

13922

No. _____

Supreme Court of Illinois

Radcliff et al.

vs.

Pierce.

71641  7

SUPREME COURT.

SECOND GRAND DIVISION.

ABSTRACTS IN CASES Nos. 71, 72, 73, 74, 75 AND 76,
PREPARED BY THE PLAINTIFFS FOR THE
ARGUMENTS OF THE CASES.

JANUARY TERM, A. D. 1859.

These cases originated in the Circuit Court of Coles county, being proceedings in Chancery to enforce Mechanics' Liens. Page.

No. 71.

DAVID V. N. RADCLIFF, *et als.* }
vs. } Error to Coles.
ALBERT H. PIERCE. }

The bill in this case was filed March 13th, 1858.

The complainant claimed a lien for a balance of \$103.51, due for materials furnished in the erection of a hotel building in the town of Mattoon, in Coles county, during the months of June and July, 1857.

The bill alleges that the Illinois Central Railroad Co., and the Terre Haute, Alton and St. Louis Railroad Co. were possessed of certain rights of way at the intersection of their respective roads, in Mattoon, the use and occupancy of which rights of way the railroad companies leased to Morgan Griffin, in March, 1857, for 20 years; that David V. N. Radcliff and Amos Cutter have an interest in and own, in fee, a portion of block 116 in the town of Mattoon, the description of which as well as of the rights of way leased is recited in the final decree herein given.

The bill further alleges that, by virtue of the lease, Griffin agreed to erect a large hotel building on the leased premises, to aid in the erection of which the railroad companies agreed to advance, jointly, five thousand dollars; that Amos Cutter and David V. N. Radcliff had an interest in the erection of the hotel building from the time the contract for its erection was made; that Griffin, though he had some interest in the matter, acted mainly as the agent of the Companies, Radcliff and Cutter, and on the 30th of June, 1857, he assigned his interest in the lease to Radcliff and Cutter, who are still entitled to the possession of the premises.

It is further alleged that Griffin, Radcliff and Cutter imme-

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Page. diately after the execution of the lease, commenced and prosecuted, almost to completion, the erection of the hotel building on the leased premises, and on that portion of block 116 owned by Radcliff and Cutter.

The bill alleges some unknown interest of Frederick E. Radcliff in the property, prays his joinder as defendant with the others, and the sale of the property, &c.

6 A subpoena in chancery, issued to defendants, and service was
7 had on the Railroad Companies and Morgan Griffin, on the 17th of April, 1858, others not found.

8 The following notice was published six successive weeks, in the
7 Charleston Courier, commencing March 17th, 1858 :

“COLES CIRCUIT COURT, MAY TERM, 1858.

ALBERT H. PIERCE,

vs.

<p>AMOS CUTTER, DAVID V. N. RADCLIFF, MORGAN GRIFFIN, FREDERICK E. RAD- CLIFF, ILLINOIS CENTRAL RAILROAD COM- AND TERRE HAUTE AND ALTON RAILROAD COMPANY.</p>	}	<p>Mechanics' Lien.</p>
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Affidavit having been filed in my office that Amos Cutter, David B. N. Radcliff, Frederick E. Radcliff and Morgan Griffin, defendants in the above cause, are non-residents of the state of Illinois, notice is therefore given to said defendants that a bill in chancery, to enforce Mechanics' lien, has been filed in said cause, upon which subpoena in chancery has been issued, returnable on the first day of the next term of the Coles Circuit Court, to be holden in the town of Charleston, on the third Monday in the month of May next, and that unless they, the said defendants, shall be and appear at the said time and place and plead answer or demur to said bill, the allegations therein contained will be taken for confessed by and against them, and a decree entered accordingly.

GEO. W. TEEL, *Clerk.*”

At the May Term, 1858, an order was made as follows:—
“Now at this day come the parties, as well petitioner as defend-
9 ants, by their solicitors, and by their agreement it is ordered and adjudged by the Court that this cause be continued, and that said petitioner have leave to amend his said petition. And it is further agreed, on the part of defendants, that all objections arising from the joinder of parties, plaintiffs or defendants, are expressly waived, &c.”

At the October Term, 1858, the Railroad Companies filed their joint answer on the 10th day of the term, in which they deny

knowledge of the contract stated in the bill ; aver that on the 31st Page.
of March, 1857, they owned the land in the bill mentioned, and 12
at that date leased the same to Morgan Griffin ; that the sti-
pulations in the lease were not complied with, and that they did,
in conformity with the terms of the lease, on the 1st of January,
A.D. 1858, enter upon the premises and declare the lease for-
feited.

Their answer further denies any rights of the complainant
against them, and asks that their rights be protected. 13

To this answer the plaintiff filed a general replication.

Also, on the 10th day of the same term a decree saving the
rights of the Railroad Companies was rendered by default, as
for confessed, against the other defendants, none of whom ap- 14
peared, the property was ordered to be sold, the demands of the
plaintiff and 15 other complainants ordered to be paid out of the 15
proceeds, and the surplus to be paid over to the Railroad Com- 16
panies in equal parts.

On the 12th day of the same term the two Radcliffs filed their
motion, supported by affidavits, to set aside the decree taken by
default, as to them. This motion was denied by the Court, on
the ground that these defendants did appear and consented to the 21
decree against them.

On the same day Amos Cutter filed his motion, supported by af-
fidavit, to set aside the decree against him, and also exhibited his an-
swer to complainant's bill.

In his answer Cutter denies any knowledge of the contract sta-
ted in the bill, and states his interest in the premises to be that he
advanced to Griffin about \$5,500 as funds for the erection of the
hotel building, which money was used in and about the construc- 26
tion of the building, and was paid out to mechanics and material
men for labor and materials furnished, and was advanced upon the
express understanding and agreement that Cutter was to be reim-
bursed shortly and secured by a lien upon all the rights and interest
of Griffin in the premises.

By the bill of particulars filed by Cutter in the cause it appears
that the money was advanced in the months of April, May, June,
July and August, 1857. 45

The answer also states that on the 30th day of June 1858, Grif-
fin assigned his lease to David V. N. Radcliff and Cutter, which 26
assignment was intended and treated as in the nature of a mort-
gage for the security of the money advanced by Cutter as well as 27
by David V. N. Radcliff to Griffin.

He denies any knowledge of the existence of liens at the time
he advanced the money, but avers that \$3,500 of it were advanced

Page. on the assurance of Griffin and Radcliff that so much would complete the building, and he avers that that amount did cover in and preserve the building from decay.

He further avers that the assignment was recorded on the 30th of June, A. D. 1857; and also that the hotel is erected partly on his own land, being a part of block 116, in the town of Mattoon, of which land he is owner as in fee of the undivided one half part, and which was not included in the lease, but is the separate property of himself and David V. N. Radcliff, who owns the other moiety. To this answer the plaintiff filed a general replication.

28 On the 15th day of the same term, Cutter's motion was heard
29 and granted, and his answer filed.

29 The complainant and the railroad companies appeared at the same time by their Solicitors, but the Radcliffs and Griffin failing to make any answer to the bill it was again taken as confessed against them. And the cause coming on to a hearing at that time a decree was rendered sustaining the plaintiff's claim and ordering the same to be paid within ten days and in default of payment a sale of the premises which are described as follows:—

31 "All of block No. 116, in the town of Mattoon, in the county of Coles and State of Illinois, except a portion of said block, commencing at a point on the North side of said block, where the white painted store recently built to be occupied by True, and the Terre Haute, Alton and St. Louis Railroad lands connect on the South-West side of said store, running along said store to the street known as Broadway, thence Westerly along said street 69 feet, thence Northerly parallel with the West side of said store house to the lands of the said Terre Haute, Alton and St. Louis Railroad company, thence along said Railroad lands to the place of beginning.

31 Also so much of the right of way of the Illinois Central Railroad company as lies west of a line drawn west of and thirty-six feet from the center line of said Railroad, measuring at right angles to said center line and parallel thereunto, and extending from the north line of Broadway avenue in the town of Mattoon, to the Terre Haute, Alton and St. Louis Railroad.

32 Also all the right of way of the Terre Haute, Alton and St. Louis Railroad company lying south of a line drawn south of and twenty feet from the center line of said Railroad measuring at right angles to said center line, also parallel thereunto, extending from a point thirty-six feet west of the center line of the Illinois Central Railroad, southwesterly along said Terre Haute, Alton and St. Louis Railroad 212 feet, measuring on the south line of said right of way. All the above described tract or parcel of land be-

ing a part of section No. 13, Township No. 12, N. of Range 7 Page. East.”

The proceeds were ordered to be applied to the payment of the complainant's demand and the demands of 15 other complainants whose bills were pending in the same court.

And because it appeared that Cutter had during the building of the hotel, advanced to Griffin \$5,479,50 to aid in the construction, and that Cutter's advancing the money was the consideration on Cutter's part for the assignment of Griffin's lease to Cutter and Radcliff, therefore it was further decreed that the overplus arising from the sale of the premises, after the payment of the liens and costs, be paid to Cutter to the amount of his advance, and the residue be paid to the defendants.

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The following errors are assigned :

1st. That the final decree orders the sale of all the premises in Complainant's bill mentioned and described.

2d. That said decree orders the sale of David V. N. Radcliff's separate, individual property, and directs a distribution of the proceeds thereof among the said defendants who are not alleged or shown to have or to have had any interest therein.

