, and we shall be compelled to commence sult to enforce our claim against said Frank Parmelee & Co.

Dated March 11th, 1857.

Very respectfully yours,

HAMBLETON & GOODMAN.

To Messrs. Frank Parmelee & Co., Mr. Wm. W. Boyington.

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Your petitioners further show that after such certificate was given by said Boyington as aforesaid, they called on him and inquired of him why he had neglected to include in said certificate the said sum of \$86,62, and he admitted that it was omitted by mistake, and then gave them a separate certificate for that amount, which amount the said Frank Parmelce & Co. afterwards paid to your petitioners.

Your petitioners further show that it is true as was in said notice stated, that

whatever damage or loss was sustained in relation to the "brick arch side walks" resulted from a defective design furnished by said Boyington and that the work done by your petitioners was done well and in strict compliance with the contract, and according to the designs furnished, that the said brick and side walks were nearly completed, when they gave way, and it was evident that arches built according to such design would not be sufficient, and your petitioners were directed not to complete them but were told that they must remove the materials provided and used for such arches, which instructions by said Boyington your petitioners followed.

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Your petitioners further show that although the said Frank Parmelee & Co., after receiving such notice at first consented to such arbitration, and agreed with your petitioners upon persons to act as arbitrators, yet the said Frank Parmelee & Co. finally concluded not to submit to such arbitration. That on the 25th day of March the said Parmelee called at the office of the said attorneys and informed them that the persons whom they had named were not willing to act, that they (the said Frank Parmelee & Co. meaning,) had not been able to find suitable men who would act as arbitrators in the matter, that they had concluded not to try any farther, and that they had rather leave the matter to the decision of twelve men, than to any three men they would be able to get. Your petitioners therefore claim that the said Frank Parmelee & Co., are justly indebted to your petitioners as following, viz.

The balance of the price mentioned in the contrast after deducting all payments and also deducting the said sum of \$18,74 for brick work and plastering omitted and also allowing for the materials taken from the brick arch side walks, and for the value of the work remaining to be done on the said side-walks, when your petitioners were instructed not to complete them \$150 \$4,260,26 For extra work and materials, \$497,00 For damages sustained through the default of said Frank Parmelee & Co. above set forth, \$2000,00

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Your petitioners further show that as they are advised and verily believe they have a lien upon the said land and upon the leasehold interest of the said Frank Parmelee & Co. in and to said land, and upon the said building for the sum so due them as aforesaid. And they ask the aid of this honorable court in the premises, and pray that such lien may be enforced, and that a judgment or decree may be made direct-

ing the sale of said leasehold interest and of said buildings, and of all the right, title, and interest of the said Parmelee, Bigelow, Gage and Johnson, in or to the said land or buildings, to pay the sum due to your petitioners as aforesaid, and that such other further, or different order or decree may be made in the premises as to your honor shall seem meet, and as shall be agreeable to equity.

20

Your petitioners further pray that a summons may issue from this court directed to the sheriff of Cook county, to summon the said Franklin Parmelee, Liberty Bigelow, David A. Gage and Walter S. Johnson, returnable to the next term of this court to cause them to appear and answer this petition.

DANIEL GOODMAN, JOSEPH W. HAMBLETON.

GOODRICH, FARWELL & SMITH, Soliciters for Petitioners.

STATE OF ILLINOIS, ss.

The above named Joseph W. Hambleton and Daniel Goodman being severally duly affirmed, each for himself doth say that he has heard read the foregoing petition and knows the contents thereof, and the same is true according to the best of his knowledge and belief.

JOSEPH W. HAMBLETON. DANIEL GOODMAN.

This 2nd day of April, 1857, Wm. L. Church clerk.

"SCHEDULE A."

21 Construction }

Specifications for the Masons: Work and materials required for the erection and completion of a block of pressed brick stores and offices that F. Parmelee & Co. are about to have built on the corner of State and Randolph streets, in front of and in connection with the walls of the omnibus barn.

Special reference will be had by the contractor to the following specifications, and

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the accompanying designs, as made by Wm. W. Boyington, architect, and which consists of the following drawings, to wit:

Plan of Foundation, and Vaults under walk.

- " " Basement.
- " " Main Floor.
- " " Second "
- " "Third and Fourth Floors will be the same as the second floor. Fifth Floors will be only finished in towers.

Duties of Contractor: He shall be strictly held to make such work, and to use such material as is hereinafter described, and to work up the building to the given design, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions, without reference to what the drawing may measure on its scale. He will be further held to submit as to the character of the materials used and the work done, to the judgment of the superintendent, and to procure from him all necessary interpretations of the design, and all necessary certificates, regarding his payments.

Superintendants and their Duties: Boyington & Wheelock, or assistant architects, are declared to be the superintendents of the work for the owner. Their duties will consist in giving, on demand, such interpretations, either in language, writing or drawing, as in their judgments the nature of the work may require, having particular care that any and all work done, and materials used for the work, be such as is hereinafter described, in giving, on demand, any certificates that the contractor may be entitled to, and in settling all deductions of, or additions to the contract price which may grow out of alterations of the design, after the same is declared to the contract. Also determining the amount of damages which may accrue from any cause, and to particularly decide upon the fitness of all material used, and work done

The contractor being bound in all cases, to remove all improper work or materials, upon being directed so to do by the superintendent.

But the contractor, if, after being directed, as above, to remove the same, should

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refuse or neglect so to do, shall not only suffer a deduction from the contract price of the difference, in value of proper and improper work and materials, but shall also be liable for all damages of whatsoever nature or kind, that may result from such cause. The above provisions to apply in the same way to all materials or work used, made or fixed, without the knowledge of the superintendent.

And it is hereby expressly provided, that, in case, the contractor should feel aggrieved by the decision of the superindentent, an appeal may be taken from such decision to an arbitration, chosen indifferently, and whose decision in the matter shall be final, and binding on all parties.

The owner reserves the right to alter or modify the design, and to add to or diminish from the contract price, the difference to be adjusted, as provided above.

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The owner being bound, in all cases, to recognize the acts of his superintendent, not only as regards extra work, but also to the sufficiency of the design, the contractor being in no case responsible for any accident resulting to the work from a defective design, which fact must be determined by an arbitration of three disinterested men, chosen indifferently, and if found that the damages resulted from a want of proper care on the part of contractor, then, and in such case, the damages and loss shall be paid for and made good by him. But, if found that the accident or damage resulted from an improper design, then, and in such case, all damages shall be sustained by owners; which, in all cases, must be real, and in no case constructive damages to be allowed.

All payments made on the work during its progress are on account of the contract, and shall, in no case, be construed as an acceptance of the work executed, but the contractor shall be liable to all the conditions of the contract, until the work is accepted, as finished and completed.

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Dimensions of the building, as represented by, and figured on the drawings:

Heights.

Basement Story, 8' (Cellar,) walk under, to be 6' 6" feet.

Principal	do	do	13'	3" do.
Second	do	do	12'	3" do.
Third	do	do	11'	3" do.
Fourth	do	do	10'	3" do.
Fifth	do	do	15'	0" do.

For depth of foundation below the cellar bottoms, see sections and plans.



This building is intended to be thorough in every particular, and must be finished throughout, as hereinafter described, and anything shown by the drawings, and not hereinafter particularly reserved or described, which is necessary to complete the masons materials and work of the building is to be done at the cost of the contractor notwithstanding such omission.

GRADE OF BUILDING.

Top of first floor of joist to be fixed twenty-one inches above the new grade of sidewalk.

EXCAVATIONS.

The entire area of the proposed building, as required by plans, to be dug out to the required depth for cellar and basement bottom, by propr etors. Excavations for footings of walls, to be dug by contractor, below the first named excavation. All other excavations for drains and cisterns, and for foundations of piers, and for vault-of water closets, as required by plans, to be dug by the contractor. All the excavated earth to be disposed of by the proprietors. Contractor to properly level off the earth about the walls, so as to turn the water from the walls, and re-fill the excavations for drains. After the same is put in and properly fixed, the drains will all be let into the sewer that now passes from the barn to State street. These drain pipes will be furnished, and laid by the proprietors, after the trenches are dug, and cesspools properly arranged by the person putting in the drain pipes, so as to drain each basement and cellar under the walks seperate.

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26.

RUBBLE STONE WORK.

All walls shaded blue to be of stone, of dimensions, and heights figured on the drawings and composed of good quarry stone, laid in the best manner with mortar mixed of proper proportions of best lime and clean coarse sand, the whole to be well bedded and bonded together and well faced on both sides.

Dwarf walls to have stone foundations, same kind of work as above specified between main pier, same depth and average twenty-four inches thick laid in cement mortar, all stone walls to be laid in cement mortar one foot above the basement floor, outside walls to cellars under the side-walks will be laid in cement full height

27-

Footing of wall for piers on fronts from the bottom of trenches to be composed of large stone, and will be three feet high and five feet 6" wide the first course or layer must not be less than twelve inches thick by thirty feet square surface and must be well settled in the earth by a heavy instrument of wood and laid in a mortar made of two parts sand and one of water lime, upon the first store there will be two more courses 10" to 12" each 4' x 4' and 3' x 3' thoroughly fitted together and bedded in fine mortar as above, the top of the top stone will be dressed with square edges. Piers in the cellar for partition walls 3 feet deep built of good square stones, and the top of each to be covered with a stone at least 10" thick. Bearing walls for the support of the arches and side-walks will be as shown in plans and sections. Foundations for the support of the iron columns in the cellars under walks will be composed of large stone, one stone to each layer and well fitted together.

The top of the piers for the fronts to rest the iron columns upon will be dressed and squared for staying surface.

The same kind of stone will be used for the foundations of iron columns for the interior of basement and laid in same way. All necessary holes to receive timbers and joists must be cut in the brick and stone work of old walls, by contractor for masonry. Walls of areas to be of stone, for height and thickness, see section and plan. The face of which must be laid in courses with good bonds and coarse, bush

27-

hammer face. All door and window openings left where shown on plans with return stone jambs and stone caps and sills.

All proper holes left for drains and gas pipes as directed or shown by plans.

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CUT STONE.

For the quality and kind reference will be had to the accompanying description and drawings, where the same is plainly described and shown, and must all be properly set, and after the walls are finished to be properly cleaned off and pointed up.

All stone piers shown on basement plan must be composed of good square blocks, well cut on all sides, medium bush-hammered with $1\frac{1}{2}$ inch border, well laid in fine mortar to the right height to rest the columns upon, there will be no stone door sills. There will be a belting course of cut stone 6 inches thick laid in connection with the stone sills to the first tier of windows above the stores with a drip cut on under side, this belt course will project $2\frac{1}{2}$ inches and tay in the wall at least 6 inches, and at the windows full width for sills of 8 inch jambs, under this belt of stone will be a strip of sheet lead 8" wide laid in the wall solid and furnished by the mason, projecting out for the purpose of making water tight over cornice and balcony. The stone piers dividing the store fronts on both streets will be formed in blocks thirteen inches deep into them with rustic joint, fine bush hammered face with fine miter border, all neatly trimmed and laid up with a fine point of mortar, up to the right height for the lintel of store fronts.

2.9

BRICK WORK.

All walls shaded red on the plans are to be of bricks of the thickness and size marked on the plans, laid in the best manner, with solid heads and bed joints, and slushed solid every two courses. The cellars under the walks will be formed with 12 inch cross skin back brick arches, from which four inch brick arches will be turned and all laid in cement mortar composed of two parts sand to one of cement. The cross arches will be anchored with 1 inch round iron with nuts and washers at each

end. The washer on the area side will be four feet long, let into the face of the wall, size $1\frac{1}{2} \times 2\frac{1}{2}$ with $\frac{3}{4}$ bolt at bottom through the wall.

The window jambs and casings outside for the last story of towers will be formed of brick and will be on all sides except the south side of south tower. There will be three of these towers one to each corner of the building.

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All brick used for facing the outside walls must be hard burned, all soft brick to be rejected from the work. The face will be red, pressed brick, on both streets, close jointed and tuck pointed. Tower walls to extend above the roof of main building on all sides, the inner sides to each will be commenced on trusses from the ceiling of fourth story, these tower walls will be light in thick above the fourth story. Owners will furnish at the time they are wanted in all cases where the roof is to be of felt and composition, a sufficient amount of 2 x 4 inch scantling to surround the whole roof of building and which must be built in the fire walls by contractor in such a manner as the lower side of the piece will be flush with the top of the roof boards. neys to be built as shown by drawings, and in all cases where the flues passes through the floorings the brick work must project out 4 inches so as to form at least 8 inches between the timbers and smoke flues, all the flues to be smoothly plastered on the inside, and have stove pipe thimbles with tin stoppers, as directed, and be finished above the roof, at least one foot above the highest point. There will be brick arch window caps to all the windows of the fourth story. Seasoned lath to be worked in all the joints of the brick of the outside walls of the different stories, one to each 12th course. Contractor to execute all the masonry and furnish all the materials necessary for setting bank vault in the corner room, and all necessary iron anchors and stone lining for same. Iron grating for ventilation 8 x 12 inches, to be worked in the outside walls with connecting flues to reach the basement under walks. The contractor for the masonry will set all stone and iron window caps and sills in a thorough manner.

IRON ANCHORS,

For each of the piers, and for at least every ten feet of the dead walls, to be

carefully worked in the masonry and secured to the timbers of each of the floors and roof. There will be $1\frac{1}{2}$ by $2\frac{1}{2}$ wrought iron anchors, extending on top of stone piers and let into the same on both fronts, and will extend the whole length of both fronts over openings except where oak timbers are to be put in.

The iron anchors for the fronts will be turned down into the stone one inch, and pass each other at least 6 inches, so as to prevent splitting the stone. Iron to be let in flush with top of stone.

These will be all pin anchors, made to wit: Pin eight inches long, of 7-8 round iron, the shank to be 24 inches long, properly welded around the pin, and will be fastened to the timber with two spikes, size of iron $\frac{1}{2} \times 1\frac{1}{2}$. Those for the stone lintels of fronts to be extra heavy and must be long enough to reach the third joist from the stone or timber to be anchored. Straps of $\frac{1}{2} \times 1\frac{1}{2}$ iron to be placed on the timbers of all the floors and roof, where the same lie upon and meet on divissior walls, these straps must be 20 inches long, American iron, and have 4 spikes each, with ends turned down into timbers. All main timbers that connect with the old wall, or every ten feet of joist must have the same kind of anchor extending through the wall, with a nut on inside of wall.

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PLASTERING

All throughout the building to be of the best quality plaster of Paris finish.—
All three coat work except the basement, fourth and fifth stories, which will be two coats.

All brown mortar must be composed of suitable proportions of clear, sharp san', quick fresh lime and hair, each of which must be put on at proper proportions and times. The finishing coat must be thoroughly polished, with plumb angles and true corners.

The contractor for the masonry will be held responsible for a perfect job of plas-

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tering, and all places that may have been damaged or bruised by carpenters or other wise must be made good by the mason, without extra charge.

Finally the whole job to be fully completed in a careful, skilful and workmanlike manner, and every material to be furnished therefor, and anything shown by the plans relating to or is necessary to complete the masonry of the building, and not hereinbefore particularly reserved or described, is to be done at the cost of the contractor, notwithstanding such omission.

FINAL.

Owner to give possession of the ground on or before the 26th day of May A. D. 1856. Contractor must agree to build the walls and chimneys ready for roof on or before Sept. 1st 1856, and fully complete the plastering of the building within forty-five days after the same is declared by the Superintendent ready for lathing, and must complete the whole job of masor ry within one hundred and fifty days after the first aboved mentioned time.



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Said work in no case shall be considered as finished, unless the same is so reported to the Superintendent and accepte I by him. The owner hereby agreeing to have in readiness all necessary timber and carpenter's work as they may be wanted, so that in no case the masonry shall be hindered for the want of the same, and will put on each floor of joist on all the buildings within days after the walls are made ready to receive the same and in case he should fail to do so, then and in such case do hereby agree to exten I the time for finishing said work in a Pro Rata proportion for such delay, and will also pay all damages resulting to the contractor from such cause of delay, provided the contractor shall at the time of such delay notify the superintendent in writing of the extent thereof, and the damages to him arising therefrom, and if required by owner must prove the same.

DAMAGES.

And in order to secure the execution of the work in the manner, and at the times specified, it is hereby distinctly declared that the damages arising from the non-ful-

fillment of the contract as regards time, shall be one hundred dotlars per day, for each and every day the work remains unfinished and which sum of damages shall be deducted from the contract price as eliquidated damages. The object of the above is to guard against delays that can be avoided but unavoidable delays excepted.

PAYMENTS.

To be made on the work as may be hereafter agreed.

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The Answer of the defendants is as follows.

The answer of Franklin Parmelee, Liberty Bigelow, David A. Gage and Walter S. Johnston, defendants to the petition of Joseph W. Hambleton and Daniel Goodman, petitioners in the said petition against the defendants aforesaid:

And the said defendants answering said petition say that they admit that on the 27th day of May A. D. 1856, they were possessed of said parcel of land described in said petition, as assignces of certain leases before then made by the owners thereof, to divers persons other than these defendents, which leases have a long period of time yet to run; but that on or about the 15th day of September A. D. 1856 these defendants, by their deed bearing that date onveyed all their interest in and to said premises to one Daniel Lawrence of the city of Boston, who is still the legal owner of said leasehold estate, which said deed on about the 16th day of October 1856, was duly recorded in the Recorder's office of said county of Cook, as by the said deed when produced will more fully appear.

And the said desendants further answering say that on or about the 27th day of May aforesaid, they entered into a contract with the said petitioners substantially the same with the specifications as set forth in said petition.

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The said defendants also say that said contract was made respecting the said lands and premises described in said petition.

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And the said defendants further say that they deny that the said complainants did all the work and furnished all the materials to be by them done and furnished according to the provisions of said contract and they deny that the said petitioners were prevented by causes of delay which were unavoidable on their part from completing the said work or the several parts thereof within the time specified in such contract, and they also deny that the said delay in finishing said work and fulfilling said contract was occasioned by the defendants, or that they were prevented from completing the same by the defendants neglect to furnish any of the materials provided in and by the said contract or otherwise to be furnished by them. And the said defendants allege that the delay of the said petitioners, instead or being occasioned by the default of the defendants in the premises, was in fact occasioned by the omission of the petitioners to prosecute the said work when the weather was suitable and by a bad and improper arrangement of said work, by their sub-letting different portions thereof, to different persons one portion to one man and another portion to another man, and thus requiring the defendants to bring forward the other work, which was not to be done by the petitioners, all at the same time and in a manner which it was not contemplated or agreed that they should do.

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The defendants deny that the said petitioners have been put to great expense, or any expense (except that which was mentioned in said petition as amounting to eighty-six dollars and sixty-two-cents, which defendants paid or that they have sustained any loss or damage by reason of any default or omission of the defendants to perform their part of said contract and that all the delays in said work. (except that above mentioned) on the part of said petitioners or their sub-contractors, were their own fault in the arrangement of said work and the want of proper care, arrangement and diligence in prosecuting the same.

And they further say that the said petitioners did not notify the said Boyington, Wheelock or assistant, at the time of any alledged delay or the damages consequent thereupon, nor did they notify the defendants to the best of their knowledge, infor-

mation and belief, or either of them, of the same, except as to that above mentioned. And the said defendants deny that they delayed the said Ford or prevented him, or any other of the sub-contractors on said work from completing their contract.

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And the said defendants further say that the said petitioners failed to complete their said contract, and that the said building was so far unfinished in respect to the said work to be done and performed by the said petioners and therefore unfit to be used for the period of more than sixty days after the time appointed and fixed in said contract for the completion thereof, and they say that the rents of said building if finished would have amounted to the sum of fifteen hundred dollars per month for said time, and it is provided in and by said contract and that the said petitioners should pay the defendants one hundred dollars per day for each and every day the said work remained unfinished after the time specified in said contract, which should be deducted from the contract price as liquidated damages (unavoidable delays being excepted) and they further say that such delay was not unavoidable, and they shall insist on the said sum of one hundred dollars per day for said time, as the damages sustained as aforesaid, and which was due and owing by petitioners at the commencement of this suit and it is still due and owing as a legal proper offset to the claim of the said petitioners and which they hereby offer to allow and have deducted from any sum which the said petitioners may prove on the trial, of this suit against these defendants. said defendants further answering admit that the said complainant caused to be served upon them the notice mentioned in said petition whereby they objected to so much of said certificate of Wm. W. Boyington as related to the non-fulfilment of said contract as respects time, and an allowance of two thousand dollars as damages for such non-fulfillment, and to so much of said certificate as related to the brick and side walk substantially as stated in said petition,

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And these defendants having fears that the persons proposed as arbitrators in said notice would have an undue partiality towards the complainants, from the fact that said persons were, as these defendants were informed and believed to be true engaged in the same occupation as that of the complainants, and therefore would be liable to lean strongly against these defendants, did take the liberty to interpose an objection to them, and to suggest other names and persons as they believed more suitable to decide such a controversy impartially.

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And with that view these defendants within the time required in said notice, sent to complainants' solicitors the following communication.

Chicago, March 16th, 1857.

GOODRICH, FARWELL and SMITH, Esq'rs.

GENTLEMEN:

In pursuance of a notice from Hambleton & Goodman, of a wish on their part to arbitrate the differences which have arisen between them and us, respecting the work on "Garret Block," and wishing ourselves to avoid litigation, and to arbitrate our differences, providing we can agree on the arbitrators, and the terms of submission, we say that we have made inquiries concerning the men named by Messrs. Hambleton & Goodman in their notice bearing date March 11th inst, and although they are very reputable gentlemen, yet the fact that they are all engaged in the same business with Messrs. Hambleton & Goodman is sufficient, we think, to give them an undue bias in their favor and we therefore feel unwilling to accept either of them, and to avoid the bias which naturally arises from similarity of occupation as in the persons named, we name Cyrus Beers, William R. Loomis and James L. Howe, as arbitrators, or as names to choose from, and desire that you inform us within a reasonable time whether Messrs. Hambleton & Goodman will accept these or either of them, to form the arbitrators between us, which arbitrators ought not to be less than three in number, all of which ought to be chosen by the parties.

Yours Respectfully,

F. PARMELEE & CO.

And these Derendants further say that the complainants or their said solicitors objected to all the persons so named by the said deff'ts, except the said Cyrus Beers, whom they accepted, that after considerable negotiation these arbitrators were agreed upon by the parties but on being notified of such selection, two of them as these defendants are informed, and verily believe to be true, being the said Beers and Mr. Francis Sherman refused to serve and the defendant Parmelee on being so informed and believing that it would be extremely difficult if not impossible to obtain the services of three such gentlemen of experience, ability and integrity, as the importance of the differences between the parties required, went to the complain-

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ant's solicitor who had charge of the matter, and informed him of such conclusion, and stated that he believed it would be better for all concerned to leave these matters to the decision of twelve men than to try any more to have it done by arbitrators, to which the said solicitors also assented. But nothing more was done in that behalf.

And these defendants further say, that according to the best of their knowledge and belief, it is not true, as stated in said petition; that the damage resulting from the failure of said brick arch side walks, was occasioned by a defective design of said work, but the same was the result of the negligence of the petitioners in not building the same in the proper season of the year, and in proper and suitable weather, and in a proper manner; that they were frequently requested during the fair weather, and proper season to do said work, but persisted in leaving the same till the season became wet and cold, and wholly unsuited to such work, and by reason thecof the work failed. That the design of said work, as they are informed and believe, has been much followed' and when the work is well done, has alway proved sufficient and successful.

And the said defendants say that they kept and performed the said contract on their part, except as to said short detention of a very few days and for that they settled with and paid the complainants, but that the complainants have not performed said contract on their part but failed so to do and have thereby for the period of more than sixty days without any cause of prevention by these defendants or unavoidable accidents or delays, deprived these defendants of the use of said building and occasional damages to these defendants to a much larger sum than can or ought justly to be claimed upon said contract on their part. Without this that any other matter or thing not hereinbefore confessed or avoided, traversed or denied, is true to the best of their knowledge or belief, and they pray that they may be hence dismissed with their costs, expenses &c.

FRANKLIN PARMELEE, LIBERTY BIGELOW, DAVID A. GAGE, WALTER S. JOHNSON.

WM. K. McALLISTER Solicitors for Defendants.

Replication was filled in the usual form.

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The bill of exceptions was entitled in the cause in said Court of Common Pleas and is as follows, viz.:

Be it remembered that on the 30th day of November, A. D., 1857, that being one of the days of the November term of the said court. the said defendants filed with their clerk of said court an affidavit for a continuance of said cause, and thereupon by their attorneys moved the said court that the said cause be continued which said affidavit is in the words and figures following, to wit.

FRANK PARMELEE, LIBERTY BIGELOW, DAVID A. GAGE, ET AL ads. JOSEPH W. HAMBLETON & DANIEL GOODMAN.

Cook County Court of Common Pleas.

MECHANICS' LIEN.

STATE OF ILLINOIS, Solution of cook.

Frank Parmelee one of the defendants in the above entitled cause, being duly sworn deposes and says that the said defendants, have fully and fairly stated their case in this cause, to W. K. McAllister of the city of Chicago, their counsel therein, and that they have a good and substantial defense on the merits in this cause, as they are advised by their said counsel after such statement, and which the said defendants verily believe to be true.

And he further says that John Whitney who resides in the city of Chicago and Harmon Lanckton, who is now residing in Bainbridge, Granger Co., Ohio, are each of them necessary and material witnesses for the defendants on the trial of this cause, without whose testimony and that of each of them the said defendants cannot safely proceed to the trial of the same.

And deponent further says that the said witnesses are each of them mechanics and that they are competent, credible and intelligent persons, and that he expects that

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the defendants will be able to prove by the said John Whitney, on the trial of this cause, that he the said Whitney saw the progress of the work done under the contract of the petitioners set out in their petition in this cause, nearly every day with some slight exceptions from the commencement of the said petitioners with their said job until they quit the same. And that from the commencement aforesaid to the time fixed in said contract for the completion of said job by the petitioners there were materials and work always in readiness for the use of petitioners in their said iob, sufficient to have enabled them by procuring reasonable and adequate supply of laborers, and by prosecuting said work with proper dilligence to have completed said job within the time fixed in said contract for the completion thereof. And that this deponent in the month of August, A. D., 1856, at the place of said work requested and urged the petitioners to procure more help so as to complete said job within said time, stating to them that their money was ready to pay them as fast as needed if they would do so, and more particularly that deponent urged and requested them to proceed at that time and make the brick arches under the side-walks upon State and Randolph streets, to support the flagging in front of said building on said streets as provided by the contract, to which contract (as set forth in the said petition, deponent refers as a part of this affidavit,) and he expects to be able to prove by said Whitney, that the said petitioners during the greater part of the time of doing said work had an insufficient supply of men for said work and that they neglected to prosecute the same with diligence and fidelity, and that they wholly omitted and neglected (though requested to do the same at the proper time by deponent.) to commence the building of said arches, and work under the side-walks until late in the fall, when the season was cold and wet and that the same in part fell in. for that reason and for want of proper construction soon after they were built by petitioners. And that the said job of the petitioners for and during the period of about wo months after the time fixed for the completion thereof, was so far unfinished as to render said building entirely untenantable during that time and that the defendants sustained heavy damages by losing the use of said buildings during such time as aforesaid. And he further expects to be able to prove by said Whitney that such delay as aforesaid, in completing said job, was not the result of any unavoidable accident, nor of the default of the defendants in furnishing the materials required to be furnished by them or otherwise, but was the result of a want of diligence and fidelity on the part of petitioners, in the prosecution of the same, and furnishing the requisite number of laborers. And he further says that he expects to be able to prove by the said Lanckton, on the trial of this cause, that the witness worked upon the said brick arches, during their construction, under the direction of

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the petitioners. And that the weather was cold enough at the time of said work to freeze the mortar and that instead of making the mortar rich and using a small quantity of it and putting the bricks in the arches aforesaid, close together, a large and improper amount of mortar was used, which on thawing necessarily gave away and displaced the bricks, and thus weakened the arches, for the reason of such use of mortar and the coldness of the weather and by the occurrence of a thaw, felliu, and also that said witness has worked at the masons trade for a great many years and has known many arches built upon the plan of these in question, and that if properly constructed, they are good and durable arches.