3d. That said decree adjudicates and determines upon the rights existent between the co-defendants, upon the answer of the defendant Cutter to the bill, and grants affirmative relief to Cutter against his co-defendants, by decreeing the payment of his alleged advances out of the proceeds of the sale.

4th. That the claim of Cutter is made a privileged one against the proceeds of the sale.

5th. That the rights of David V. N. Radcliff, who is shown by Cutter's answer to have the same interest in the hotel building, and lease and land that Cutter has, are not placed on the same footing with those of Cutter.

6th. That the Court denied the motion of the Radcliffs, to open and set aside the first decree as to them.

7th. That payment of Cutter's alleged advances to the hotel fund is decreed to be made out of the proceeds of the sale of the separate property of David V. N. Radcliff.

8th. That the Court rendered a second, final decree, at the same term of Court, in the absence of parties defendant.

9th. That said last final decree was rendered without notice to said Radcliffs of the answer of said Cutter.

10th. That the decree was rendered against David V. N. Radcliff, who had never appeared, and had never been duly brought into Court.

Page. 11th. That the publication of notice to non-residents was made without affidavit of the non-residence of parties defendant, and before the return of the Sheriff.

No. 72.

DAVID V. N. RADCLIFF, *et als.* }
vs. } Error to Coles.
 DAVID M. REESE, *et al.* }

No. 73.

DAVID V. N. RADCLIFF, *et als.* }
vs. } Error to Coles.
 DAVID V. CROSBY, *et al.* }

No. 76.

DAVID V. N. RADCLIFF, *et als.* }
vs. } Error to Coles.
 DAVID W. WATSON. }

1 The bills in these cases were filed on the 18th of January, A.D. 1858.

The complainants claim liens respectively, for work and labor done, and materials furnished in the erection of a building upon the following described piece or parcel of land, in the county of Coles and State of Illinois, to wit: "All of block 116, in the town of Mattoon, except that portion of said block commencing on the north side of said block, where the white painted store, recently built, to be occupied by True, and the Terre Haute, Alton and St. Louis Railroad lands connect, thence south, running along said store to the street known as Broadway, in said town of Mattoon, thence westerly along said street 69 feet, thence northerly parallel with the west side of said store house to the lands of said Terre Haute, Alton and St. Louis Railroad, thence easterly along said railroad lands to the place of beginning.

2 Also, so much of the right of way of the Illinois Central Railroad Company as lies west of a line drawn west of and thirty-six feet from the center line of said Railroad, running at right-angles to said center line, and parallel thereunto, and extending from the north of Broadway Avenue, in the town of Mattoon, to the Terre Haute, Alton and St. Louis Railroad. Also, all the right of way of the Terre Haute, Alton and St. Louis Railroad Company lying south of a line drawn south of and twenty feet from the line of said Railroad, measuring at right-angles to said center line, also parallel thereunto, extending from a point 36 feet west of the center line of the Illinois Central Railroad northwesterly along said Terre Haute, Alton and St. Louis Railroad 212 feet.

measuring on the south line of said right of way. All of the above described land being part of section 13, in Township 12 north, range 7 West," and being the property of and in possession of the said defendants. Page.

There was an affidavit of the non-residence of David B. N. Radcliff and others, and notice by publication as in No. 71, and all the subsequent proceedings in each of the cases were identical with those in No. 71, (to the abstract of which reference is made for a further abstract of these cases, beginning with these words: "At the May Term, 1858, &c.") except in the amounts of the decrees rendered in favor of the respective complainants.

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The same errors, also, are assigned as in No. 71, as far as applicable, and also the following additional ones:

1st. That the decree was rendered against David V. N. Radcliff, who never appeared and was never brought into Court.

2d. That the premises ordered to be sold are not those described by the complainants, and are not mentioned in the pleadings.

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No. 74.

DAVID V. N. RADCLIFF, *et als.* }
vs. } Error to Coles.
JOHN P. USHER, *et als.* }

The bill in this case was filed on the 19th day of January, 1858.

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The complainants claim balances amounting to \$593 for materials furnished and used in "the building of the brick hotel, in the town of Mattoon, Coles county, which hotel is situated upon a lot owned by the defendants" (whose interests the complainants aver themselves to be unable to state,) "hereinafter described, at the junction of the Terre Haute and St. Louis Railroad company and the Illinois Central Railroad company, running from the point where said roads cross each other in said town, south on the Illinois Central three hundred feet; thence west parallel with the Terre Haute and St. Louis Railroad three hundred feet; thence north to said last named road track three hundred feet; thence with said Railroad track east three hundred feet to the place of beginning."

The contracts are stated to have been made by and with Morgan Griffin.

There was filed on the 6th of April, 1858 an affidavit of the non-residence of David V. N. Radcliff, Frederick E. Radcliff and others, which is certified by the publisher of the Charleston Courier to have been published—successive weeks in that newspaper, commencing on the 7th day of April, 1858.

The subsequent proceedings in the case were identical with those

Page. in No. 71 throughout, except that the decree gives to the complainants \$634.54, and reference for the further abstract of this case is made to the preceding abstract in No. 71, beginning at the words, "At the May Term, 1858, &c."

The errors assigned are similar to those in No. 71, as far as applicable, and also are assigned the following additional ones:

1st. That the sum of 634.54 is decreed to complainants.

2d. That the premises ordered to be sold are not the same as those described by the complainants' bill and against which they pray that their lien may be enforced.

No. 75.

DAVID V. N. RADCLIFF, *et als.* }
 vs. } Error to Coles.
 THOMAS B. JOHNS. }

1 The bill in this case was filed January 28th, 1858.

4 The Complainant claims a balance of \$765.12 due for materials furnished in July, 1857, for the purpose of erecting a hotel on lot No. 116, in the town of Mattoon, in Coles county.

The bill alleges that the "town lot No. 116, on which said hotel is erected, and for the erecting and building of which" the materials were furnished "is owned by Amos Cutter, David V. N. Radcliff, Frederick Radcliff, Morgan Griffin and Illinois Central Railroad, Terre Haute and Alton Railroad Companies."

The bill concludes with a prayer for the sale of lot No. 116, &c.

2 There was an affidavit of the non-residence of David V. N. Radcliff and others, and notice by publication six successive weeks in the Charleston Courier, commencing February 3d., 1858, to David B. N. Radcliff and others. The subsequent proceedings throughout the case are similar those in No. 71, except that the decree allows to the complainant \$483; and for a further abstract of this cause reference is made to the abstract of No. 71 preceding, commencing at the words "At the May Term 1858, &c."

The same errors, as in No. 71, as far as applicable, are assigned, and also the following additional ones:

1st. That the premises ordered to be sold are not mentioned in the complainant's bill or in any way described in the pleadings.

2d. That the sum \$483 was awarded to the complainant instead of the sum of \$465.12 claimed by him.

3d. That the decree was rendered against David V. N. Radcliff, who had never appeared, and who had never been brought into Court.

LUCIEN EATON,
 LOGAN & HAY,
Attorneys for Plff's.

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Be it Remembered

That on the 13th day of March A.D. 1858. there was filed in the Office of the Clerk of the Circuit Court in and for the County of Coles and State of Illinois, the following Bill in Chancery, ~~in the~~ ^{wherein} ~~Case of~~ ^{Complainant} Albert H. Pierce is ^{vs.} The Ills. C. R. R. Co. Et. Al. ^{are Defendants} in the words and figures following - to-wit

"To the Hon. Charles Emerson sole Judge of the Coles County ^(Circuit) Court in Chancery sitting, of the May Term A.D. 1858 - Humbly complaining unto your Honor your Orator Albert H. Pierce would respectfully represent that the Illinois Central Railroad Company were entitled to and possessed of certain Rights of Way within the limits of the Town of Mattoon in the County of Coles and State of Illinois, and that the Terre Haute Alton & St. Louis Railroad Company were entitled to and possessed of certain other Rights of Way contiguous to that of the said Illinois Central Railroad Company also in the said Town of Mattoon. And that on the 31st day of March A.D. 1857 the said Railroad Companies severally leased and transferred the use and occupancy of their said Rights of Way so situated in the said Town of Mattoon, by their lease duly executed and recorded to one Morgan Griffin for the term of twenty years, fully to be completed and ended. To-wit, the said Illinois Railroad Company by their said lease to the said Griffin, conveyed

much of the said right of way so belonging to them as
lies West of a line drawn West of and thirty six feet from
the center line of said Railroad running at right angles
to said Center line and parallel thereto and extending from
the North line of Broadway Avenue in the said Town of
Mattoon to the Terre Haute Alton & St Louis Railroad.
Also all the Right of Way of the said Terre Haute Alton and
St. Louis Railroad Company lying South of a line drawn
South of and Twenty feet from the center line of said
Railroad the Terre Haute Alton & St Louis Railroad
measuring at right angles to said Center line also
parallel thereto extending from a point thirty six feet
West of the center line of ^{the} Illinois Central Railroad
South westerly along said Terre Haute Alton & St Louis
Railroad. Two hundred & ⁽²¹²⁾ twelve ~~feet~~ feet, measuring on
the South line of said Right of Way - Your Orator would
further represent that Amos Cutter & David V. K.
Radcliff have an interest in and own in fee all of
Block, numbers One hundred and sixteen in said
Town of Mattoon except a portion of said Block
commencing on the North side of said Block where the
White painted Store, recently built to be occupied by
Tree and the Terre Haute Alton and St Louis Railroads
lands connect on the South West side of said Store run-
ning along the said Store to the street known as
Broadway, thence Westly along said along said
Broadway Sixty Nine feet - thence Northly, parallel
with the West side of said Store house to the lands