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And deponent further says that on the twenty-fifth day of November inst., he caused the said John Whitney to be duly served with a subpoena in the cause issued by the clerk and under the seal of said court, requiring his appearance, (among others named therein,) in said court, on the 30th day of November inst., the day set for the trial of said cause, to testify on the part of the defendants. And he further says that the said John Whitney since the service of the subpoena on him as aforesaid, and on the 6 o'clock train, in the morning on the 26th day of November inst., without the permission, privity, or consent of the said defendants or either of them, left the city of Chicago to go to Rochester in the State of New York, to be absent for the period of about three weeks. That the said Whitney has and is interested in a large claim against the Detroit and Milwaukee Railroad Company, amounting as deponent is informed and believes to be true, to fifteen hundred dollars, which is past due and which said Whitney greatly feared he should lose. That during last week he received a communication from the agent of said Company. That if the said Whitney would be in Detroit on the 30th of November inst., the said claim would be settled and paid.

That said Whitney also had the settlement of a Railroad contract to build portions of a road in Canada in connection with one Orson Touslay, Charles Harrington and Everhed, which required his presence at the city of Rochester, New York, the middle of the present week by appointments by his co-contractors, as deponent is informed and believes to be true, and that his interest in said matters would greatly suffer unless he went there as required and he would unless personally present in all probability lose said debt \$1,500.

And deponent further says the said Harmon Lanckton was at the time he so worked on the said arches as aforesaid, in the employ and under an engagement with one B. C. Howard, a master builder in Chicago, and was permitted to work on said arches under the direction of said petitioners for their accommodation, and on account of some neighborly dealings between said Howard and petitioners, but was paid for the said work, by the said Howard, which facts were until the 25th of November inst., wholly unknown to the said defendants or either of them.

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That neither of the defendants had any acquaintance with the said Lanckton or until the 28th inst, knew his name. That deponent has endeavored in order to prepare for the trial of this cause, to ascertain the facts concerning the same, and the names of persons employed, by enquiring of the different employees of the petitioners, but has been unable from the prejudice or unwillingness of such employees to obtain any information solicited, and on the 25th November inst., while causing the witnesses in this case to be subpæned he acidentally and for the first ascertained the facts aforesaid, which he could prove by the said Lanckton, and immediately applied to the said Howard, for the name and residence of the said witness: but the said Howard had forgotten his christian name, and was unable to find out the same. And when the said Lanckton had gone to using every reasonable effort by looking over papers and making inquiries until the 28th inst., when for the first time deponent ascertained the name and residence of the said witness, and that he had left Chicago about six weeks ago for Bainbridge, aforesaid, to remain there during a month or two of the coming winter, and then return to Chicago. Doponent further says that said witness, as he has learned since ascertaining his name, is about 50 years of age, and a very candid, intelligent mason by trade, of a long and extensive experience in the different branches of his said trade in eastern cities. And at the time of working on the said arches as aforesaid, he was not in the employment of either of the parties to this suit, and is therefore a reliable witness, and that defendants do not know of any witness by whom they can so fully and satisfactorily prove the said facts as the said Whitney and the said Lanckton.

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And deponent further says that this application for a continuance of said cause is made in good faith, and for the mere and sole purpose of securing to the defendants in this cause, on the trial thereof, their rights in the premises. And he fur-

ther says, that he has no doubt but that the defendants can obtain the testimony, and the attendance of said witnesses for the trial of this cause, at the next term of this court.

FRANK PARMELEE.

Sworn this 30th day of November,
A. D., 1857, before me John
Forsyth, Notary Public.

The counsel for the petitioners, in opposition to such motion, called the attention of the court to certain statements contained in the deposition of Patrick Kerlihan, a witness on the part of the petitioners, which deposition had been taken on the 19th day of October, A. D., 1857, by the consent of counsel, and was then on file. The following Interrogatories had been put to the witness, viz:

Have you, within the last few days, had any conversation with the defendant, Frank Parmelee, with reference to the claim of Hambleton & Goodman, against him'? If so, state when, and where such conversations took place, and what was said by either of you, on the subject?

To which he answered as follows:

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Yes, I have. The conversation was last Saturday morning, on the corner of State and Randolph streets. I asked him when the trial of Mr. Hambleton was coming off. He answered, that perhaps next month, but probably not until spring. I asked him if he meant to put the trial back. He said "If I possibly can." I think this is what he said, according to the best of my opinion. I was just leaving.

To the reading of which, on the hearing of said motion, the defendants, by their counsel, then and there objected, which objection was overruled by the court, and the said answer was read on the hearing of said motion, to which ruling of the court, the defendants, by their counsel, then and there excepted. And the counsel of the petitioners also stated to the court, and the counsel for defendant admitted John Whitney, one of the persons named in the foregoing affidavit of Parmelee, was father-in-law of said Parmelee.

And the said court then and there denied the said application for a continuance of said cause. And the defendants, by their counsel, to said denial thereof by the court, then and there excepted.

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That on the 3d day of December, A. D., 1857, said cause came on to be tried before the said court and a jury, and thereupon, the said petitioners, for the purpose of sustaining the issues in said cause, on their part, offered in evidence the contract between the said petitioners, and the said defendants referred to in said petition, and a copy of which is thereto attached.

And for the purpose of further sustaining the issues in said cause on their part, the said petitioners, by witnesses, introduced and sworn on said trial, gave evidence showing that they took possession of the ground described in said petition and contract, and commenced the excavations for foundation walls of the buildings to be erected thereon by them, on or about the 27th day of May, A. D., 1856, and that they were engaged in and about the crection and completion of said building from that time up to and until the 20th day of February, A. D., 1857. Said petitioners offered further evidence, tending to show that they were delayed in the prosecution of their work upon said building in the months of August, September and October, 1856, or want of timber, lintels, and the cast iron window caps and window sills, stone sills for one of the towers. That these materials were furnished by the defendants, but were not furnished in due and proper season, as they were required. And that the defendants paid the plaintiffs the sum of \$86 62, being the wages of the men who remained idle while waiting for the iron caps and sills, as mentioned in the peti-That said delays occurred at different times during the months aforesaid, and that in consequence thereof, the petitioners could not employ, to good advantage, so many men upon said building as they otherwise might have done; and could not proceed with the work any more rapidly than they did. Further evidence was given on the part of the petitioners, tending to show that they commenced the laying of the front walls of the building on State and Randolph streets, on the 11th day of August 1856; that for the purpose of laying the outside tier of brick, a scaffold was necessarily used, resting upon upright poles, four or five feet distant from the wall, and that said front walls were finished and the scaffoldings removed on or about the first day of That in the month of October, A. D., 1856, the petitioners, at November, 1856.

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the request of the said defendants, commenced the excavations under the side walks, on State and Randolph streets, and were getting ready to build the brick arches for the vaults which were to be constructed beneath the side walks, and on a level with the basement story or cellar of the building, and intended for the use of the building. That the masoury of said vaults was built up to and connected the front walls of said building on State and Randolph streets, and extended out from said walls sixteen or eighteen feet. That the petitioners having built all the side walls of the vaults, and the supports for the arches, commenced the construction of said arches on or about the 5th day of November, 1856, and in the course of three or four days had put up all of said arches on State street, and a few upon Randolph the defendants had begun to place upon the arches, the street, and flagging stone for a side walk, when the arches commenced falling in, and very soon all the arches on State street, and all but two or three on Randolph street had given way and fallen. And at the request of the superintendent, the remaining arches were taken down, and the brick of the arches that had fallen were removed by the said petitioner, and no more arches were built, but in place of the brick arches and flagging stone, the defendants afterwards constructed a plank side. walk around the building.

Petitioners further offered evidence inten ling to show that the plan of the arches intended to support the side walks was defective, and that they fell because of the defects of the plan.

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Petitioners introduced further evidence tending to show that they were delayed in the completion of the plastering of said building by the cold weather, and in procuring, stoves for heating the rooms in which the plastering was to be done and for want of some cut stone work for door sills which were to be furnished by the defendants and without which the building could not be completely enclosed. That the roof could not be put on until the front walls were up. And that the inside work could not be done until the roof was on. That after the roof was on the petitioners followed up the carpenters without delay and finished the inside work as soon as practicable,

The petitioners also introduced in evidence the certificate of the architect, Wm. W. Boyington, referred to in the petition, and a copy of which is therein contained and also gave evidence showing the truth of the statement in the petition, as to the interest and title of the defendants in and to the premises, and showing that the defendants were in possession the premises as described and mentioned in the petition.

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The petitioners further gave evidence tending to show the amount and value of extra work done by them and in connection with said job, and mentioned by them in their said petition in this cause.

The petitioners also offered to give evidence to show that they had sustained the special damages mentioned in the petition, but the defendant's counsel objected to such evidence on the ground that if such damages were in fact sustained, they could not be allowed in this proceeding, and that there could not be any lien upon the premises for such damages, which objection was sustained by the court and the petitioners were not allowed to give any evidence as to such alledged damages.

In every instance where the petitioners gave evidence to substantiate the allegations as above stated, such evidence consisted of the testimony of at least two witnesses.

The defendants for the purpose of sustaining the issues in said cause on their part thereupon by witnesses introduced and sworn gave testimony tending to show that the petitioners did not prosecute their work on said building diligently, particularly in the early part of the season, and that they consumed a disproportionately large part of the season in the construction of the foundation and particion walls. That they were not delayed to any considerable extent for want of the iron and cut stone work, and that if they had prosecuted the work diligently and vigorously after the last of the iron and cut stone was on the ground, they might have finished their

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portion of the work on said building by the first day of December A. D. 1856, when in fact they did not finish the plastering of the building until about the 20th day of February 1857.

The defendants further offered evidence tending to show that it was not necessary to have outside scaffolding in the putting up of the front walls, and that said walls might have been laid up from the inside and that the petitioners might have commenced their work upon the arches for the side walk much earlier in the season than they did and have finished them during warm weather of the Summer or Autumn.

That when they commenced building said arches the weather was cold. so that the mortar froze between the bricks. That the season was very unfavorable for the construction of such arches and that the petitioners had notice from the Superintendent of the building not to build the arches at that time and that in going on with them at that time they assumed the responsibility of making them stand.—

That the arches were not properly built by the petitioners according to the plan and that they were so informed by the Superintendent soon after they commenced building them.

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That the plan of the arches was a good one and suitable for the purpose intended and if properly built so as to carry out the plan, they are strong and firm. That other arches built upon the same plan and properly constructed have stood firm for years without any indication of settling or giving way. That in warm weather is the proper time to build such arches.

The defendants further gave evidence showing that they had paid to the said petitioners for work done and materials furnished by them on said building the sum of fifteen thousand eight hundred and eighty-five dollars.

It further appeared from the evidence introduced by the defendants, that the excavations for the brick arches, and the arches constructed in said excavations were made and constructed outside of the line of the lot described in the petition and in the public streets of the city of Chicago.

 The plaintiffs council thereupon asked the court to instruct the jury as follows:

The Plaintiffs are not to be charged with delay in doing their work, if such delay was caused by the defendants or was owing to the want of materials, which the defendants were to furnish.

- 2. The plaintiffs are not responsible for the failure of the arches, if such failure was owing to a defective design.
- 3. There is no issue made by the pleadings as to the location or description of the premises upon which the work was to be done. If the jury believe from the evidence that the work was done upon the premises mentioned in the petition, then the plaintiffs have a lien upon the premises if anything is due them for such work.
- 4. If the jury find anything due the plaintiffs they will allow interest at the rate of six per cent per annum, from March 9th, 1857.

Which said instructions so asked for by the council for the said petitioners were given by the court and to the giving of said instructions, and each of them separately by the court the defendants by their counsel than and there excepted.

The counsel for the defendants then asked the court to instruct the jury on the part of said defendants as follows, to wit:

- 1. If the jury find from the evidence that the brick arches in question, and the excavations in which they were placed were made within the street or streets of the city of Chicago, and were not in fact upon the lot or land described in the petition in this cause, the jury will as to all items claimed by the plaintiffs for that work find for the defendants.
- 2. That if the jury find that the claim of the plaintiffs in this cause, includes a portion of work done and performed within the streets of the city of Chicago and not upon the lot or land described in the petition, which said work so done off from said lot or land together with that which was done on said lot or land, was performed under one and the same contract, and the contract in evidence, the claim for the whole work is not divisible, or to be apportioned, and the plaintiffs having no lien for the work done within the streets and not upon the land described, cannot by reason of the indivisibility of the demand have a lien for any part of the same.

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3. That under the contract and specifications between the parties, and read in evidence, the plaintiffs are themselves bound to furnish all the stone and iron window caps and sills and also the cut stone to be used in doing the work on the building under said contract and specifications. And if the jury shall believe that there was any delay of said work on account of said materials or any of them not being furnished at the time they were wanted by plaintiff on said job, such delay is no legal excuse for the plaintiff in not completing said job within the time specified in said contract for such completion, and they will find for the defendants.

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4. That the parties in this case have fixed on a certain mode by which the amount to be paid under the contract in question shall be ascertained, and having done so, the party seeking an enforcement of the agreement must show that he has

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done everything on his part to carry it into effect, and he cannot compel the payment of the amount claimed unless he procure the kind of evidence required by the contract or show that by time or accident he is unable to do so. And if the jury find that a certificate of the amount due has been given by the architect, the plaintiffs cannot take part of it as evidence of extra work done, and reject the other parts of it, but the same must be taken together in all its parts as to amounts, if one part is taken.

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5. If the Jury find from the evidence that the plaintiffs failed to make the brick arches in question in accordance with the contract and specifications between the parties respecting them, or if the architect of said work gave them directions as to the manner of doing said work, and the plaintiffs failed to comply with such directions, or if they performed said work in an unskillful, unworkmanlike and improper manner, then the plaintiffs have failed to complete their said contract, and cannot recover in this suit, whether the design for such arches was good and sufficient, or inot."

Of which said instructions the first, second, third and fourth were refused, and the last was given by the court. And to the ruling and decision of the court, in refusing said first, second, third, fourth instructions, and each of them, so asked for by the said defendants, as aforesaid, the defendants, by their counsel, then and there ex cepted, and the jury having retired, to consider of their verdict, returned into court with the following verdict, to wit:

We, the jury, find a verdict for the plaintiffs to the amount of Four Thousand Nine Hundred and Seventy two and 28-100 Dollars.