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of said Terre Haute & St. Louis Railroad, thence
along said Railroad lands to the place of beginning —
Your Orator would further represent that the said Morgan
Griffin under said lease, among other things, agreed to erect
a large building to be occupied as a Hotel on the premises so
leased by said Railroad Companies, who were to occupy a
portion of said building and advance the said Morgan
Griffin the sum of five thousand dollars to be used in
erecting said building. Your Orator further show that
the said Amos Cutter & David V. N. Radcliff had an
interest in the erection of said building from the time of
making said Contract to erect it, and that the said
Morgan Griffin, although he had some interest therein
acted mainly as the agent of the said Railroad Companies
Radcliff and Cutter, and that the said Griffin on
the 30th day of June A.D. 1857. assigned his interest in
said lease to the said Radcliff and Cutter and that
they, the said Radcliff and Cutter still are entitled to
the possession of the premises under said assignment —
Your Orator would further represent & show that the
said Morgan Griffin, David V. N. Radcliff and
Amos Cutter immediately after the execution of said
lease, commenced and have prosecuted the enterprise
of erecting said building on the premises so leased for
that purpose, and on that portion of said Block
number one hundred and sixteen so owned by the
said Cutter & Radcliff as aforesaid almost to comple-
tion. And that in making the purchase of Materials

In erecting said building the said Morgan Griffin
 was the active man - and made many, if not all of the
 contracts in his own name, but really for himself the
 said Railroad Companies, Radcliff and Cutler, and
 your Orator further shows that heretofore to wit on the
 11th day of June A.D. 1857 at and within the said County
 of Colos the said Morgan Griffin Contracted with your
 Orator to furnish & put up the necessary gutters and
 leaders to convey the water from the roof of said Hotel
 Building, in the Chimneys & furnish the necessary shut-
 iron thimbles, at the rate of 20cts. per foot for said gut-
 tering & leaders to be done in a reasonable time thereafter
 and to be paid for when said work was completed, And
 your Orator further shows that during the months of June
 & July A.D. 1857 he furnished and put up said guttering
 & leaders to meet said Chimneys & furnished said thimbles
 and fully performed said Contract on his part on his
 part - that the whole amount of said guttering & leaders
 so by your Orator furnished and put up as aforesaid
 is Seven hundred & forty feet, and that your Orator
 trimmed five Chimneys at \$1.25 cts each and furnished
 30 thimbles at fifteen cents each amounting in all to
 One hundred fifty three dollars & eighty one cents, on which
 there has been paid fifty dollars & thirty cents, And that
 there is a balance still due your Orator for said work
 and materials, One hundred and three dollars & fifty
 one cents as per bill of particulars herewith filed and
 made a part of this Petition and referred to as Exhibit A.

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Your Orator further shows that the said sum of \$113.51
is now due and unpaid, and that all & every of those
interested in the erection of said Hotel Building have utterly
neglected and refused to pay the same to your Orator and
still do neglect and refuse, although often requested so
to do. Your Orator therefore prays that the said Illinois
Central Railroad Company, The Terre Haute & St. Louis
Railroad Company, the said Moses Cutler, Morgan
Griffin, David V. St. Radcliff & one Frederick C. Radcliff
who is said to have some interest in the premises but of
what character, your Orator cannot state be made parties
defendants to this your Orator's Bill of Petition, that
the necessary process may issue and said defendants
be required to appear and answer fully hereto, that
the amount due your orator in the premises be ascer-
tained said defendants required to pay the same to
your orator by a short day to be fixed by your Honor
And in default of such payment that the interests of
all the said defendants in said Hotel building and the
premises on which the said Hotel Building is erected
or being erected - be decreed to be sold, and the money
derived from said sale be applied in payment of
your Orator's said debt and the costs of this application in
accordance with the Statute in such case made
& provided, And that your Honor will grant your Orator
all other necessary or further relief in the premises, and your
Orator as in duty bound, ^{will} ever pray &c

Starkweather & McLean

7
" Ills. Central R Road Co. at Mattoon, also J. C. Smith
agent Terre Haute Alton & St Louis R Road Company
at Mattoon - others not found -

\$ fus. serving 150

Copys 75

Mileage 12 McCall 186

Ret

10

\$4.15

Mc B Worley S. L. Co. "

Also on file is the following Notice - to wit
"Coles Circuit Court, May Term 1855

Albert H. Pierce.

vs.

Mechanics Lien -

Amos Cutler David V A Radcliff

Morgan Griffin, Frederick C. Radcliff

Illinois Central Railroad Com. and

Terre Haute and Alton Railroad Company

Affidavit having been filed in my office, that
Amos Cutler, David V. A. Radcliff, Frederick C. Radcliff
and Morgan Griffin, defendants in the above cause
are non residents of the state of Illinois. Notice is
therefore, given to the said defendants, that a bill in
chancery to enforce Mechanics Lien has been filed in
said cause, upon which subpoenas in chancery has
been issued returnable on the first day of the next
term of the Coles Circuit Court, to be holden in the town
of Charleston on the third Monday in the month of
May next, and that unless they the said defendants
shall be and appear at the said time and place

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And afterwards ^{to wit} at a Circuit Court began and held at the Court House in Charleston in and for the County of Cook and State of Illinois on Monday the 17th day of May A.D. 1858. before the Hon. Charles Emerson Judge on the 18th day of the Term thereof the following ^{Order} was made as appears of Record to-wit

" Albert H. Pierce
vs. Petition to Enforce Mechanic's Lien
Mss. Gen. R.R. Co. et al.

Now at this day come the parties as well Petitioner as defendants, by their Solicitors and by their argument. It is ordered and adjudged by the Court that this cause be continued; and that said Petitioner have leave to amend his said Petition. And it is further agreed on the part of Defendants that all objection arising from the joinder of parties, plaintiffs or defendants are expressly waived &c

And afterwards to wit at a Circuit Court began and held at the Court House in Charleston in and for the County of Cook and State of Illinois on Monday the 18th day of October A.D. 1858. before the Hon. Charles Emerson Judge on the 11th day of the Term thereof - to-wit on the 29th day of Oct. 1858 there was filed the answer of the Illinois Central R.R. Co. now The Terre Haute Alton & St. Louis Railroad Company. List of the defendants in the above entitled cause as follows to-wit

" The answer of the Terre Haute Alton and Saint Louis R. Road Company and The Illinois Central Rail Road Company. Two of the defendants to the petition of Albert H. Pierce for Mechanics Lien - Joint respondents would state that they are strangers to and know nothing of the contracts stated in said petitions only by common reports ~~stated in said~~ and deny that they are in any way parties to the same and that they never entered into any such contract expressly or impliedly -

Joint respondents further state that on or about the 31st of March 1857 they were owners of the land in the petition mentioned and that at that date they executed a lease for said premises to Morgan Griffin who is one of the defendants to said petition, for the term of twenty years from said date and that in and by said lease there was stipulated and conditioned to be kept and performed, and among other things that the said Morgan Griffin would within six months from the date of said lease erect upon said premises and complete a passenger & eating house after the plans and specifications thereunto annexed which building was to be finished to the acceptance of respondents engineers, and the said Morgan Griffin was to furnish said building with all needful furniture and to keep it as a respectable first rate R. Road passenger & eating

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house during the continuance of said Lease -
Respondants further state that it was further agreed
by said lease that if said Griffin should fail to
finish said Passenger's Eating house and to have it
ready for business by the terms in said Lease stipulated
or should fail to keep all and singular the covenants
in the indenture contained therein it should be lawful
for respondents or their agents ~~or~~ attorneys at any
time after or during the continuance of said Lease
to enter said premises and declare said lease to be
void in which case all right and title of the said
Griffin in & to said premises should cease and be
determined without any other act to be done by said
respondants, and that all interest of said Griffin
accruing by virtue of said Lease should be exting-
uished ~~as~~ perfectly as if the same had never existed

And that ~~whenever~~ the right of the said Griffin
should cease by lapse of time or forfeiture or otherwise
the said Griffin agreed to surrender peacefully the
possession of said premises to respondents or their
agents, all of which will more fully appear by said
lease a copy of which is filed herewith and made
a part hereof - Your respondents state that they
performed all things in said Lease stipulated on
their part to be performed - Your respondents further
state that they are informed that after the making
of the said Lease the said Griffin assigned a part
of his interest in some way to Amos Cutter David

V. N. Radcliff & Frederick C. Radcliff the other
 defendants to said petition -

Your respondents further state that the said
 Griffin entirely failed to perform his contract
 & agreement in said Lease mentioned in this
 that he failed to erect and complete upon said
 premises a passenger & Eating house within six months
 or at any other time, that he failed to furnish said
 building with necessary furniture and to keep the
 same as a respectable first-rate Clean Rail Road
 passenger & Eating house hitherto, whereby the
 respondents have been greatly injured and have
 sustained great ~~loss~~ damage, and that but a
 small portion of the work on said building has been
 completed. Your respondents further state that by
 reason of said default as of said the said
 Lease became and was entirely forfeited and
 that all the right of the said Griffin ceased
 and was at an end, and that your respondent
 ✓ to-wit on the first day of Jan'y 1858 entered upon
 said premises and declared said Lease forfeited
 and void of which said Griffin had due notice

Your respondents further show that the said
 petitioners had means of full knowledge of the rights
 of said Griffin in and to said premises, and that
 his interest was liable to forfeiture, and that the
 claims of the petitioners for Mechanics Lien, upon
 said premises ought not to be enforced against

V. N. Radcliff & Frederick C. Radcliff the other
defendants to said petition -

Your respondents further state that the said
Griffin entirely failed to perform his contract
& agreement in said Lease mentioned in this
that he failed to erect and complete upon said
premises a passenger & Eating house within six months
or at any other time, that he failed to furnish said
building with necessary furniture and to keep the
same as a respectable first-rate Clean Rail Road
passenger & Eating house hitherto, whereby the
respondants have been greatly injured and have
sustained great ~~loss~~ damage, and that but a
small portion of the work on said building has been
completed. Your respondents further state that by
reason of said default as of said the said
Lease became and was entirely forfeited and
that all the right of the said Griffin ceased
and was at an end, and that your respondent
✓ to-wit on the first day of Jan'y 1858 entered upon
said premises and declared said Lease forfeited
and void of which said Griffin had due notice
Your respondents further show that the said
petitioner had means of full knowledge of the rights
of said Griffin in and to said premises, and that
his interest was liable to forfeiture, and that the
claims of the petitioner for Mechanics Lien, upon
said premises ought not to be enforced against

the rights of respondents and that whatsoever rights the said petition
may have had against the said Griffin, and his interest in
said premises before forfeiture by said forfeiture was entirely
gone. Jan respondents ask that all their rights may be
protected, and that the said petition may be dismissed as
to them and that they may go hence without prejudice & with
their reasonable costs, The Terre Haute Alton & St Louis R.R. Co.

The Ill. C. R.R. Co -

By S. W. Moulton their Attorney"

Also on file is the Replication of Petitioners -

" Albert H. Pierce

October Term A.D. 1858 -

vs

And complainants reply & say that the

S. W. A & St Louis R.R. Co & others

Answer of said defendants wherein it

admits the truth of the allegations contained in said complaint
bill of complaint the same is true, and wherein it denies
the truth of the same, the said replication is untrue, and this
they are ready to verify &c. whereof &c."

And afterwards - to-wit - on the 10th day of the said term
of said Court, the following order ^{& decree} ~~and decree~~ was
made - To-wit -

" Albert H. Pierce

October Term A.D. 1858

vs

Mechanics Lien.

Ills Co R.R. Co Et Al

Now at this day came the Terre Haute
Alton & St. Louis Rail Road Company & the Illinois Central
Rail Road Company by Moulton & Hicklin their attorneys
and file their answer to said Bill and the other defendants
having been duly notified, failing to appear, judgment, as for costs
is rendered against them, and it is further ordered and decreed

that the said petitioners recover of and from the said last named
 defendants the sum of \$103.31 — and that all the interest
 right and title of the said last mentioned defendants in and to
 the premises in said petition To-wit, All of Block No 116.
 in the Town of Mattson, Cook County & State of Illinois. (Except a part
 of said Block commencing at a point on the North side of said Block
 where the White painted Store recently built to be occupied by Greer
 and the Terre Haute Alton & St. Louis Railroad lands connect
 on the Southwest side of said Store running along said Store
 to the Street known as Broadway, thence Westwardly along said Street Sixty nine
 feet, thence Northwardly parallel with the West side of said Store
 House, to the lands of the Terre Haute Alton & St. Louis Railroad —
 thence Eastwardly along said Rail Road lands to the place of begin-
 -ning — Also so much of the "Right of Way" of the Illinois
 Central Rail Road ^{Company} as lies West of a line drawn West of
 and thirty six feet from the center line of said Rail Road
 measuring at Right Angles to said center line
 and extending from the North line of Broadway
 Avenue in the Town of Mattson to the Terre
 Haute Alton and St. Louis Rail Road —
 Also all of the "Right of Way" of the Terre
 Haute Alton & St. Louis Railroad lying South
 of a line drawn South of and twenty feet
 from the center line of said Rail Road
 measuring at Right Angles to said center line
 also parallel thereto, extending from a point
 thirty six feet West of the center line of the
 Illinois Central Rail Road South westerly

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along said Terre Haute Alton and St. Louis Rail
Road, Two hundred and twelve feet measuring on
the south line of said Right of Way. All the above
described piece or parcel of land being a part of Section
No. 13, Town 12, N. Range 7 East - be ordered to be sold
by the Sheriff of the said County of Colos. by giving notice
of said sale as in other sales of land on Execution
subject to all the rights and equities of the said
Rail Road Companies which are to be in no manner
prejudiced by this decree, it appearing by the evidence
that the rights of the said Morgan Griffin and the
other defendants in and to the said premises are entirely
forfeited to said Corporations. And it is further ordered
and decreed by & with the consent of said Railroad
Companies that the purchaser of the premises under
this decree shall have all the rights and privileges
of Morgan Griffin the lessee of the same and shall
be subject to all the liabilities and obligations in the
said lease contained and that no provisions of said
Lease shall be enforced as against said purchaser
if he or they will substantially comply with the terms
of said Lease within thirty days after said sale
And it is further ordered and decreed that the said
Griffin, Carter and Radcliff pay the costs of this
proceeding, and that said Sheriff of said Colos County
put the purchaser in full & immediate possession of said
premises, and that he use whatever means that may
be necessary for that purpose. And it is further

to Davis Dr. Watson \$213.35 = to Duell Copying & other \$634.54 - to Harmer Bond \$480.42 - to Thomas 73.
 \$483 - to Philander Jones \$106.30 - to William Patrick \$279.33 - to Crayby & Praggner \$115 -
 to Pearson & Nichol \$100. - to Reese & Baker \$1432.62 - to Bacon, Hoyal & Co \$122.33 - to
 J. Lodge & Son. \$279.07 - to Sturdevant & Brown \$415. = to H. W. A. Bromble \$325. = to Stephens
 Hoffman \$31.17 - and to Scooter & Dr. Kenney \$169.49

ordered and decreed by the Court that the money
 derived from said sale be paid pro rata by the Sheriff
 to the various petitioners for Mechanics Liens against
 said defendants to wit - to ^{said Complainants} the sum of \$103.50
 &c. of each of the Petitions

And the surplus if any be paid to said Railroad
 Companies in equal parts &c

And afterwards to wit on the 12th day of said Term
 the following Petition of D. V. A Radcliff & Frederick
 E. Radcliff ^{was filed} as follows -

" Albert H. Pierce and others
 against

The Illinois Central Rail Road & Terre Haute & Alton
 St. Louis Rail Road Companies and Morgan Griffin
 David V. N. Radcliff & F. C. Radcliff -

In Circuit Court of Cook County State of Illinois
 now at this day comes David V. A ~~Radcliff~~
 and F. C. Radcliff by their attorney and move the
 Court to set aside the decree ordered herein and
 and in the several petitions against said defendants
 and for such other relief as shall just in the
 premises, and in support of their motion file
 herewith Affidavits -

S. M. Shrive

for sd named defts -"

Also upon the same day - was filed the
 affidavits of the said Radcliffs as follows -
 To-wit -

Albert H. Pierce and others Compts.

vs

Miles Central & Terre Haute Alton & St Louis Rail Road Co
Amos Catter, Morgan Griffin D. V. N. & F. C. Radcliff

Personally appeared before me F. C. Radcliff for himself and as agent of David D. N. Radcliff who states that he and said David D. N. Radcliff are parties defendants in this proceeding; that as such he was desirous to defend the several Compts filed and to that end Employed Mr Maulton as resident attorney at Shelby, Illinois and S. W. Shreve an Attorney at St Louis Missouri to represent their interests in conjunction with the interests of the two rail road Companies above mentioned, that said Maulton agreed and undertook to defend said suits in behalf of affiant and said D. V. N. Radcliff and in pursuance of said agreement held interviews with said Shreve touching the defence of said suits and agreed that he would make such defence and in all respects protect said interests when said suits were called for hearing and informed affiant that these suits would be set down for hearing in this Court on a day named, and affiant accordingly commissioned an agent to be present at the hearing of said suits at the time he was told said suits would be heard heard to take all necessary steps for the proper defence thereof that said agent proceeded to this Court and arrived the evening previous

to the day he was informed said suits would be heard, but was then for the first time informed the cases had been heard and decree entered therein the day previous, when and whereby the rights of affiant and D. V. N. Radcliff were forfeited and they were decreed to pay the costs of said proceedings and the surplus if any arising from the sale of the property subjected to the claims of the Petitioners ordered to be divided equally between the Codefendants, the two Rail Road Companies, and default taken as to them, as confessed. Affiant states that such confession was in direct violation of the agreement with said Moulton, that they have a just, meritorious and equitable defence to said proceedings, that David V. N. Radcliff is the lessee of the premises so subject to be sold by virtue of a lease executed by said Rail Road Companies and to said Radcliff The Terre Haute Alton and St. Louis Company having actually signed said lease and the Illinois Central have agreed to sign the same and are bound so to do, and by the terms of said lease said Rail Road Companies are fully protected against the liens for which the property has been subjected to sale, and said lessee bound to pay the same, and is entitled to the possession of the lands and tenements during the tenure of said lease and the decretal distribution of the surplus if any

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arising from said sale and the substitution of another who may become the purchaser of said property is in manifest derogation of his rights and he prays this Court to set aside said decree and delay making any order of sale until the rights of the parties may be ascertained and settled by this Court, upon such terms as may seem just and proper.