R. S. Hicks, Foreman, which said verdict included the unpaid balance of the contract price, the amount of the extra work, and interest on the same from the 9th day of March, A. D., 1857. And the said defendants, by their counsel, then and there moved the court to set aside the verdict of the Jury, and to grant to the said defendants a new trial, which motion was overruled by the court. To which decision of the court, in overruling said motion, the defendants, by their counsel, then and there excepted, and prayed an appeal to the Supreme Court, and that this bill of exceptions might be sealed by the Court, which is accordingly done.

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JOHN M. WILSON.



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Frank Parmeled Frank Parmeled Humbertent-Goodman

The third Instruction given on the part of the Peffs below, is clearly Erroneaus, The Juny are told by the Court, that there is no ifan made by the pleadings as to the location or description of the premises upon which the wak was to be done. The fair imput of that language is that, it is admitted by the pleadings, that the work was done on the premises described, Which is not true. See 1-2-3 pages of abstract as to allegations of bill in reference to Written Centract, & page 4 as to Extra look now the answer admits the making of the Written Contract (See page abstract 18 in page) it also Days thus the Dand defts also Day that Said Central was made respecting the Said lands and premises described in Dand petition (page 19) but days not one word respecting the zetra work, There is, then no admission as to Extra work Whether it was done on the premises described a whether it was done at the regrees t of the defts; and much being admitted or deried, the Peffs were bound, this being a Chancey proceed ing to prove the allegations, De bolf is Long 2 Gil 679

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The Statement of the Court that there was no ifam in the pleadings as to whether the work was done on the premises, would as a proposition of land induce the pary to infer that the work was infact done on the premises described, or the defts would have taken if see on it, or Else that it was admitted altogether,

Then the other branch of the instruction and while seems to be a distant proposition, is still worse.

"If the Jusy believe from the Evidence that the work was done whow the premises mentioned in the petition, then the plffs have a lieu upon the

primises if any thing is due them for such wall,"

The Court Must bead in Mind that plffs Claimed five hemilied dollars for Expha works, and the defts Could not be legally liable at all for that work unless it was done upon Negrest, and the 1st Sie of the Siew Statute (See RS 1845 page 345) is that "any presson who shall, by Centrat with the owner of any price of land xi furnish labor "xc There is no such hypothesis included or intended as that if the Jung shall find that such work was done intended any leguest by the deft, or under any centrait soppies or implied: but the men fact that the work was done on their premises, is made

a foundation for the lien; Such Dervices perform

2 d on the defts premises, however neederious they

might be or praiseworthy, such as Daving his property

from fine, if not done upon request, form no

ground for an action,

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and if services done expensives land, would not
be the ground of an action without a request or

Centract they certainly could not create a lien

under the Statuto,

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The latter clause option daid instruction does not cere the defect, if they believe the work was done on the premises, then the plffs have a lieu upon the premises, if any thing is due them for such work. That is subswitting the land to the pery, to be found by them, unless the instruction means, that if they had done work on the premises, which has not been paid for, then the plffs have a lieu upon the premises,

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SUPREME COURT.

SUPREME COURT.

JOSEPH W. HAMBLETON, Appellers. Brief of Counsel for Ap-FRANKLIN PARMELEE, et. al. Appelants

I. There was no error in the decision of the Judge, in refusing to grant a continuance.

A party is not entitled to a continuance as a matter of right, except in the cases provided for by the Practice Act.

Ault vs. Rawson, 14 III .- 490. Section 13 applies only to civil common law cases. Baxter vs. The People. 3 Gil.-372.

This being a proceeding by Petition to enforce Mechanic's Lien, the rules of Chancery Practice are to govern.

R. S. Chap. 65; Sec. 23. Kimball vs. Cook. I Gil.—423.

If Section 23 of the Practice Act applies to this case, then the question is this-viz:

Should the Judge, exercising a sound discretion, have granted the motion?

The affidavit does not show but that the Defendants knew that the witness Whitney was intending to go away. If they knew it they could have taken his deposition.

Kimball vs. Cook. I Gil-430.

As to the witness Lanchton-the substance of the affidavit, taken in connection with the answer, is, that the Defendants did not learn until the 25th of November that he was employed by Howard.

But the deposition of Keilihan shows that the Defendants were acting in bad faith; that on the 17th day of October-more than a month before Whitney went away, or they had discovered that Lanchton was an important witness for them, the Defendant Parmelee stated that probably the cause would not be tried until Spring, and that he meant to put the trial back if he possibly could.

The suit was commenced April 2d, 1857, in the Circuit Court, and on the day it was called for trial at the May term, the Defendants procured a change of venue to the Common Pleas, which put off the trial until December. Under the circumstances the Judge was warranted in thinking that the motion for a continuance was not made in good faith.

II. The Judge was right in refusing the 1st and 2d instructions asked for the Defendants as to the work under the side-walks, because

1st. The Jury were to try nothing but the issues made by the pleadings, and no such question was in issue. R. S. Chap. 65. Sec. 7 and 8. Daniels Chy. Recorp 992.

The questions in dispute were not as to where the work was AL - 12-3

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AL p. 27

done, but only as to the manner in which it was done and as to

the cause of the delay.

The Defendants, as the owners of the lot, had the title to the middle of the street. The premises are described as bounded-"on the north by Randolph Street and on the south by State St." The public had merely a right of way with which these vaults in no respect interfered, consequently the vaults were in fact on the land of the Defendants. There was no evidence that the title to the streets was vested in the city of Chicago. That could not be unless a plat had been regularly made, acknowledged and recorded.

R. S. Chap. 25; Sec. 21. Manly vs. Gibson. 13 III; p 312. Sfith's Leading Cases, vol. 2, p 187–190.

Even if the question where the work was done, had been before the Jury, and it had been proved that the title to the streets was in the city, yet the petitioners would have a lien upon the lot for the work on the vaults.

The statute gives the lien not only for erecting or repairing any building but also for erecting or repairing the appurtenances of any building.

R. S Chap. 65; Sec. 1.

An appurtenance is defined as being "something belonging to another thing as principal, and which passes as incident to the

the principal thing."-Bourier's Law Dictionary.

These vaults were constructed beneath the side-walks and on a level with the basement story or cellar of the building, and intended for the use of the building. The masonry of the vaults was built up to and connected with the front walls of the building and extended out from said walls sixteen or eighteen feet. ! (See Bill of Exceptions.) Does not this describe an appurtenance to a building? Would not a deed of the lot convey this appurtenance?

But even if the statute did not contain the language referred to, yet the mechanic would have a lien on the lot for building such vaults. It is well known that in cities, vaults of this description are allowed, by the city authorities, to be built under the sidewalks, and are used chiefly for receiving coals. The right to construct and use such vaults constitutes an easement, or, as it is termed in the civil law, a service or servitude, which, as long as it exists, is appurtenant to the land or lot with which it is connected, passes by any conveyance of the land, and cannot be severed from it.

Smith's Leading Cases. Vol. 2; p. 187-8, 4 Kent Com. -518. - 467 Domat's Civil Law, Sec. 1031.

This is materially different from the case where the claim is for paving a street or flagging a side-walk. Such improvements are made under the direction of the city authorities, and are intended chiefly for the benefit of the public, and may not, to any considerable degree, enhance the value of the lot. But vaults under side walks are for private use alone. If they are judiciously planned and well built, they add to the value of the lot just as much, in proportion to their cost, as the main building itself.

Why, then, should not the mechanic have a lien upon the lot for the labor and materials which have so increased its value?

The Judge was right in refusing to give the 3d

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Haddan & Shouly. 13 200-583

Instruction asked by Defendants, as to the construction to be given to the contract.

As regards the iron window caps and sills, it is evident from the specifications, that the Petitioners were not to furnish them. Iron work is not masonry. They were to furnish certain iron anchors, and were "to set all stone and iron window caps and sills in a thorough manner." As to the store sills in question, the contract and specifications alone do not enable us to determine who was to furnish them, but we are referred to the plans. The Appellants have not thought it advisable to have those plans included in the Bill of Exceptions, nor does it appear that the Bill of Exceptions contains all the evidence given on the trial. This is a sufficient answer on this point, but we can go further.

The Petition states that the Petitioners were delayed for want of this iron and stone work which was to be furnished, and was finally furnished by the Defendants; that on ore occasion the Defendants promised to pay the wages of the workmen who should remain idle while waiting for the iron work, and did accordingly

pay \$86 62.

The answer does not deny that this iron and stone work was to be furnished by the Defendants, but denies that there was any default on the part of the Fefendants, and claims that the delays were owing to the Petitioners not prosecuting the work when the weather was suitable, and to an improper arrangement of the work, except the delay for which the \$86 62 was paid as aforesaid.

The Bill of Exceptions states that some of such stone work, (the stone door sills) were to be furnished by the Defendants, and that evidence was given tending to show that all the stone and iron work in question was furnished by the Defendants but not

as soon as required.

This, then, seems to be the state of the case, viz: both parties supposed that the Defendants were to furnish these caps and sills, and the Defendants did in fact furnish them. When the pleadings were put in the Attorneys for the respective parties must have been of the same opinion. On the trial the counsel for the Defendants seek to have a construction given to the contract different from the one given to it by the parties, and ask for an Instruction, part of which was clearly wrong, and no part of which, as far as this Court can discover from the record, was clearly right. The Instruction asked was properly refused. To have given it would have been error.

Vallamer S. King, 3d Barbour S. C., Rep. 548,

IV.—The fourth instruction asked by the defendants mistates both the fact and the law. If it had been given, it would have misled the Jury. The substance of the instruction is: 1st, That the petitioners were not entitled to payment except upon a certificate from the architect; 2d, That if they claimed any benefit from any portion of such certificate, they were bound by the whole of it.

By the terms of the contract, the superintendent is to decide

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as to all matters in dispute, &c.; but the contractor has the right

of appeal to arbitrators.

The petition states that after the work was completed, the petitioners applied to the architect for a certificate, and he gave one, in and by which he made certain decisions as to the claims of the petitioners; that, among other things, he allowed them \$497 for extra work; but claimed to deduct, for brick arch sidewalks, \$500, and for twenty days delay, \$2,000; that the petitioners appealed from the decision of the architect in relation to the sidewalks and in relation to delay; but, failing to agree upon arbitrators, both parties concluded it was best to have the dispute settled by suit. The answer does not notice the allegation as to the certificate, and it was therefore necessary for the petitioners to prove that such a certificate was given, that being one of the material racts in the case.

If the certificate is treated as an admission on the part of the defendants, or of their agent, the rule of law requires that if the petitioners offered in evidence any portion of it, they should offer the whole, and they did so. But they were not therefore con-cluded by its statements. They had the right to show, and the Jury had the right to find that the allowance for extra work was correct, and that the deductions for the brick arches and for delay were unjust. The petitioners gave other evidence on both of these points; and the Jury, by their verdict, sustained the claim

of the petitioners.

V.—The petitioners were entitled to interest from March 9th, 1857:

1st, On the account for extra work, because on that day that account was settled, and the sum due was agreed

upon:

2d, On the balance due on the contract, because, by the terms of the contract, it was due on the completion of the work

It is true, that by the terms of the contract, the work is to be done to the satisfaction of the architect, and he is to give a certificate that the unpaid balance of the contract price is due, subject however to appeal from his decision. The refusal of the architect to be satisfied and to give such certificate, when he was in duty bound to be so satisfied and to give such certificate, was a fraud upon the rights of the petitioners, and could not operate to prevent the money becoming due at the time when such certificate was applied for, and should have been given. The architect claimed to make certain deductions from the contract price. The petitioners refused to acquiesce in such decision. The Jury have found that the petitioners were right and the architect wrong; that no such deductions should be made; that the balance on the contract was due on the 9th March, and the architect should have so certified. This suit could not be commenced until the money was due. If it has ever been due, it was due on the 9th March; and being due on a contract in writing, we are entitled to interest rom that time.

Panuelee at al Brief of Goodnile & Famelle Coursel for Millers 100 les

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Interest- The

FRANK PARMELEE, LIBERTY BIGELOW, DAVID A. GAGE & WALTER S. JOHNSTON,

JOSEPH W. HAMBLETON & DANIEL GOODMAN.

Appeal from the Cook County Court of Common Pleas.

MECHANICS' LIEN.

Abstract of Record.

be tition break

the controct in anopenone This suit was commenced by filing a petition, to April term, A. D. 1857, of the Cook county Circuit Court, for the enforcement of a Mechanics Lien, under the statute. At the June special term of the Circuit Court, the said cause was transferred to the Cook county Court of Common Pleas. And the petition, answer and other papers in the case duly filed in said Court of Common Pleas. petition is as follows:

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Farmers

STATE OF ILLINOIS, SS. CCOK COUNTY.

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To the Honorable George Manierre, Judge of the Circuit Court of Cook Co.:

The petition of Joseph W. Hambleton and Daniel Goodman respectfully shows unto your honor, that your petitioners are masons by trade and are partners doing business in the city of Chicago, in said county under the name of Hambleton and

must berng Amuself within the statute to entitle houte Could Stat only applies to level Com & proceedings

That Franklin Parmelce, Liberty Bigelow, David A. Gage and Walter S. Johnson, on and before the 27th day of May 1856, possessed and occupied a certain parcel of land situate in Chicago aforesaid, and described as follows, to wit: Bounded on the North by Randolph street, on the West by State street, on the

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Money due on any instrument in writing drows milital mhitten the amount due is legendrette.

Then is no Everence that this street was ever planet it is only in such enses that the fee is record in the city Hen the common hom une privaces & the longues to the middle of the stree

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South by the brick barn of Frank Parmelce & Co., and by the lot lying next south of said barn, and on the east by said barn and by an alley, being about one hundred and twenty-four feet on State street, by about one hundred ond fifty-one feet on Randolph street. Which lands were and are held by them under and by virtue of certain leases before them made by the owners of the above described premises for a long term of years. Which term will not expire for a number of years yet to come. That on or about the said 27th day of May, the said Parmelee, Bigelow, Gage and Johnson by their company name of "Frank Parmelee & Co." made and entered into a contract in writing with your petitioners of which contract the following is a copy, viz..