F. C. Radcliff

Sworn to and Subscribed before me this 8th day of November A. D. 1858



In Witness Whereof I have set my hand and affixed the seal of said Court at office in the City of Saint Louis the day and year above written

Stephen Rice Clerk "

Also there was placed on file on the same day the following -

" Albert H. Pierce & others

vs.

Illino Co. & Terre Co. A & St Louis Co & others

Affidavit States he was present when Joseph A. Eddy employed S. H. Maulton Esq. of Shelby Illinois to defend these suits in behalf of D. T. W. Radcliff & said Maulton accepted and agreed to do

During the second week of October as the agent of Mr Eddy I addressed Mr Maulton informing him that he would be relied on to attend to the same, and the parties relied upon him solely

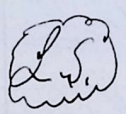
to defend their interests. upon the day previous we were informed said cases would be heard I proceeded to Charleston and arrived the night previous but with surprise early on the morning of said day was informed by said Maulton that the cases had been disposed of and judgment by confession taken as to Radcliff. —

Mr Maulton knew that I was acting as the agent of Eddy and Radcliff's interest and at all times by his conduct and expressions induced me to believe that he considered himself as retained to represent said Radcliff, and that he would do so.

George W. Seolley

Subscriber and sworn to before me the Clerk of the Circuit Court this 8th Novr 1858

In Testimony whereof I hereunto set my hand and affix the Seal of said Court at office in the City of St Louis the day and year above written -



Stephen Rice Clk

And afterwards - to wit upon the said day of the said Term of said Court, the following order of Court was made - to wit

- " A. H. Piser
 - "
 - "
- } Clerk Circuit Court
} October Term 1858
- The Terre Haute Alton & St Louis R.R.
Co. et al.

Now at this time come the said

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defendants, Frederick E. Radcliff & David V. N. Radcliff, and upon affidavits filed, move the Court here to set aside & open as to them the decree in this cause, but it appearing to the Court upon said motion, upon evidence heard, the statements contained in the said affidavits and the inspection of the records in this cause that the said Frederick E. Radcliff & David V. N. Radcliff did appear at the last Term of this Court by their Solicitor, S. W. Moulton, Esq. and that the decree in this cause was rendered by their confession & consent - said motion is overruled with costs to be taxed against them &c

And also on the same day was filed the following - Petition of Amos Cutter in words and figures as follows - to wit

" Of the Coler Circuit Court - October Term A.D. 1855

Amos Cutter who has been made Defendant in the following entitled causes being petitions to enforce Mechanics Liens I do Wit Albert W. Pinner vs. Illinois Central Rail Road &c &c also David W. Crosby & William Haggone vs same also Philander Jones vs same - Also Pinner & Naper vs same - also Stephen Hoffmann vs same also J. Locke & Brother vs same also Lister & McKinnay vs same also Bacon, Hyde & Co vs same also Harmon Blood vs same also

J. H. & S. N. Tremble vs. same, also Starkard &
 Cromwell vs. same, also William Patrick vs same
 also Thomas B. Johns vs same also Saul Topping
 & Usher vs same also David W. Watson vs same
 also Reese & Baker vs. same, comes and prays the
 Court that the deers severally entered in each
 of said Causes be opened and that he be
 permitted to come in and defend the same upon
 such terms as the Court here shall direct &
 order. for the reasons that he is not a resident
 of the state of Illinois and has no notice by
 service a copy, that he supposed that suits
 would be disposed of in accordance with the
 rights of all parties but that in fact the same
 have been so disposed of that his rights which are
 important have been utterly sacrificed -
 that he has a good defence to the said actions
 he being not a contractor with ^{any} of said petitioners
 for the performing of work or furnishing materials
 that he has advanced the sum of about five
 thousand five hundred Dollars to one Morgan
 Griffin for the purpose of erecting said House
 in petitions mentioned, that said money was
 advanced upon the express understanding and
 agreement that he was to be reimbursed in a
 short time and secured by lien upon the rights
 and estate of said Griffin in said premises
 that said Griffin held a part of the ground

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7 +
upon which said House is built by a lease
from the said Railroad Companies which
lease the said Griffin on the thirtieth day of
June A.D. 1858 assigned to this Defendant
and his Co-defendant D. W. N. Radcliff. and
then delivered possession of said house to Respondent
which assignment of said lease was duly recorded
in said County on the 30th Day of June A.D. 1857.
which assignment was made and understood and
intended at the time as a Mortgage to secure to the
Defendant & sd. Radcliff the money by them ad-
vanced to said Griffin - He further states that
he is owner in fee of the undivided half of about
one fourth part of the land on which said house
stands which is not included in said lease
He further says that by the Decree in said cause
rendered at this term his rights in said portion of
land are wholly divested and the amount of
money so advanced by him wholly lost to this
Dept - as well as all his rights under his security
by said assignment. and that by said Decree
his property in said Real estate not covered by
said lease is not only ordered to be sold, but the
surplus if any arising from said sale is to be paid
over to said Railroad Companies although part
of the land on which said House is erected is
not nor even was included in the said lease but
is the separate property of this Defendant

Your petition prays that in consideration of
 the premises the said doctos be opened as above
 prayed, the same having been entered by agreement
 between other parties defendants and the said
 petitioners, to the Detriment of this Defendant
 Amos Cutler

State of Illinois }
 Colis County } Ss.

Personally appeared before the
 undersigned Geo. W. Sul Clerk of the Circuit Court
 in & for said County Amos Cutler who being duly
 sworn on oath says that the matters and things
 set forth in the above foregoing petition are true
 to the best of his knowledge information and belief

Amos Cutler

Sworn to and Subscribed before me this 9th day
 of November 1858 - Geo. W. Sul Clerk

And Afterwards - to wit - on the same day
 there was filed the answer of Amos Cutler
 in the words and figures as follows
 to-wit -

Amos Cutter impleaded with
Illinois Central Railroad Co-

October Term 1858
Coles Circuit Court.

et al

ads.

Albert H. Pierce ~~~~~ Amos Cutter,
one of the said defendants answering to
so much of the petition of compltys filed
herein as he is advised it is necessary for him
to answer, saving to himself all manner of ex-
ceptions by reason of the many irregularities, in-
formalities & errors therein, answering says that
he is wholly ignorant as to whether the said
petitioners have done & performed the labor &
furnished the materials for the erection of said
House or Hotel, but of this requires full proof.
He further says that he never did at any time
make any contract by himself or any other
persons for him with the said petitioners
or any of them or any other person
on their behalf for any part of said
work & materials to be done or furnished
for the said Building. Your Respond-
ent further saith that he is interested in
the said premises in the following manner.
That your Respondent did at the request of the
said Morgan Griffin advance to the said Griffin
the sum of Five thousand five hundred
Dollars or about that amount as funds

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for the erection of said Building, which money
so advanced by your Respondent was used
by said Griffin in and about the con-
struction of said - and was paid out to
Mechanics and Material Men for labor
& materials furnished for the same, which
money was so advanced upon the express
agreement and understanding that your
Respondent was to be reimbursed shortly and
secured by a lien upon all the rights &
interest of said Griffin in the same.

Respondent is informed and be-
lieves that the said Companies did
furnish to the said Griffin the sum
of two thousand five hundred Dollars
each for the construction of said House
in consideration of certain privileges secured
to them by the terms of a certain lease
by which said Griffin held a portion
of the land on which the said House
is erected, which part of said land
was leased by said Companies to said
Griffin upon the terms of a lease a
true copy of which is exhibited to the
Court here and referred to as a part
of this answer. Respondent further
says that the last of said money was
advanced in the month of June

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or July A.D. 1858 and that on the 30th Day of June 1858 the said Griffin assigned to your Respondent & one David M. Radcliff the said lease from the said Railroad Companies to him & delivered possession of said House to Respondent, which assignment of said lease was at the time intended, understood & treated by the parties to the assignment as in the nature of a mortgage for the security of the money advanced by your Respondent as well as by the said Radcliff to said Griffin.

He further states that at the time said money was so advanced he had no knowledge of any liens whatever on said Building but that \$3500.00 of said money was advanced upon the representations of said Griffin & Radcliff that said last mentioned amount of money would complete said building and said Respondent avers that by means of said money so advanced the said house was covered and preserved from decay for the benefit of all parties concerned. He further says that said assignment of said lease was duly recorded in said County on the 30th Day of June 1857. Respondent further alleges that the said house is erected partly on the land of this Respondent, being a part of Block No. 116 in the town of Mattou of which land your Respondent is owner as in fee of the undivided one half part, and which was not included in said lease, but is the separate property of your Respondent & the sd Radcliff who owns the other moiety. And Respondent says that about one fourth part of said House built on said Block 116. - And now having fully answered, this Respondent prays that he be protected in his rights, and dismissed with reasonable costs, Amos Cutler.

State of Illinois }
 Coles County - }
 Be it remembered that on this - day of
 November A. D. 1858, before the undersigned
 clerk of the Circuit Court in & for said County, personally appeared Amos
 Cutter, who being first duly sworn on oath says that the matters &
 things in the foregoing answer set forth are true to the best of his knowl-
 edge, information, recollection and belief and further saith not.
 Sworn to and subscribed ^{before} me this 9th Day of November 1858 } Amos Cutter,
 Geo. W. Deel clerk. - - - - - }

And the said Complainants re-
 ply and say that the within & foregoing answer wherein it
 admits the truth of the allegations contained in complainants
 bill, the same is true & wherein it denies the truth
 of the same said answer is untrue and this said com-
 plainants are ready to verify & prove &c. wherefore &c.

Endured - By Starkweather Solicitor.
 "Filed Nov. 9th 1858"
 "Geo. W. Deel clerk."

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And afterwards to wit on the 15th day of said Term to wit on the 12th day of November A.D. 1855 the following Order or Decree was made as appears of Record -

"About H Pierce
vs.

of the Civil Circuit Court
October Term A.D. 1855

The Terre Haute Alton & St Louis
Rail Road Co, and Others

Now at this day comes Amos Cutter one of said defendants and Shuttis and shows to the Court by his affidavit that he was not served with process or notified in this cause and that he did not appear therein at or before the entering of the decree against him heretofore made in this cause, and on inspecting the records & files in this cause it not appearing that the said defendant Cutter was notified personally, and the said Cutter also now exhibiting his answer herein and praying the Court that the decree entered against him be opened and set aside, and that he have leave to answer Complainants bill, which prayer is granted & he files his answer, and said Complainants appearing by their Solicitors and the said Terre Haute Alton & St Louis Rail Road Company appearing by John P. Asher their solicitor and the said Illinois Central Rail Road Company also appearing by C. B. Ficklin their solicitor and the other defendants, J. C. Radcliff, David V. A. Radcliff & Morgan Griffin failing to make any answer to said

Complainant's Bill of Complaint. The same is again taken as confessed against such defendants as have failed to answer, and this cause now coming on for hearing upon bill answer, replication Exhibits & proofs, with the express agreement by and between all the parties hereto except the Radcliffe & Morgan Griffin that any answer filed in any of the causes now pending in this Court against said defendants to enforce Mechanics Lien against said premises shall be taken accepted and received as answers to each and every case so pending against said defendants and the Replication filed herein are also to be taken as Replications in all of said causes. And it being fully proved to the Court here that said Complainant did furnish materials which were used in erecting said Hotel Building and performed labor thereon to the value of one hundred and fifty three dollars & Eighty one cents and that the sum of \$103.51 is still due and unpaid as per Exhibit "A" heretofore filed in this case. And it also being proved that the interests of the said several defendants and their several liabilities are truly set forth in said Complainant's bill of Complaint, all of which being heard examined and fully understood it is ordered adjudged and decreed the said Complainant recover of the said defendants the said sum of \$103.51 and that the same be a lien upon said premises, which sum

of \$103.51 the said defendants are hereby ordered and decreed to pay to the said Complainant within ten days from the rendition of this decree, and in default of such payment that said house together with the interest of said defendants in the lots and ground in said Complainant's mentioned-to-wit-

All of Block No 116, in the Town of Mattoon in the County of Coles and State of Illinois. (Except a portion of said Block, commencing at a point on the North side ^(of said) Block where the white painted store recently built to be occupied by Green and the Terre Haute Alton and St Louis Rail Road lands connect on the Southwest side of said Store running along said Store to the Street known as Broadway then westerly along said Street sixty nine feet then northerly parallel with the west side of said Store house to the lands of the ^{Suff} Terre Haute Alton & St Louis Rail Road Company, thence along said Rail Road lands to the place of Beginning) Also so much of the "Right of Way" of the Illinois Central Railroad Company as lies West of a line drawn West of and thirty six feet from the center line of said Railroad measuring at Right Angles to said center line and parallel therewith, and extending from the North line of Broadway Avenue in the Town of Mattoon to the Terre Haute Alton & St Louis Rail Road - Also all of the Right of Way of the Terre Haute Alton and St Louis Railroad Company lying South

of a line drawn South of and Twenty feet from the center line of said Rail Road measuring at Right Angles to said Center line also parallel thereto extending from a point Thirty Six feet West of the Center line of the Illinois Central Rail Road. Southwardly along said Terre Haute Altoon and St. Louis Rail Road Two hundred and Twelve feet measuring on the South line of said Right of Way - all the above described tract or parcel of land being a part of Section No 13. Township No 12. N. of Range 7. East - to be sold by the Sheriff of the County of Cook & State of Illinois (said Sheriff giving such notice of such sale as the law requires on the sale of Real Estate or Execution and the money derived from said sale be applied in payment of the said Complainants debt pro rata with the judgments of other complainants obtained at this term of this Court against these defendants and which are also a lien upon the same premises to-wit. the Judgment of Harmon Blood the sum of \$ 480. 42 of Bacon, Heyde & Co. the sum of \$ 122. 35. of H. S. N. Tremble the sum of \$ 325. 00. of J. Lester & Bro. the sum of \$ 279. 87. of Lester & Mc Kimmey the sum of \$ 169. 49. of Stephen Hoffman the sum of \$ 31. 17 of Starkart & Cromwell the sum of \$ 415. 00. of Hus & Baker the sum of \$ 1422. 62. of Philander Jones the sum of \$ 106. 30 of Pearson and Mepa the sum of \$ 100. 00 of Crasby and Waggoner the sum of \$ 115. 00 - of

Tull. Topping & Asher, the sum of \$634.54. of David
 W. Watson, the sum of \$213.25 of William Patrick
 the sum of \$279.33 & of Thomas B. Johns the sum
 of \$483.00, said sale also to be made subject to
 the rights of said ~~Comptroller~~ Corporation defendant
 as lessors of a part of said premises to the said Morgan
 Griffin. And said Sirri Haute Alton St-Louis
 Rail Road Company ^{& the said Illinois Central R.R. Company} hereby expressly waives any
 forfeiture of said lease to the said Morgan Griffin
 up to this time and for thirty days after the sale
 of said premises under this decree, giving the
 purchaser full benefit thereof if he substantially
 comply with the conditions of said lease
 within the said term of thirty days after said
 sale - And it further expressly appearing
 by the evidence adduced by the said Defendant -
 Amos Cutter, in this cause upon the hearing, that
 said defendant Cutter during the time said Hotel
 building was being erected and during the progress
 of the work thereon had advanced to the said Morgan
 Griffin the sum of \$5479.57, to aid the said
 Griffin in erecting said building and that the
 said Griffin expended said money in the erection of
 said building, and that the advancing of said money
 by the said Amos Cutter was the consideration
 on the part of the said Cutter for the assignment
 of the said lease by the said Griffin to the said
 Cutter & Radcliff, which interest so conveyed

to said letter he holds subject to said Complaint
 Said our other Mechanics Lien for said advances -
 It is therefore further ordered adjudged and decreed that
 after paying said Complainant's debt and all the other
 said Mechanics Lien thereon and all costs arising
 in each suit from the money derived from the sale
 of said premises as aforesaid, and that the surplus
 be paid to the said Amos Letter to the amount of
 his said advances, and the residue if any be paid to
 said defendants - and it is further ordered and decreed
 by the Court here that the said Sheriff put the purchaser
 into possession of said premises &c

The following Exhibits were filed on the
 hearing of said Cause, to wit:

Whereas Amos Cutter of St. Louis and David V. N. Radcliff of Albany N York have by their joint funds, and also by the aid of a loan from the Illinois Central and Terre Haute Alton and St. Louis Rail Road Cos. erected a Public house or Hotel & other improvements appertaining to the same at the village of Mattoon in the State of Illinois, and whereas said Rail Road Cos. leased under certain conditions a certain piece or lot of land to Morgan Griffin of the said village of Mattoon, upon which a part of said House or Hotel is built, and whereas the said Hotel building extends beyond said leased land and on to the adjoining land upon which a portion of said House is built, which said adjoining land is held in fee simple by D. V. N. Radcliff having been conveyed to said Radcliff by Eben Noyes as will appear by his deed duly recorded. Now therefore in consideration of the premises and of one dollar to him in hand paid by the said Amos Cutter, the said D. V. N. Radcliff hereby sells, grants, & conveys to the said Amos Cutter his heirs and assigns forever the one equal undivided half of all that piece or portion of land situated

at Mattoon, being a part of Block No 116, upon which a part of said Hotel is built and extends over and beyond the land leased by the said Illinois Central and Terre Haute Alton & St. Louis R.R. Cos. with the improvements & appurtenances appertaining to the said Hotel extending from the south west corner of the Hotel building as it now stands running thence at right angles with the Terre Haute, Alton & St. Louis Railroad to the street called Broadway meaning and intending hereby that the said Amos Cutler & D. V. N. Radcliff their heirs and assigns shall hold all that part of the said Hotel and improvements constructed upon the land or lot purchased from Eben Noyes as tenants in common in equal parts or halves.

In witness whereof the said D. V. N. Radcliff has hereunto affixed his name and seal the 22^d day of September A.D. 1857.

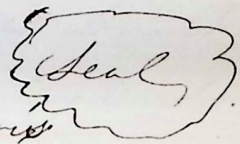
In presence of } David V. N. Radcliff (seal)
 R. J. Hilton
 F. E. Radcliff

State of New York City & County of Albany ss. Be it remembered that on this 22^d day of September A.D. 1857 before me the undersigned Robert J. Hilton, a Commissioner resident in the city of Albany in the State of New

37
I, the duly commissioned & qualified by the Executive
authority & under the Laws of the State of Illinois to
take acknowledgments of Deeds, &c. who used and re-
corded therein, personally came David V. N. Rad-
cliff whose signature appears to the foregoing
deed and who is personally known to me to be the
real person described in and who subscribed
and executed the same, and acknowledged
the same to be his free act and deed.