These articles of agreement made and entered into this 27th day of May, A. D., 1856, between Hambleton and Goodman of the first part, building contractors of the city of Chicago, and Frank Parmelee & Co., of the same place of the second part witnesseth,

That the said Hambleton & Goodman or executor's administrators and assigns, for and in consideration of the payments hereinafter to be made to them by the said F. Parmelee & Co., or their legal representatives, do on their part contract and agree to build finish and complete in a careful, skillful and workmanlike manner, to the full and complete satisfaction of Wm. W. Boyington or assistant super intendent, and by and at the times mentioned in the foregoing specifications, the masons and stonework of a five story block and basement of stores and offices, that is to be erected on the corner of Randolph and State, as aforesaid, so as fully to carry out the designs of said work as it is set forth in the foregoing specifications and the plans and drawings therein especially referred to. Said specifications and plans and drawings, being hereby declared part and parcel of this contract.

And the said Frank Parmelee & Co., or their executors administrators or assigns, for and in consideration of the said Hambleton & Goodman doth fully and faithfully executing the aforesaid work, so as to fully carry out the design for the same, as set forth by the specifications. And accordingly to the true spirit, meaning and intent thereof, and to the full and complete satisfaction of Wm. W.

8

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Boyington, or his assistant superintendent as aforesaid, and at the times mentioned in the foregoing specifications doth hereby agree to pay the said

the sum of Twenty Thousand Three Hundred and seventy-four dollars \$20,374 in the manner following viz.: As the work progresses, the superintendent is to make out estimates from time to time, of the work and material in-wrought into the building and upon presentation of a certificate from said superintendent of eighty-five per cent on said estimate. The said Frank Parmelee & Co., or their legal representatives are to pay the amount from time to time, and the balance fifteen per cent is to be paid together with any other balance that may be due to said Hambleton & Goodman, upon the completion of the contract as aforesaid, provided the said superintendent shall certify in writing that they are entitled thereto.

In Witness whereof, the parties hereto have set their hands the day and year above written. (Signed)

HAMBLETON & GOODMAN. FRANK PARMELEE & Co.

That specifications mentioned in the said contract is hereto annexed and marked schedule A, and is made a part of this petition, excepting, however, that the words in said specifications contained under the head of "damages" and relating to unavoidable delays, were added some few days after the said 27th day of May, with the consent and by the directions of the parties to such contracts and for the purpose of making such addition a part of such contract.

And your petitioners further show that the premises first above described, and which are hereinbefore stated to have been possessed and occupied by the said Parmelee, Bigelow, Gage and Johnson are the same premises referred to, in the said contract and specifications and are the same lands and premises upon which your petitioners performed the work, furnished the materials and put up the buildings as hereinafter stated.

And your petitioners further show that immediately after making such contract

they proceeded to the performance of the same, on their part, and did all the work and furnished all the materials to be by them done and furnished according to the provisions of such contract, and would have completed the work and the several parts thereof within the times specified in such contract if they had not been prevented by causes of delay that were unavoidable on their part, and if they had not been delayed said Frank Parmelee & Co. And if they had not been obliged to wait for certain iron work and castings which were to be furnished and which were finally furnished by the same Frank Parmelee & Co. That your petitioners were obliged to wait for lintels to be placed over the iron columns, and for the iron window caps and sills, and for the stone sills of the south tower, and for the carpenter work to be done, and for the building to be shut up and warmed so that the plastering would dry.

Your petitioners further show unto your honor, that by reason of the neglect of the said Frank Parmelee & Co., in the particulars above mentioned and by reason of the said delay consequent thereupon your petitioners were put to great expense and suffered great loss and damage, masmuch as they could not keep their men at work to advantage, and the men were frequently idle for want of work, and your petitioners were obliged from time to time to discharge their men and then to hire again at higher wages, and were obliged to complete the job when the days were short, and during the cold weather of the fall and winter, when it necessarily cost them a much larger sum, than it would if they could have done such work at the time contemplated when such contract was made. Which loss and damage so sustained by your petitioners to the sum of Ten Thousand Dollars, besides the sum \$86,62, a claim for money paid as hereinafter mentioned. That your petitioners frequently complained to the said Frank Parmelee & Co., and to their architect and agent, the said Boyington of each delay and notified them of the damage which your petitioners were sustaining in consequence thereof.

Your petitioners further show unto your honor that at the request of the said Frank Parmelee & Co. and under the direction of the said superintendent they furnished materials and performed work in addition to that which was specified in the contract, of the value of Five Hundred Dollars or thereabouts.

Your petitioners further show that they made an agreement with one William

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(12020-05)

Ford by the terms of which agreement he was to lay up the front wall of the building, and he employed a sufficient number of competent workmen and would have completed his job in the month of August if he had not been delayed through the default of the said Frank Parmelee & Co., in the particulars above mentioned, That his men were frequently without work, and he was on several occasions obliged to dismiss a number of them while waiting for said iron work. That finally the said Frank Parmelee & Co. either personally or by their said architect requested that the said Ford should retain his workmen and promised to pay their wages for such time as they should thereafter remain idle for want of iron work so to be furnished by the said Frank Parmelee & Co. That pursuant to such request, the masons and laborers were detained and paid by said Ford, and your petitioners for time that they were idle from the 22nd to the 26th of September the sum af eighty six dollars and sixty two cents.

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And your petitioners further show unto your honor, that your petitioners having ta length fully completed their job, and having faithfully kept and performed the said contract, on their part, did, on or about the 1st day of March last past, present to the architect and superintendent, the said Wm. W. Boyington, their account and claim for the extra work and materials, which they had so done and furnished, as above mentioned, which account also included the items of the said claim of \$86 12-100, being for money paid at the request of said Frank Parmelce & Co., as above stated. That your petitioners and the said Boyington looked over-such account, and made divers corrections in the same, and mutually agreed that the amount due thereon unto your petitioners, for such extra work and materials, was the sum of \$497, and that the said sum of \$86 12-100, was also justly due to your petitioners. That thereupon your petitioners applied to the said Boyington to give them a final certificate for the balance due them, of the price mentioned in said contract, and also for the amount due for such extra work and materials, for said money paid.

13-14

And your petitioners further show that on the 9th day of March last past the said Boyington delivered unto your petitioners a certificate of which the following is a copy, viz.:

Chicago, March 9th, 1857.

I hereby certify that I have carefully examined all the variations from the

contract by which Messrs. Hambleton & Goodman, on the 27th day of May, A. D. 1851, agreed to the masonry and stone work, and furnish materials for a block of stores and offices situated on the corner of State and Randolph streets for Messrs. F. Parmelee & Co. I find that Messrs. Hambleton & Goodman are entitled to an allowance of four hundred and ninety-seven dollars

for various extra work &c	\$497,00
	\$20,871,00
Messrs. Hambleton & Goodman are also deficient in point	
of not fulfilling contract and work charged, making some	11.
parts less than was called for in the contract, viz.: For brick work and plastering omitted, " brick arch side walks,	\$1,874 \$500,00
" twenty days delay in finishing the building as provided in contract\$20	
Payments as per certificate from time to time,	\$18,302,2 6 \$15,885,00
	\$2,417,35
Ww. W. BOYINGTON.	

Superintendent.

15

Your petitioners further show that they at once appealed from the decision of the said Boyington, as will appear from the following notice which they served upon the said Frank Parmelee & Co., and upon the said Boyington on the 12th day of March.

GENTLEMEN,

Having fully performed on our part the contract entered into on the 27th day of March, 1856, with Frank Parmelee & Co., we applied to Wm. W. Boyington the superintendent, for a final certificate for the balance due us. On the 9th day of March instant, he delivered to us a certificate in which he among other things professes to decide and certify that we are deficient in point of not fulfilling contract and work charged. Making some parts less than was called for in the contract, to wit,

We claim that whatever damage or loss may have been sustained in relation to the brick arch side walks, resulted from a defective design furnished by said superintendent and that whatever delay there was in finishing the building was unavoidable on our part and was caused by you or by some of you.

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You will please take notice that we hereby protest, against the above mentioned decision of the said superintendent, and as provided for in said contract appeal from such decision to an arbitration to be chosen indifferently. And we propose as arbitrators the following named persons, to wit, Thomas Wilner, Levi H. Waterhouse and William H. Carter, each of whom is, as we believe disinterested, and fully competent to act as such arbitrator. It you are willing to submit to such arbitration please notify us or our attorneys, bereinafter named, of such willingness without delay, so that we may if possible agree with you upon the persons to act as arbitrators. Our attorneys above referred to are Messrs. Goodrich, Farwell and Smith, whose office is 47 Clark street. If you do not on or before the 16th instant, notify us or our attorneys of your willingness to submit to such arbitration. We shall conclude that you refuse to arbitrate, and we shall be compelled to commence sult to enforce our claim against said Frank Parmelee & Co.

Dated March 11th, 1857.

Very respectfully yours,

HAMBLETON & GOODMAN.

To Messrs. Frank Parmelee & Co., Mr. Wm. W. Boyington.



Your petitioners further show that after such certificate was given by said Boyington as aforesaid, they called on him and inquired of him why he had neglected to include in said certificate the said sum of \$86,62, and he admitted that it was omitted by mistake, and then gave them a separate certificate for that amount, which amount the said Frank Parmelee & Co. afterwards paid to your petitioners.

Your petitioners further show that it is true as was in said notice stated, that

whatever damage or loss was sustained in relation to the "brick arch side walks" resulted from a defective design furnished by said Boyington and that the work done by your petitioners was done well and in strict compliance with the contract, and according to the designs furnished, that the said brick and side walks were nearly completed, when they gave way, and it was evident that arches built according to such design would not be sufficient, and your petitioners were directed not to complete them but were told that they must remove the materials provided and used for such arches, which instructions by said Boyington your petitioners followed.

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Your petitioners further show that although the said Frank Parmelee & Co., after receiving such notice at first consented to such arbitration, and agreed with your petitioners upon persons to act as arbitrators, yet the said Frank Parmelee & Co. finally concluded not to submit to such arbitration. That on the 25th day of March the said Parmelee called at the office of the said attorneys and informed them that the persons whom they had named were not willing to act, that they (the said Frank Parmelee & Co. meaning,) had not been able to find suitable men who would act as arbitrators in the matter, that they had concluded not to try any farther, and that they had rather leave the matter to the decision of twelve men, than to any three men they would be able to get. Your petitioners therefore claim that the said Frank Parmelee & Co., are justly indebted to your petitioners as following, viz.

19

mi i i	0,	
The balance of the price mentioned in the contract after		
deducting all payments and also deducting the said sum		
of \$18,74 for brick work and plastering omitted and also		
of \$10,14 for orick work and plastering omitted and also		
allowing for the materials tuken from the brick arch side		
walks, and for the value of the work remaining to be done		
on the said side-walks, when your petitioners were instructed		
not to complete them\$150 \$	10000	
For extra work and materials	4,260,2	26
For extra work and materials,	-497.0	00
For damages sustained through the default of said Frank		
Parmelee & Co. above set forth,		
	2000,0)0
Motal -		_
Total\$6	3.757.2	26

Your petitioners further show that as they are advised and verily believe they have a lien upon the said land and upon the leasehold interest of the said Frank Parmelee & Co. in and to said land, and upon the said building for the sum so due them as aforesaid. And they ask the aid of this honorable court in the premises, and pray that such lien may be enforced, and that a judgment or decree may be made direct-

ing the sale of said leasehold interest and of said buildings, and of all the right, title, and interest of the said Parmelee, Bigelow, Gage and Johnson, in or to the said land or buildings, to pay the sum due to your petitioners as aforesaid, and that such other further, or different order or decree may be made in the premises as to your honor shall seem meet, and as shall be agreeable to equity.

20

Your petitioners further pray that a summons may issue from this court directed to the sheriff of Cook county, to summon the said Franklin Parmelee, Liberty Bigelow, David A. Gage and Walter S. Johnson, returnable to the next term of this court to cause them to appear and answer this petition.

DANIEL GOODMAN, JOSEPH W. HAMBLETON.

GOODRICH, FARWELL & SMITH, Soliciters for Petitioners.

STATE OF ILLINOIS, SS.

The above named Joseph W. Hambleton and Daniel Goodman being severally duly affirmed, each for himself doth say that he has heard read the foregoing petition and knows the contents thereof, and the same is true according to the best of his knowledge and belief.

JOSEPH W. HAMBLETON. DANIEL GOODMAN.

This 2nd day of April, 1857, Wm. L. Church clerk.

"SCHEDULE A."

21

Specifications for the Masons: Work and materials required for the erection and completion of a block of pressed brick stores and offices that F. Parmelee & Co. are about to have built on the corner of State and Randolph streets, in front of and in connection with the walls of the omnibus barn.

Special reference will be had by the contractor to the following specifications, and

the accompanying designs, as made by Wm. W. Boyington, architect, and which consists of the following drawings, to wit:

Plan of Foundation, and Vaults under walk.

- " " Basement.
- " " Main Floor.
- " " Second "
- " "Third and Fourth Floors will be the same as the second floor. Fifth Floors will be only finished in towers.

DUTIES OF CONTRACTOR: He shall be strictly held to make such work, and to use such material as is hereinafter described, and to work up the building to the given design, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions, without reference to what the drawing may measure on its scale. He will be further held to submit as to the character of the materials used and the work done, to the judgment of the superintendent, and to procure from him all necessary interpretations of the design, and all necessary certificates, regarding his payments.

Superintendants and their Duties: Boyington & Wheelock, or assistant architects, are declared to be the superintendents of the work for the owner. Their duties will consist in giving, on demand, such interpretations, either in language, writing or drawing, as in their judgments the nature of the work may require, having particular care that any and all work done, and materials used for the work, be such as is hereinafter described, in giving, on demand, any certificates that the contractor may be entitled to, and in settling all deductions of, or additions to the contract price which may grow out of alterations of the design, after the same is declared to the contract. Also determining the amount of damages which may accrue from any cause, and to particularly decide upon the fitness of all material used, and work done

The contractor being bound in all cases, to remove all improper work or materials, upon being directed so to do by the superintendent.

But the contractor, if, after being directed, as above, to remove the same, should

22.

refuse or neglect so to do, shall not only suffer a deduction from the contract price of the difference, in value of proper and improper work and materials, but shall also be liable for all damages of whatsoever nature or kind, that may result from such cause. The above provisions to apply in the same way to all materials or work used, made or fixed, without the knowledge of the superintendent.

And it is hereby expressly provided, that, in case, the contractor should feel aggrieved by the decision of the superindentent, an appeal may be taken from such decision to an arbitration, chosen indifferently, and whose decision in the matter shall be final, and binding on all parties.

The owner reserves the right to alter or modify the design, and to add to or diminish from the contract price, the difference to be adjusted, as provided above.

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The owner being bound, in all cases, to recognize the acts of his superintendent, not only as regards extra work, but also to the sufficiency of the design, the contractor being in no case responsible for any accident resulting to the work from a defective design, which fact must be determined by an arbitration of three disinterested men, chosen indifferently, and if found that the damages resulted from a want of proper care on the part of contractor, then, and in such case, the damages and loss shall be paid for and made good by him. But, if found that the accident or damage resulted from an improper design, then, and in such case, all damages shall be sustained by owners; which, in all cases, must be real, and in no case constructive damages to be allowed.

All payments made on the work during its progress are on account of the contract, and shall, in no case, be construed as an acceptance of the work executed, but the contractor shall be liable to all the conditions of the contract, until the work is accepted, as finished and completed.

Dimensions of the building, as represented by, and figured on the drawings:

Heights.

 Basement Story, 8' (Cellar,) walk under, to be 6' 6" feet.

 Principal
 do
 do 13' 2" do.

 Second
 do
 do 12' 3" do.

 Third
 do
 do 10' 3" do.

 Fourth
 do
 do 15' 0" do.

For depth of foundation below the cellar bottoms, see sections and plans.

This building is intended to be thorough in every particular, and must be finished throughout, as hereinafter described, and anything shown by the drawings, and not hereinafter particularly reserved or described, which is necessary to complete the masons materials and work of the building is to be done at the cost of the contractor notwithstanding such omission.

GRADE OF BUILDING.

Top of first floor of joist to be fixed twenty-one inches above the new grade of sidewalk.

EXCAVATIONS.

The entire area of the proposed building, as required by plans, to be dug out to the required depth for cellar and basement bottom, by propr etors. Excavations for footings of walls, to be dug by contractor, below the first named excavation. All other excavations for drains and eisterns, and for foundations of piers, and for vault-of water closets, as required by plans, to be dug by the contractor. All the excavated earth to be disposed of by the proprietors. Contractor to properly level off the earth about the walls, so as to turn the water from the walls, and re-fill the excavations for drains. After the same is put in and properly fixed, the drains will all be let into the sewer that now passes from the barn to State street. These drain pipes will be furnished, and laid by the proprietors, after the trenches are dug, and cesspools properly arranged by the person putting in the drain pipes, so as to drain each basement and cellar under the walks seperate.

26

1120000

RUBBLE STONE WORK.

All walls shaded blue to be of stone, of dimensions, and heights figured on the drawings and composed of good quarry stone, laid in the best manner with mortar mixed of proper proportions of best lime and clean coarse sand, the whole to be well bedded and bonded together and well faced on both sides.

Dwarf walls to have stone foundations, same kind of work as above specified between main pier, same depth and average twenty-four inches thick laid in cement mortar, all stone walls to be laid in cement mortar one foot above the basement floor, outside walls to cellars under the side-walks will be laid in cement full height

Footing of wall for piers on fronts from the bottom of trenches to be composed of large stone, and will be three feet high and five feet 6" wide the first course or layer must not be less than twelve inches thick by thirty feet square surface and must be well settled in the earth by a heavy instrument of wood and laid in a mortar made of two parts sand and one of water lime, upon the first store there will be two more courses 10" to 12" each 4' x 4' and 3' x 3' thoroughly fitted together and bedded in fine mortar as above, the top of the top stone will be dressed with square edges. Piers in the cellar for partition walls 3 feet deep built of good square stones, and the top of each to be covered with a stone at least 10" thick. Bearing walls for the support of the arches and side-walks will be as shown in plans and sections. Foundations for the support of the iron columns in the cellars under walks will be composed of large stone, one stone to each layer and well fitted together.

The top of the piers for the fronts to rest the iron columns upon will be dressed and squared for staying surface.

The same kind of stone will be used for the foundations of iron columns for the interior of basement and laid in same way. All necessary holes to receive timbers and joists must be cut in the brick and stone work of old walls, by contractor for masonry. Walls of areas to be of stone, for height and thickness, see section and plan. The face of which must be laid in courses with good bonds and coarse, bush



hammer face. All door and window openings left where shown on plans with return stone jambs and stone caps and sills.

All proper holes left for drains and gas pipes as directed or shown by plans.

CUT STONE.

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For the quality and kind reference will be had to the accompanying description and drawings, where the same is plainly described and shown, and must all be properly set, and after the walls are finished to be properly cleaned off and pointed up.

All stone piers shown on basement plan must be composed of good square blocks, well cut on all sides, medium bush-hammered with $1\frac{1}{2}$ inch border, well laid in fine mortar to the right height to rest the columns upon, there will be no stone door sills. There will be a belting course of cut stone 6 inches thick laid in connection with the stone sills to the first tier of windows above the stores with a drip cut on under side, this belt course will project $2\frac{1}{2}$ inches and lay in the wall at least 6 inches, and at the windows full width for sills of 8 inch jambs, under this belt of stone will be a strip of sheet lead 8" wide laid in the wall solid and furnished by the mason, projecting out for the purpose of making water tight over cornice and balcony. The stone piers dividing the store fronts on both streets will be formed in blocks thirteen inches deep into them with rustic joint, fine bush hammered face with fine miter border, all neatly trimmed and laid up with a fine point of mortar, up to the right height for the lintel of store fronts.

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BRICK WORK.

All walls shaded red on the plans are to be of bricks of the thickness and size marked on the plans, laid in the best manner, with solid heads and bed joints, and slushed solid every two courses. The cellars under the walks will be formed with 12 inch cross skin back brick arches, from which four inch brick arches will be turned and all laid in cement mortar composed of two parts sand to one of cement. The cross arches will be anchored with 1 inch round iron with nuts and washers at each



end. The washer on the area side will be four feet long, let into the face of the wall, size $1\frac{1}{2} \times 2\frac{1}{2}$ with $\frac{3}{4}$ bolt at bottom through the wall.

The window jambs and easings outside for the last story of towers will be formed of brick and will be on all sides except the south side of south tower. There will be three of these towers one to each corner of the building.

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All brick used for facing the outside walls must be hard burned, all soft brick to be rejected from the work. The face will be red, pressed brick, on both streets, close jointed and tuck pointed. Tower walls to extend above the roof of main building on all sides, the inner sides to each will be commenced on trusses from the ceiling of fourth story, these tower walls will be light in thick above the fourth story. Owners will furnish at the time they are wanted in all cases where the roof is to be of felt and composition, a sufficient amount of 2 x 4 inch scantling to surround the whole roof of building and which must be built in the fire walls by contractor in such a manner as the lower side of the piece will be flush with the top of the roof boards. All chimneys to be built as shown by drawings, and in all cases where the flues passes through the floorings the brick work must project out 4 inches so as to form at least 8 inches between the timbers and smoke flues, all the flues to be smoothly plastered on the inside, and have stove pipe thimbles with tin stoppers, as directed, and be finished above the roof, at least one foot above the highest point. There will be brick arch window caps to all the windows of the fourth story. Seasoned lath to be worked in all the joints of the brick of the outside walls of the different stories, one to each 12th course. Contractor to execute all the masonry and furnish all the materials necessary for setting bank vault in the corner room, and all necessary iron anchors and stone lining for same. Iron grating for ventilation 8 x 12 inches, to be worked in the outside walls with connecting flues to reach the basement under walks. The contractor for the masonry will set all stone and iron window caps and sills in a thorough manner.

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IRON ANCHORS,

For each of the piers, and for at least every ten feet of the dead walls, to be

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carefully worked in the masonry and secured to the timbers of each of the floors and roof. There will be $1\frac{1}{2}$ by $2\frac{1}{2}$ wrought iron anchors, extending on top of stone piers and let into the same on both fronts, and will extend the whole length of both fronts over openings except where oak timbers are to be put in.

The iron anchors for the fronts will be turned down into the stone one inch, and pass each other at least 6 inches, so as to prevent splitting the stone. Iron to be let in flush with top of stone.

These will be all pin anchors, made to wit: Pin eight inches long, of 7-8 round iron, the shauk to be 24 inches long, properly welded around the pin, and will be fastened to the timber with two spikes, size of iron $\frac{1}{2} \times 1\frac{1}{2}$. Those for the stone lintels of fronts to be extra heavy and must be long enough to reach the third joist from the stone or timber to be anchored. Straps of $\frac{1}{2} \times 1\frac{1}{2}$ iron to be placed on the timbers of all the floors and roof, where the same lie upon and meet on divissior walls, these straps must be 20 inches long, American iron, and have 4 spikes each, with ends turned down into timbers. All main timbers that connect with the old wall, or every ten feet of joist must have the same kind of anchor extending through the wall, with a nut on inside of wall.

PLASTERING

All throughout the building to be of the best quality plaster of Paris finish.—All three coat work except the basement, fourth and fifth stories, which will be two coats.

All brown mortar must be composed of suitable proportions of clear, sharp sand, quick fresh lime and hair, each of which must be put on at proper proportions and times. The finishing coat must be thoroughly polished, with plumb angles and true corners.

The contractor for the masonry will be held responsible for a perfect job of plas-

tering, and all places that may have been damaged or bruised by carpenters or other wise must be made good by the mason, without extra charge.

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Finally the whole job to be fully completed in a careful, skilful and workmanlike manner, and every material to be furnished therefor, and anything shown by the plans relating to or is necessary to complete the masonry of the building, and not hereinbefore particularly reserved or described, is to be done at the cost of the contractor, notwithstanding such omission.

FINAL.

Owner to give possession of the ground on or before the 26th day of May A. D. 1856. Contractor must agree to build the walls and chimneys ready for roof on or before Sept. 1st 1856, and fully complete the plastering of the building within forty-five days after the same is declared by the Superintendent ready for lathing, and must complete the whole job of masor ry within one hundred and fifty days after thefirst aboved mentioned time.

Said work in no case shall be considered as finished, unless the same is so reported to the Superintendent and accepte I by him. The owner hereby agreeing to have in readiness all necessary timber and carpenter's work as they may be wanted, so that in no case the masonry shall be hindered for the want of the same, and will put on each floor of joist on all the buildings within days after the walls are made ready to receive the same and in case he should fail to do so, then and in such case do hereby agree to exten! the time for finishing said work in a Pro Rata proportion for such delay, and will also pay all damages resulting to the contractor from such cause of delay, provided the contractor shall at the time of such delay notify the superintendent in writing of the extent thereof, and the damages to him arising therefrom, and if required by owner must prove the same.

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DAMAGES.

And in order to secure the execution of the work in the manner, and at the times specified, it is hereby distinctly declared that the damages arising from the non-ful-

fillment of the contract as regards time, shall be one hundred dotlars per day, for each and every day the work remains unfinished and which sum of damages shall be deducted from the contract price as eliquidated damages. The object of the above is to guard against delays that can be avoided but unavoidable delays excepted.

PAYMENTS.

To be made on the work as may be hereafter agreed.

The Answer of the defendants is as follows.

The answer of Franklin Parmelee, Liberty Bigelow, David A. Gage and Walter S. Johnston, defendants to the petition of Joseph W. Hambleton and Daniel Goodman, petitioners in the said petition against the defendants aforesaid:

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And the said defendants answering said petition say that they admit that on the 27th day of May A D. 1856, they were possessed of said parcel of land described in said petition, as assignees of certain leases before then made by the owners thereof, to divers persons other than these defendents, which leases have a long period of time yet to run; but that on or about the 15th day of September A. D. 1856 these defendants, by their deed bearing that date onveyed all their interest in and to said premises to one Daniel Lawrence of the city of Boston, who is still the legal owner of said leasehold estate, which said deed on about the 16th day of October 1856, was duly recorded in the Recorder's office of said county of Cook, as by the said deed when produced will more fully appear.

And the said defendants further answering say that on or about the 27th day of May aforesaid, they entered into a contract with the said petitioners substantially the same with the specifications as set forth in said petition.

The said defendants also say that said] contract was made respecting the said lands and premises described in said petition.

And the said defendants further say that they deny that the said complainants did all the work and furnished all the materials to be by them done and furnished according to the provisions of said contract and they deny that the said petitioners were prevented by causes of delay which were unavoidable on their part from completing the said work or the several parts thereof within the time specified in such contract, and they also deny that the said delay in finishing said work and fulfilling said contract was occasioned by the defendants, or that they were prevented from completing the same by the defendants neglect to furnish any of the materials provided in and by the said contract or otherwise to be furnished by them. And the said defendants allege that the delay of the said petitioners, instead or being occasioned by the default of the defendants in the premises, was in fact occasioned by the omission of the petitioners to prosecute the said work when the weather was suitable and by a bad and improper arrangement of said work, by their sub-letting different portions thereof, to different persons one portion to one man and another portion to another man, and thus requiring the defendants to bring forward the other work, which was not to be done by the petitioners, all at the same time and in a manner which it was not contemplated or agreed that they should do.

The defendants deny that the said petitioners have been put to great expense, or any expense (except that which was mentioned in said petition as amounting to eighty-six dollars and sixty-two-cents, which defendants paid or that they have sustained any loss or damage by reason of any default or omission of the defendants to perform their part of said contract and that all the delays in said work. (except that above mentioned) on the part of said petitioners or their sub-contractors, were their own fault in the arrangement of said work and the want of proper care, arrangement and diligence in prosecuting the same.

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And they further say that the said petitioners did not notify the said Boyington, Wheelock or assistant, at the time of any alledged delay or the damages consequent thereupon, nor did they notify the defendants to the best of their knowledge, infor-

mation and belief, or either of them, of the same, except as to that above mentioned. And the said defendants deny that they delayed the said Ford or prevented him, or any other of the sub-contractors on said work from completing their contract.