In witness whereof I have hereunto set my
hand and affixed my official seal on the day
and year and at the place above written.

D. V. N. Radcliff,
Commissioner for Illinois
at City of Albany N.Y.



Filed Feb'y 13th 1858, Recorded Feb'y 15th 1858
Book No 1 of Deeds Pages 340 & 341.

Geo. W. Feil
Recorder.

This Indenture made at Chicago this thirty-first
 day of March 1857 between the Illinois Central
 Railroad Company and Terre Haute Alton and
 St. Louis Railroad Company parties of the first
 part and Morgan Griffin of the Town of Mattson
 Coles County State of Illinois party of the second
 part, Witnesseth that upon considerations herein
 after mentioned, the first parties agree to ad-
 vance to the second party five thousand dollars
 to be applied to the improvements hereinafter
 mentioned, and this Indenture further
 witnesseth that the said party of the first
 part doth grant to the second party the right
 to use certain lands whose description is
 as follows, so much of the "Right of Way" of
 the Ill. C. R. R. Company as lies West of a
 line drawn west of and thirty six feet from
 the center line of said Railroad running
 at right ^{angles} to said center line and parallel
 thereto and extending from the North line
 of Broadway Avenue in the Town of Mattson
 to the J. H. A. & St. L. Railroad, also all of the
 "Right of Way" of J. H. A. & St. L. R. R. Company
 lying North of a line drawn south of and
 twenty feet from the center line of said J.
 H. A. & St. L. R. R. Measuring at right angles
 to said center line also parallel thereto ex-
 tending from a point thirty six feet west

of the center line of the S. C. R. R. Southwesterly along said T. H. A. & St. L. R. R. two hundred and ~~eighty~~ ^{eighty} feet measuring on the south line of said "Right of Way."

To have and to hold the same to him the said second party and his legal representatives for and until the Term of Twenty years shall be fully complete and ended, giving and paying therefor annually on the first day of January of each year the sum of one dollar, the receipt of which is hereby acknowledged.

The second party hereby covenants with the first party that within six months from this date he will erect upon said premises and complete a passenger and eating house after the plans & specifications hereunto annexed, which building shall be finished to the acceptance of the first party's principal Engineer. The second party further agrees to furnish said building with all needful furniture and to keep it as a respectable first class Railroad Passenger and Eating House during the continuance of this lease. The second party further covenants that the first party shall be entitled to the exclusive use of the ticket office and Baggage room to be constructed within

said Passenger house as is marked in said plan and that the passenger room therein marked shall be kept and appropriated to the use of passengers in a manner becoming a first class Passenger Station.

The second party further agrees that in his management of said passenger room and office, and in his times for serving meals to passengers and to men in the employ of the first party he will conform to such rules as the first party's Superintendents may make from time to time touching the same or which the said Superintendents shall think necessary to maintain ^{their} control and discipline over men in his or in the first party's service.

It is further agreed between the parties that if the second party shall fail to finish said Passenger House and to have it ready for business by the time above stipulated or shall fail to keep all and singular the covenants in this Indenture, then it shall be lawful for the first party or their agent or attorney at any time afterward during the continuance of this lease to enter said premises and declare this lease to be void, in which case all right and title of the second party to the said demised

Premises shall cease and be determined without any further act to be done by the said first party, and thereupon all interest of the said second party arising by virtue of these presents shall be extinguished as perfectly as if the same had never existed. It is further agreed between the parties that at any time during the continuance of this lease it shall be lawful for the first party to rescind the same giving reasonable previous notice thereof not less than ninety days to the second party.

If this power shall be exercised, for any cause not arising from the fault of the second party, the building erected by the second party, ~~then~~ upon the premises leased shall be purchased by the first party in the manner hereinafter provided. Whenever the rights of the second party to the premises leased shall be terminated by lapse of time or forfeiture or by any other manner, the second party hereby covenants and agrees to surrender the possession thereof to the first party or his authorized agent. At the expiration of said time it is agreed that the first party shall have the privilege of purchasing such buildings erected on the premises leased at appraised value thereof deducting any advances which the first

party may here made. In this case the first party shall give to the second party reasonable notice of his election to take the said buildings. The valuation shall be made by three disinterested appraisers one to be chosen by each party and the third by the two thus chosen. In making such valuation the good will of the stand or the expected profits shall not be taken into consideration but the appraisement shall be made of the value of the buildings only.

The valuation of the said appraisers or a majority shall be final, and the amount thereof shall be paid to the second party within sixty days after the first party shall receive notice from appraisers of the amount thereof. In case the first party shall not elect to take such buildings as is before provided it shall be lawful for the second party to remove from the premises leased at any time within six months after the expiration of the lease all buildings which the second party may have erected thereon upon first paying to said first parties the said five thousand dollars with interest accruing after the said termination. The first parties hereby covenant with the second party that they will construct suitable

water-closets and vaults in conformity with the attached plans and that they will construct & maintain in good order a convenient platform between the Railroad and stoop of the house.

In testimony of which the parties have herunto set their names and seals the day and year aforesaid

(Signed Triplicates) The Illinois Central R.R. Co.
By W. H. Osborn Pres^t
The Terre Haute & St. Louis R.R. Co.
By Charles Craft Pres^t
Morgan Griffin

For and in consideration of the sum of five thousand and no dollars to me in hand paid by David V. M. Radcliff of New York and Amos Cutter of Missouri, the receipt whereof is hereby acknowledged, I have this day bargained sold and assigned, by these presents do hereby bargain and sell and assign to them their heirs, executors and assigns all my right title & interest in and to the above foregoing lease, and do hereby assign and convey to them their executors and assigns all my right of property in and to the ground leased, the improvements thereon and the said term of twenty years.

In testimony whereof I have hereunto
set my hand and affixed my seal
this 30th day of June A.D. 1857,

Morgan Griffin (Seal)

State of Illinois, Coles County, ss.

I, Geo. W. Teal, Clerk of the Circuit Court in &
for said County do hereby certify that the above
named Morgan Griffin whose signature ap=
pears to the foregoing assignment, and who is per=
sonally known to me to be the person who executed the
same, this day in his proper person came before
me and acknowledged that he signed, sealed and
acknowledged said instrument of writing for the
uses and purposes therein expressed.

(Seal) In testimony whereof I have hereunto
set my hand and ~~set~~ official seal this 30th day
of June A.D. 1857. Geo. W. Teal Clerk,

Filed & Recorded June 30th 1857

Geo. W. Teal Recorder

I certify that the foregoing is a true copy.

(Seal) Given under my hand and official
seal this 4th day of October 1858.

Geo. W. Teal Clerk & ex officio
Recorder of Coles Co., Ills.

Exhibit A & B.

Filed Nov. 12th 1858

Geo. W. Teal Clerk.

45-

Mr Morgan Griffin
and Mattoon Hotel
To Amos Cutter

1857			
April, 25 th	"	To Cash	630.28
May 23	"	" Do	500.00 292.02
June 3	"	" Do	500.00
13	"	" Do	500.00
18	"	" Do	600.00
26	"	" Do	299.50
July 2	"	" Do	500.00
3	"	" Do	289.50
"	"	" Do	29.50
4	"	" Do	610.00
19	"	" Do	496.10
Aug	"	" Do at sundry times	<u>323.00</u>
		Interest to be added	\$5,499.50

Norman Cutter being duly sworn says
that the foregoing account is truly copied
from the Books of Amos Cutter, and
is correct, according to the best of his
knowledge and belief,
Sworn to before } Norman Cutter
me Nov. 10th 1858 }
Geo. W. Peck clk.

State of Illinois
Coles County

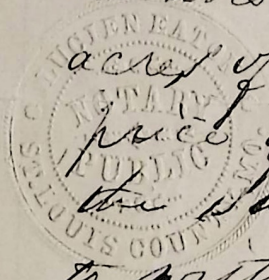
I, George W. Leel Clerk of
the Circuit Court in and for said County,
Certify that the foregoing is a true, full and
Complete Record, in the Case of Albert H.
Pierce, against The Illinois Central Railroad
Company & Others - and that the answers, Repli-
cations, Decrees & Exhibits herein Copied are iden-
tical with those used ^{& Remanded} in fifteen other Cases
of Applications to enforce Mechanic's Liens, against
said defendants, to wit: Crosby & Wagoner;
Bacon, Hyde & Co; Harmon Blood; Stephen Hoffmann;
Thomas B. Johns; Philander Jones; Lester & McKinney;
J. Locke & Bro; William Patrick; Pearson & Meiser;
Reese & Baker; Stunkard Cromwell; H. S. A. Trumble;
Snull, Lopping & Asher; and David W. Watson;
all of which were ~~heard~~ and finally determined
in manner set forth in said Decree, at the
October Term 1858. of said Circuit Court,
as appears of Record in my Office.

In Testimony Whereof, I have hereunto
set my hand and affixed the Seal
of said Court at Charleston, this
3rd day of December 1858.

Geo. W. Leel clk,

44
File 1000 P. by L. Eaton for
D. S. Wilson & S. B. Raderick

Personally appeared before me
Lucien Eaton a Notary Public in
and for the County of St. Louis and
State of Missouri, duly commissioned
and qualified, D. S. Wilson, who being
duly sworn, on oath says that he is
a resident of Litchfield in the
County of Montgomery and State of Illi-
nois, that he is the owner of real
estate in the town of Mattoon in
the County of Coles in the State of
Illinois to the ~~number~~ amount of eighty
acres of land valued at a cash
price of thirty dollars per acre, that
the same is not encumbered
to within fifteen hundred dollars
of its cash value, and that he
has property worth above all in-
cumbrances at least six thousand
dollars.