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And the said defendants further say that the said petitioners failed to complete their said contract, and that the said building was so far unfinished in respect to the said work to be done and performed by the said petioners and therefore unfit to be used for the period of more than sixty days after the time appointed and fixed in said contract for the completion thereof, and they say that the rents of said building if finished would have amounted to the sum of fifteen hundred dollars per month for said time, and it is provided in and by said contract and that the said petitioners should pay the defendants one hundre! dollars per day for each and every day the said work remained unfinished after the time specified in said contract, which should be deducted from the contract price as liquidated damages (unavoidable delays being excepted) and they further say that such delay was not unavoidable, and they shall insist on the said sum of one hundred dollars per day for said time, as the damages sustained as aforesaid, and which was due and owing by petitioners at the commencement of this suit and it is still due and owing as a legal proper offset to the claim of the said petitioners and which they hereby offer to allow and have deducted from any sum which the said petitioners may prove on the trial, of this suit against these defendants. And the said defendants further answering admit that the said complainant caused to be served upon them the notice mentioned in said petition whereby they objected to so much of said certificate of Wm. W. Boyington as related to the non-fulfilment of said contract as respects time, and an allowance of two thousand dollars as damages for such non-fulfillment, and to so much of said certificate as related to the brick and side walk substantially as stated in said petition,

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And these defendants having fears that the persons proposed as arbitrators in said notice would have an undue partiality towards the complainants, from the fact that said persons were, as these defendants were informed and believed to be true engaged in the same occupation as that of the complainants, and therefore would be liable to lean strongly against these defendants, did take the liberty to interpose an objection to them, and to suggest other names and persons as they believed more suitable to decide such a controversy impartially.

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And with that view these defendants within the time required in said notice, sent to complainants' solicitors the following communication.

Chicago, March 16th, 1857.

GOODRICH, FARWELL AND SMITH, Esq'rs.

GENTLEMEN:

In pursuance of a notice from Hambleton & Goodman, of a wish on their part to arbitrate the differences which have arisen between them and us, respecting the work on "Garret Block," and wishing ourselves to avoid litigation, and to arbitrate our differences, providing we can agree on the arbitrators, and the terms of submission, we say that we have made inquiries concerning the men named by Messrs. Hambleton & Goodman in their notice bearing date March 11th inst, and although they are very reputable gentlemen, yet the fact that they are all engaged in the same business with Messrs. Hambleton & Goodman is sufficient, we think, to give them an undue bias in their favor and we therefore feel unwilling to accept either of them, and to avoid the bias which naturally arises from similarity of occupation as in the persons named, we name Cyrus Beers, William R. Loomis and James L. Howe, as arbitrators, or as names to choose from, and desire that you inform us within a reasonable time whether Messrs. Hambleton & Goodman will accept these or either of them, to form the arbitrators between us, which arbitrators ought not to be less than three in number, all of which ought to be chosen by the parties.

Yours Respectfully,

F. PARMELEE & CO.

And these Defendants further say that the complainants or their said solicitors objected to all the persons so named by the said deff'ts, except the said Cyrus Beers, whom they accepted, that after considerable negotiation these arbitrators were agreed upon by the parties but on being notified of such selection, two of them as these defendants are informed, and verily believe to be true, being the said Beers and Mr. Francis Sherman refused to serve and the defendant Parmelee on being so informed and believing that it would be extremely difficult if not impossible to obtain the services of three such gentlemen of experience, ability and integrity, as the importance of the differences between the parties required, went to the complain-

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ant's solicitor who had charge of the matter, and informed him of such conclusion, and stated that he believed it would be better for all concerned to leave these matters to the decision of twelve men than to try any more to have it done by arbitrators, to which the said solicitors also assented. But nothing more was done in that behalf.

and belief, it is not true, as stated in said petition; that the damage resulting from the failure of said brick arch side walks, was occasioned by a defective design of said work, but the same was the result of the negligence of the petitioners in not building the same in the proper season of the year, and in proper and suitable weather, and in a proper manner; that they were frequently requested during the fair weather, and proper season to do said work, but persisted in leaving the same till the season became wet and cold, and wholly unsuited to such work, and by reason theeof the work failed. That the design of said work, as they are informed and believe, has been much followed' and when the work is well done, has alway proved

And these defendants further say, that according to the best of their knowledge

And the said defendants say that they kept and performed the said contract on their part, except as to said short detention of a very few days and for that they settled with and paid the complainants, but that the complainants have not performed said contract on their part but failed so to do and have thereby for the period of more than sixty days without any cause of prevention by these defendants or unavoidable accidents or delays, deprived these defendants of the use of said building and occasional damages to these defendants to a much larger sum than can or ought justly to be claimed upon said contract on their part. Without this that any other matter or thing not hereinbefore confessed or avoided, traversed or denied, is true to the best of their knowledge or belief, and they pray that they may be hence dismissed with their costs, expenses &c.

FRANKLIN PARMELEE, LIBERTY BIGELOW, DAVID A. GAGE, WALTER S. JOHNSON.

WM. K. McALLISTER Solicitors for Defendants.

sufficient and successful.

Replication was filled in the usual form.

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The bill of exceptions was entitled in the cause in said Court of Common Pleas and is as follows, viz.:

Be it remembered that on the 30th day of November, A. D., 1857, that being one of the days of the November term of the said court, the said defendants filed with their clerk of said court an affidavit for a continuance of said cause, and thereupon by their attorneys moved the said court that the said cause be continued which said affidavit is in the words and figures following, to wit.

FRANK PARMELEE,
LIBERTY BIGELOW,
DAVID A. GAGE, ET AL
ads.
JOSEPH W. HAMBLETON &
DANIEL GOODMAN.

Cook County Court of Common Pleas.

MECHANICS' LIEN.

STATE OF ILLINOIS, SS.

Frank Parmelee one of the defendants in the above entitled cause, being duly sworn deposes and says that the said defendants, have fully and fairly stated their case in this cause, to W. K. McAllister of the city of Chicago, their counsel therein, and that they have a good and substantial defense on the merits in this cause, as they are advised by their said counsel after such statement, and which the said defendants verily believe to be true.

And he further says that John Whitney who resides in the city of Chicago and Harmon Lanckton, who is now residing in Bainbridge, Granger Co., Ohio, are each of them necessary and material witnesses for the defendants on the trial of this cause, without whose testimony and that of each of them the said defendants cannot safely proceed to the trial of the same.

And deponent further says that the said witnesses are each of them mechanics and that they are competent, credible and intelligent persons, and that he expects that

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the defendants will be able to prove by the said John Whitney, on the trial of this cause, that he the said Whitney saw the progress of the work done under the contract of the petitioners set out in their petition in this cause, nearly every day with some slight exceptions from the commencement of the said petitioners with their said job until they quit the same. And that from the commencement aforesaid to the time fixed in said contract for the completion of said job by the petitioners there were materials and work always in readiness for the use of petitioners in their said job, sufficient to have enabled them by procuring reasonable and adequate supply of laborers, and by prosecuting said work with proper dilligence to have completed said job within the time fixed in said contract for the completion thereof. And that this deponent in the month of August, A. D., 1856, at the place of said work requested and urged the petitioners to procure more help so as to complete said job within said time, stating to them that their money was ready to pay them as fast as needed if they would do so, and more particularly that deponent urged and requested them to proceed at that time and make the brick arches under the side-walks upon State and Randolph streets, to support the flagging in front of said building on said streets as provided by the contract, to which contract (as set forth in the said petition, deponent refers as a part of this affidavit,) and he expects to be able to prove by said Whitney, that the said petitioners during the greater part of the time of doing said work had an insufficient supply of men for said work and that they neglected to prosecute the same with diligence and fidelity, and that they wholly omitted and neglected (though requested to do the same at the proper time by deponent.) to commence the building of said arches, and work under the side-walks until late in the fall, when the season was cold and wet and that the same in part fell in. for that reason and for want of proper construction soon after they were built by petitioners. And that the said job of the petitioners for and during the period of about wo months after the time fixed for the completion thereof, was so far unfinished as to render said building entirely untenantable during that time and that the defendants sustained heavy damages by losing the use of said buildings during such time as aforesaid. And he further expects to be able to prove by said Whitney that such delay as aforesaid, in completing said job, was not the result of any unavoids. able accident, nor of the default of the defendants in furnishing the materials required to be furnished by them or otherwise, but was the result of a want of diligence and fidelity on the part of petitioners, in the prosecution of the same, and furnishing the requisite number of laborers. And he further says that he expects to be able to prove by the said Lanckton, on the trial of this cause, that the witness worked upon the said brick arches, during their construction, under the direction of

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the petitioners. And that the weather was cold enough at the time of said work to freeze the mortar and that instead of making the mortar rich and using a small quantity of it and putting the bricks in the arches aforesaid, close together, a large and improper amount of mortar was used, which on thawing necessarily gave away and displaced the bricks, and thus weakened the arches, for the reason of such use of mortar and the coldness of the weather and by the occurrence of a thaw, fellin, and also that said witness has worked at the masons trade for a great many years and has known many arches built upon the plan of these in question, and that if properly constructed, they are good and durable arches.

And deponent further says that on the twenty-fifth day of November inst., he caused the said John Whitney to be duly served with a subpoena in the cause issued by the clerk and under the seal of said court, requiring his appearance, (among others named therein,) in said court, on the 30th day of November inst., the day set for the trial of said cause, to testify on the part of the defendants. And he further says that the said John Whitney since the service of the subpoena on him as aforesaid, and on the 6 o'clock train, in the morning on the 26th day of November inst., without the permission, privity, or consent of the said defendants or either of them, left the city of Chicago to go to Rochester in the State of New York, to be absent for the period of about three weeks. That the said Whitney has and is interested in a large claim against the Detroit and Milwaukee Railroad Company, amounting as deponent is informed and believes to be true, to fifteen hundred dollars, which is past due and which said Whitney greatly feared he should lose. That during last week he received a communication from the agent of said Company. That if the said Whitney would be in Detroit on the 30th of November inst., the said claim would be settled and paid.

That said Whitney also had the settlement of a Railroad contract to build portions of a road in Canada in connection with one Orson Touslay, Charles Harrington and Everhed, which required his presence at the city of Rochester, New York, the middle of the present week by appointments by his co-contractors, as deponent is informed and believes to be true, and that his interest in said matters would greatly suffer unless he went there as required and he would unless personally present in all probability lose said debt \$1,500.

And deponent further says the said Harmon Lanckton was at the time he so worked on the said arches as aforesaid, in the employ and under an engagement with one B. C. Howard, a master builder in Chicago, and was permitted to work on said arches under the direction of said petitioners for their accommodation, and on account of some neighborly dealings between said Howard and petitioners, but was paid for the said work, by the said Howard, which facts were until the 25th of November inst., wholly unknown to the said defendants or either of them.

That neither of the defendants had any acquaintance with the said Lanckton or until the 28th inst, knew his name. That deponent has endeavored in order to prepare for the trial of this cause, to ascertain the facts concerning the same, and the names of persons employed, by enquiring of the different employees of the petitioners, but has been unable from the prejudice or unwillingness of such employees to obtain any information solicited, and on the 25th November inst., while causing the witnesses in this case to be subpœned he acidentally and for the first ascertained the facts aforesaid, which he could prove by the said Lanckton, and immediately applied to the said Howard, for the name and residence of the said witness; but the said Howard had forgotten his christian name, and was unable to find out the same. And when the said Lanckton had gone to using every reasonable effort by looking over papers and making inquiries until the 28th inst., when for the first time deponent ascertained the name and residence of the said witness, and that he had left Chicago about six weeks ago for Bainbridge, aforesuid, to remain there during a mouth or two of the coming winter, and then return to Chicago. Doponent further says that said witness, as he has learned since ascertaining his name, is about 50 years of age, and a very candid, intelligent mason by trade, of a long and extensive experience in the different branches of his said trade in eastern cities. And at the time of working on the said arches as aforesaid, he was not in the employment of either of the parties to this suit, and is therefore a reliable witness, and that defendants do not know of any witness by whom they can so fully and satisfactorily prove the said facts as the said Whitney and the said Lanckton.

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And deponent further says that this application for a continuance of said cause is made in good faith, and for the mere and sole purpose of securing to the defendants in this cause, on the trial thereof, their rights in the premises. And he fur-

ther says, that he has no doubt but that the defendants can obtain the testimony, and the attendance of said witnesses for the trial of this cause, at the next term of this court.

FRANK PARMELEE.

Sworn this 30th day of November, A. D., 1857, before me John Forsyth, Notary Public.

The counsel for the petitioners, in opposition to such motion, called the attention of the court to certain statements contained in the deposition of Patrick Kerlihan, a witness on the part of the petitioners, which deposition had been taken on the 19th day of October, A. D., 1857, by the consent of counsel, and was then on file. The following Interrogatories had been put to the witness, viz:

Have you, within the last few days, had any conversation with the defendant, Frank Parmelee, with reference to the claim of Hambleton & Goodman, against him? If so, state when, and where such conversations took place, and what was said by either of you, on the subject?

To which he answered as follows:

Yes, I have. The conversation was last Saturday morning, on the corner of State and Randolph streets. I asked him when the trial of Mr. Hambleton was coming off. He answered, that perhaps next month, but probably not until spring. I asked him if he meant to put the trial back. He said "If I possibly can." I think this is what he said, according to the best of my opinion. I was just leaving.

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To the reading of which, on the hearing of said motion, the defendants, by their counsel, then and there objected, which objection was overruled by the court and the said answer was read on the hearing of said motion, to which ruling of the court, the defendants, by their counsel, then and there excepted. And the counsel of the petitioners also stated to the court, and the counsel for defendant admitted John Whitney, one of the persons named in the foregoing affidavit of Parmelee, was father-in-law of said Parmelee.

And the said court then and there denied the said application for a continuance of said cause. And the defendants, by their counsel, to said denial thereof by the court, then and there excepted.

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That on the 3d day of December, A. D., 1857, said cause came on to be tried before the said court and a jury, and thereupon, the said petitioners, for the purpose of sustaining the issues in said cause, on their part, offered in evidence the contract between the said petitioners, and the said defendants referred to in said petition, and a copy of which is thereto attached.

And for the purpose of further sustaining the issues in said cause on their part, the said petitioners, by witnesses, introduced and sworn on said trial, gave evidence showing that they took possession of the ground described in said petition and contract, and commenced the excavations for foundation walls of the buildings to be erected thereon by them, on or about the 27th day of May, A. D., 1856, and that they were engaged in and about the crection and completion of said building from that time up to and until the 20th day of February, A. D., 1857. Said petitioners offered further evidence, tending to show that they were delayed in the prosecution of their work upon said building in the months of August, September and October, 1856, or want of timber, lintels, and the cast iron window caps and window sills, stone sills for one of the towers. That these materials were furnished by the defendants, but were not furnished in due and proper season, as they were required. And that the defendants paid the plaintiffs the sum of \$86 62, being the wages of the men who remained idle while waiting for the iron caps and sills, as mentioned in the peti-That said delays occurred at different times during the months aforesaid, and that in consequence thereof, the petitioners could not employ, to good advantage, so many men upon said building as they otherwise might have done; and could not proceed with the work any more rapidly than they did. Further evidence was given on the part of the petitioners, tending to show that they commenced the laying of the front walls of the building on State and Randolph streets, on the 11th day of August 1856; that for the purpose of laying the outside tier of brick, a scaffold was necessarily used, resting upon upright poles, four or five feet distant from the wall, and that said front walls were finished and the scaffoldings removed on or about the first day of That in the month of October, A. D., 1856, the petitioners, at November, 1856.

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the request of the said defendants, commenced the excavations under the side walks, on State and Randolph streets, and were getting ready to build the brick arches for the vaults which were to be constructed beneath the side walks, and on a level with the basement story or cellar of the building, and intended for the use of the building. That the masonry of said vaults was built up to and connected the front walls of said building on State and Randolph streets, and extended out from said walls sixteen or eighteen feet. That the petitioners having built all the side walls of the vaults, and the supports for the arches, commenced the construction of said arches on or about the 5th day of November, 1856, and in the course of three or four days had put up all of said arches on State street, and a few upon Randolph place upon the arches, the defendants had begun to street, and flagging stone for a side walk, when the arches commenced falling in, and very soon all the arches on State street, and all but two or three on Randolph street had given way and fallen. And at the request of the superintendent, the remaining arches were taken down, and the brick of the arches that had fallen were removed by the said petitioner, and no more arches were built, but in place of the brick arches and flagging stone, the defendants afterwards constructed a plank side. walk around the building.

Petitioners further offered evidence intending to show that the plan of the arches intended to support the side walks was defective, and that they fell because of the defects of the plan.

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Petitioners introduced further evidence tending to show that they were delayed in the completion of the plastering of said building by the cold weather, and in procuring, stoves for heating the rooms in which the plastering was to be done and for want of some cut stone work for door sills which were to be furnished by the defendants and without which the building could not be completely enclosed. That the roof could not be put on until the front walls were up. And that the inside work could not be done until the roof was on. That after the roof was on the petitioners followed up the carpenters without delay and finished the inside work as soon as practicable.

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The petitioners also introduced in evidence the certificate of the architect, Wm. W. Boyington, referred to in the petition, and a copy of which is therein contained and also gave evidence showing the truth of the statement in the petition, as to the interest and title of the defendants in and to the premises, and showing that the defendants were in possession the premises as described and mentioned in the petition.

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The petitioners further gave evidence tending to show the amount and value of extra work done by them and in connection with said job, and mentioned by them in their said petition in this cause.

The petitioners also offered to give evidence to show that they had sustained the special damages mentioned in the petition, but the defendant's counsel objected to such evidence on the ground that if such damages were in fact sustained, they could not be allowed in this proceeding, and that there could not be any lien upon the premises for such damages, which objection was sustained by the court and the petitioners were not allowed to give any evidence as to such alledged damages.

In every instance where the petitioners gave evidence to substantiate the allegations as above stated, such evidence consisted of the testimony of at least two witnesses.

The defendants for the purpose of sustaining the issues in said cause on their

part thereupon by witnesses introduced and sworn gave testimony tending to show that the petitioners did not prosecute their work on said building diligently, particularly in the early part of the season, and that they consumed a disproportionately large part of the season in the construction of the foundation and partition walls. That they were not delayed to any considerable extent for want of the iron and cut stone work, and that if they had prosecuted the work diligently and vigorously after

the last of the iron and cut stone was on the ground, they might have finished their

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portion of the work on said building by the first day of December A. D. 1856, when in fact they did not finish the plastering of the building until about the 20th day of February 1857.

The defendants further offered evidence tending to show that it was not necessary to have outside scaffolding in the putting up of the front walls, and that said walls might have been laid up from the inside and that the petitioners might have commenced their work upon the arches for the side walk much earlier in the season than they did and have finished them during warm weather of the Summer or Autumn.

That when they commenced building said arches the weather was cold. so that the mortar froze between the bricks. That the season was very unfavorable for the construction of such arches and that the petitioners had notice from the Superintendent of the building not to build the arches at that time and that in going on with them at that time they assumed the responsibility of making them stand.—That the arches were not properly built by the petitioners according to the plan and that they were so informed by the Superintendent soon after they commenced building them.

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That the plan of the arches was a good one and suitable for the purpose intended and if properly built so as to carry out the plan, they are strong and firm. That other arches built upon the same plan and properly constructed have stood firm for years without any indication of settling or giving way. That in warm weather is the proper time to build such arches.

The defendants further gave evidence showing that they had paid to the said petitioners for work done and materials furnished by them on said building the sum of lifteen thousand eight hundred and eighty-five dollars.

It further appeared from the evidence introduced by the defendants, that the excavations for the brick arches, and the arches constructed in said excavations were made and constructed outside of the line of the lot described in the petition and in the public streets of the city of Chicago.

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1. The plaintiffs council thereupon asked the court to instruct the jury as follows:

The Plaintiffs are not to be charged with delay in doing their work, if such delay was caused by the defendants or was owing to the want of materials, which the defendants were to furnish.

- 2. The plaintiffs are not responsible for the failure of the arches, if such failure was owing to a defective design.
- 3. There is no issue made by the pleadings as to the location or description of the premises upon which the work was to be done. If the jury believe from the evidence that the work was done upon the premises mentioned in the petition, then the plaintiffs have a lien upon the premises if anything is due them for such work.
- 4. If the jury find anything due the plaintiffs they will allow interest at the rate of six per cent per annum, from March 9th, 1857.

Which said instructions so asked for by the council for the said petitioners were given by the court and to the giving of said instructions, and each of them separately by the court the defendants by their counsel than and there excepted.

The counsel for the defendants then asked the court to instruct the jury on the part of said defendants as follows, to wit:

- 1. If the jury find from the evidence that the brick arches in question, and the excavations in which they were placed were made within the street or streets of the city of Chicago, and were not in fact upon the lot or land described in the petition in this cause, the jury will as to all items claimed by the plaintiffs for that work find for the defendants.
- 2. That if the jury find that the claim of the plaintiffs in this cause, includes a portion of work done and performed within the streets of the city of Chicago and not upon the lot or land described in the petition, which said work so done off from said lot or land together with that which was done on said lot or land, was performed under one and the same contract, and the contract in evidence, the claim for the whole work is not divisible, or to be apportioned, and the plaintiffs having no lien for the work done within the streets and not upon the land described, cannot by reason of the indivisibility of the demand have a lien for any part of the same.

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3. That under the contract and specifications between the parties, and read in evidence, the plaintiffs are themselves bound to furnish all the stone and iron window caps and sills and also the cut stone to be used in doing the work on the building under said contract and specifications. And if the jury shall believe that there was any delay of said work on account of said materials or any of them not being furnished at the time they were wanted by plaintiff on said job, such delay is no legal excuse for the plaintiff in not completing said job within the time specified in said contract for such completion, and they will find for the defendants.

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4. That the parties in this case have fixed on a certain mode by which the amount to be paid under the contract in question shall be ascertained, and having done so, the party seeking an enforcement of the agreement must show that he has

done everything on his part to carry it into effect, and he cannot compel the payment of the amount claimed unless he procure the kind of evidence required by the contract or show that by time or accident he is unable to do so. And if the jury find that a certificate of the amount due has been given by the architect, the plaintiffs cannot take part of it as evidence of extra work done, and reject the other parts of it, but the same must be taken together in all its parts as to amounts, if one part is taken.

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5. If the Jury find from the evidence that the plaintiffs failed to make the brick arches in question in accordance with the contract and specifications between the parties respecting them, or if the architect of said work gave them directions as to the manner of doing said work, and the plaintiffs failed to comply with such directions, or if they performed said work in an unskillful, unworkmanlike and improper manner, then the plaintiffs have failed to complete their said contract, and cannot recover in this suit, whether the design for such arches was good and sufficient, or not."

Of which said instructions the first, second, third and fourth were refused, and the last was given by the court. And to the ruling and decision of the court, in refusing said first, second, third, fourth instructions, and each of them, so asked for by the said defendants, as aforesaid, the defendants, by their counsel, then and there ex cepted, and the jury having retired, to consider of their verdict, returned into court with the following verdict, to wit:

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We, the jury, find a verdict for the plaintiffs to the amount of Four Thousand Nine Hundred and Seventy-two and 28-100 Dollars.

R. S. Hicks, Foreman, which said verdict included the unpaid balance of the contract price, the amount of the extra work, and interest on the same from the 9th day of March, A. D., 1857. And the said defendants, by their counsel, then and there moved the court to set aside the verdict of the Jury, and to grant to the said defendants a new trial, which motion was overruled by the court. To which decision of the court, in overruling said motion, the defendants, by their counsel, then and there excepted, and prayed an appeal to the Supreme Court, and that this bill of exceptions might be sealed by the Court, which is accordingly done.

JOHN M. WILSON.

SEAL.

Hamilton & Breton

STATE OF ILLINOIS—SUPREME COURT.

FRANK PARMELEE, LIBERTY BIGELOW, DAVID A. GAGE and WALTER S. JOHNSON

Points for Appellants.

JOSEPH W. HAMBLETON and DANIEL GOODMAN.

T.

The affidavit filed by appellants for a continuance, was in compliance with the statute, and the court erred in overruling their motion therefor.

Wade vs. Halligan, 16 Ill., 507. 1 Gil., 260. 1 Scam., 528. 2 Scam., 73. Id. 218.

II.

The court erred in hearing evidence in opposition to the motion for a continuance.

1st. Because it has been the practice of the courts to regard the application as ex parte, and to be determined solely upon the affidavit and the pleadings in the cause.

2nd. It cannot be discretionary with the court to hear opposing testimony in such cases as he deems proper; for if it is, no exception would lie in such cases, and the right to take exceptions is made general by the statute, in all cases.

3d. If the court can, legally, receive opposing evidence, he is bound to receive it whenever offered, and as much of it as may be offered, which would lead to consequences of the most objectionable character.

Hanford vs. McNair, 2 Wend. R. 286.

III.

On the part of the plaintiffs below, the Court gave the jury the following instruction:

"That if they find any thing due the plaintiffs, they will allow interest at the rate of six per cent per annum, from March 9th, 1857."

The plaintiffs claimed a balance due upon a written contract, and also the sum of \$500.00 for work done extra of the contract, and was all done during the year 1856, and before the 20th of February, 1857.

This claim for extra work, &c., as respects interest, comes under the old statute of 1845, because the new statute was approved January 31st, 1857, and would not go into operation till 60 days after that. Sec Sess. Laws 1857—page 45.

The instruction was therefore erroneous, because it is not based upon any of the conditions, provided in sec. 2 of the interest laws of 1845.

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If it is claimed that the amount was liquidated, we say that we deny the fact. And the Court did not base his instruction upon any such ground.

Hitt vs. Allen 13 Ill. 596.

IV.

The first instruction asked by the defendants below, was correct and should have been given by the Court.

1st, Because the statute of liens, does not give a lien for work done in the streets and not upon the lot upon which the building is erected.

The first sec. is thus: "Any person who shall by contract with the owner of any piece of land or town lot, furnish labor or materials for erecting or repairing any building, or the appurtenances of any building on such land or lot shall have a lien upon the whole tract of land or town lot," &c.

If the word "appurtenances" had not been used in the section at all, it is quite clear that there would be no lien given for work done in the street—such as the arches and flagging for sidewalk.

The statute of New York was limited to the city, and therefore intended for city purposes only. It provided that there should be a lien for work materials, &c., furnished towards the crection, construction or finishing of any building." Yet the Court of Appeals held that flagging the sidewalk and work on the yards and areas were not within that statute.

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It will be seen that the introduction of the word "appurtenances" into our statute is under a limitation.

The phrase "on such land or lot" qualifies the first antecedent building and must necessarily the last antecedent, "the appurtenances of any building." This is the grammatical construction of the section, and is without doubt within the intention of the legislature.

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But the petition in this case contains no allusion to any appurtenances. It alleges that defendants were in possession of certain premises and bounds them on their north by Randolph street, on the west by State street, &c., and avers that work in question was done on the premises so described, which allegation is not admitted by the answer. Now if the plaintiffs could, under that statute and that petition, have a lien for excavations, arches, and flagging done within the streets mentioned, they could with equal propriety have a lien on the lot and building for grading and paving the same streets; which nobody will deny to be palpably absurd.

V.

In connection with the foregoing point, the appellants object to the decree in the case, as being broader than the petition.

If the word "appurtenances" will include the work done outside of the lot described and in the street, then the decree is erroneous, and should be reversed; because it decrees a lien on the premises described in the petition, "and the appurtenances."

The petition does not claim any lien upon the "appurtenances," nor does it refer in any manner to them, but is confined to premises bounded by the streets.

The second instruction asked by the defendants below should have been given.



That instruction was to the effect that the written contract, given in evidence, for the doing certain work for a gross sum, was entire, and not apportionable; and that if the jury found that the same contract included work to be done in the streets of the city, and not upon the premises described, the petitioners, as to the last mentioned work, done in the streets, would have no lien on the lot described, and therefore, by reason of the indivisible nature of the contract, could have no lien for any of said work.

1st. It is undoubtedly true that the contract referred to in the instruction was entire, and not apportionable as to the remedy.

Crosby vs. Loup, 14 Ill., 330.

2d. Suppose that contract had included a large job of grading and paving the streets, with a small job of masonry on the building in question for one entire gross sum: would the building and lot, therefore, be subject to exhaustion, from other mechanics, for the work, &c., done in grading and paving the streets?

If a lien is to be enforced in such a case, courts have to do one thing, which is impracticable, or another that is unjust. First, the contract, which is made entire and indivisible by the parties, must be divided and apportioned by the court; or, secondly, they must allow the petitioner to do indirectly what he cannot do directly, viz, have a lien for labor and materials not done upon or furnished for any building, or the appurtenances of any building. They must allow a lien for work which does not benefit the lot or building in question, and do injustice and work a fraud upon others furnishing labor and materials for the same, on the faith that others have a lien only to the extent of the labor and materials visibly furnished for the building itself; and also the effect might be to collect a debt due only from one person, from the estate of another.

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