D. S. Wilson

Sworn to and subscribed before
me this 15th day of December A. D.
1858, at St. Louis in the State of Missouri,
as witness, my hand and notarial
seal the day and year above written.

Lucien Eaton

The Illinois Central Railroad
Company, the Terre Haute, Alton
& St. Louis Railroad Company
Amos Cutter, Morgan Griffin
David V. N. Radcliff and Frederick
E. Radcliff.

vs.
Albert H. Pierce

State of Illinois,

In the Supreme Court,

January Term
A. D. 1859.

And now come David V. N. Radcliff and Frederick E. Radcliff, and say that in the Record and proceedings hereto attached and to which this assignment of errors is appended, there is manifest error in this, to wit:

- 1st That the final decree therein orders the sale of all the premises in said Complainant's Bill mentioned and described.
- 2^d That said decree orders the sale of David V. N. Radcliff's separate, individual property and directs a distribution of the proceeds thereof among the said defendants, who are not alleged or shown whose or whose had any interest therein.
- 3^d That said decree adjudicates and determines upon the rights existing between the codefendants, upon the answer of the defendant Amos Cutter to the Complainant's Bill, and grants affirmative relief to said Cutter against his codefendants by decreeing the payment of his alleged advances out of the proceeds of the sale.
- 4th That the claim of said Cutter is

made a privileged one against the proceeds of the sale.

5th That the rights of David V. N. Radcliff who is shown by said Cutter's answer to have the same interest in said Hotel Building and lease, ^{and land} as the said Cutter has, are not placed on the same footing with those of the said Cutter.

6th That the Court overruled the Motion of said David V. N. Radcliff and Frederick C. Radcliff to open and set aside the first decree as a them.

7th That payment of said Cutter's alleged advances to the Hotel fund is decreed to be made out of the proceeds of the sale of the separate property of David V. N. Radcliff.

8th That the Court rendered a second, ^{final} decree at the same term of Court in the absence of parties defendant.

9th That said last, final decree was rendered without notice to said Radcliffs of the answer of said Cutter. —

And because of the errors aforesaid & of other errors the said Radcliffs pray that the said decree in said cause (to a transcript of the record whereof this assignment is appended) rendered may be reversed and held for none.

By their attorney & solicitor
John M. Turner

I have inspected the foregoing record and the errors therein specified and allow the same. The Clk. of the Sup. Court will make the writ of Error & Repleas on the file in our court room with D. B. Wilson and William Wymon their secretaries in the sum of two hundred & fifty Dollars conditioned according to Law. Dec. 10
1858
Sidney Bass J. of Sup. Court

David N. N. Radcliff et al,

vs.

Albert H. Pierce

} Errors
} Boles

By leave of Court
come the plaintiffs David N. N. Radcliff
and Frederick E. Radcliff by their attorney
and assign the following additional
errors,

1st That the decree was rendered against
David N. N. Radcliff who had never
appeared and never was brought into
court.

2^d That the publication of notice to non
residents was made without an affi-
davit of the non-residence of the David
N. N. Radcliff, Frederick E. Radcliff and
Morgan Griffin, and before the return
of the sheriff.

By their attorney
Spencer Eaton.

Found in error

Hooker atty for
by Hampden

21

Dear Mr. [unclear]

~~Dear Mr. [unclear]~~

Albert St. Pierre

Let me see you

W. H. [unclear]

[unclear]

[unclear]

By leave of court the Plffs assign this additional error,

That the decree orders the payment of the proceeds of the sale to other parties than those both in suit & who do not appear to have any interest in it.

Lucien Eaton

Joinder in error

William Thomas & Robert

By leave of Court the Plffs assign this additional error.

That the decree orders the payment of the proceeds of the sale to other parties than those to this suit & who do not appear to have any interest in it
 found in error {
 Hooker, Thomas & Roberts
 Lucien Canton

By leave of court the Plffs assign this additional error,

That the decree orders the payment of the proceeds of the sale to other parties than those to this suit & who do not appear to have any interest in it.

Lucien Canton

joinder in error.

Wm. Thomas Roberts

By leave of court the Jffs assign this additional error.

That the decree orders the payment of the proceeds of the sale to other parties than those to this suit, & who do not appear to have any interest in it.

Lucien Cotton

Joinder in error }
 Workin, Thomas & Roberts

By leave of court the plffs. assign this additional error.

That the decree orders the payment of the proceeds of the sale to other parties than those to this suit & who do not appear to have any interest in it.

Founders in error } Lucien C. Culbert
 Gordon, Thomas & Roberts

By leave of Court the Plffs assign the following additional error

That the decree orders the sale of payment of
of the proceeds of the sale to other parties than those
to this suit & who do not appear to have any interest
in it.

Lucien Eaton

Joined in error,

Worshipp Thomas & Roberts

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,
To the Sheriff of *Coles* County.

Because in the record and proceedings, and also in the rendition of
the judgment, of a plea which was in the Circuit Court of *Coles*
County, before the judge thereof, between *Albert N. Pierce, Plaintiff*

P

*David T. A. Radcliff, Frederick E.
Radcliff & others*

Defendants; it is said that manifest error hath intervened to the injury of said *Defendants*,

as we are informed by *their* complaint, the record and proceedings of which said judgment,
we have caused to be brought into our Supreme Court of the State of Illinois, at
Springfield, before the Justices thereof, to correct the errors in the same, in due form and
manner, according to law; therefore we command you, that by good and lawful men of your
county, you give notice to the said *Plaintiff, Albert N. Pierce*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of
said Court, to be held at Springfield, in said State, on the *first Tuesday after the*
January next, to hear the records and proceedings aforesaid, and the errors as-
signed, if *he* shall think fit; and further to do and receive what the said Court
shall order in this behalf; and have you then there the names of those by whom you shall give
the said *Plaintiff* notice together with
this writ.

Witness, the Hon. *John D. Eaton* Chief

Justice of our said Court, and the seal thereof, at Spring-
field, this *22nd* day *December*
in the year of our Lord, one thousand eight hundred and
fifty eight

per

Wm. A. Turner

Clerk of the Supreme Court.



The within named
Albert W. Pierce
not found in my County
This 29 December 1854

Per
Returning 10
Malden Jones S. C. C.

71

Supreme Court.

David W. M. Bascliff
et al
Plaintiff in error,

vs.

Albert W. Pierce
Defendant in error,

13422
Scire Facias.

Filed. Janet 29
W. H. Conroy
clerk



SUPREME COURT, JANUARY TERM, 1860.

RADCLIFFE, *et al.* }
vs
GRIFFIN, *et al.* }

5 Leigh 132
6 Monf 257
3 Gilman 105
Harden 544
1 Paige 263
9 Leigh 387
211 65

Affirmative relief was decreed to Cutter, upon his answer, without a cross bill. There was no opportunity afforded his co-defendants to contest the allegations of his answer. This was contrary to true established practice of the courts, both in England and America—*1st Smith's Ch. Pa. 459. McConnel vs Hodsan, 2nd Gil. 649. Tarletan vs Vietes, 1st Gil. 472. Ballance vs Underhill, 3d Scam. 462. Edwards et al, vs Helm, 4th Scam. 143. Talbot vs McGee, 4 Monroe, 379. Pattison vs Hull, 9 Cowen, 747. Beekman vs Peek, 3 Johns, Ch. 415. Jones vs Grant, 10 ~~248~~ Paige bl. 348. Story Eq. Pl. sec. 392.*

A final decree having been entered in the cause before the filing of Cutter's answer, this decree should not have been opened or disturbed without notice to the parties interested. *Sears vs Law, 2nd Gil. 281. Hall vs O'Brien, et al, 4th Scam. 409.*

The claim of Cutter is placed on a footing with the mechanics liens. The money advanced by Cutter could not become a lieu by virtue of the mechanics lien law ; it could only be a lien by way of mortgage, which the advancement of the money and the absolute assignment of the lease to Radcliff and Cutter, by Griffin, did not create a mortgage lien and could not be enforced under the act by force of which the bills were brought. The lien is claimed only on Griffin's interest in the lease, and not on Radcliff's separate property.

The rights of D. V. N. Radcliff, appearing by the bill and answer to be the same, in the property decreed, to be sold as those of Cutter, should have been placed on an equal footing with Cutter, in the distribution of the proceeds. As a portion of block 116, was the separate property of Radcliff, the residue of the proceeds, of so much as belonged to him after satisfying this lien, should have been decreed to be paid to him.

The decree orders payment of claims not presented in this case in any way. This should not have been done; it was not competent for the court to render such a decree. *Pratt vs. Northam, 5 Mason 113. Corneal vs. Banks, 10 Wheat. 181. Rowan vs. Bowles, 21 Ills. 17. Forquer vs. Forquer, 21 Ills. 294.*

Argued on Vandro 7th ed. 217. Story Eq. Pl. sec. 394 note 1

The decree orders the sale of premises not set out in the bill; this should not have been done. The court could properly decree a sale only of the premises on which the lien was claimed. *Pratt vs. Northam, 5 Mason 113. Corneal vs. Banks, 10 Wheat. 181.*

The decree should have ordered a sale only of so much of the land as was necessary for the use of the hotel building, and not a sale of the entire premises. Block 116 is described as severed by the portion excepted in the description.

The decree exceeds the prayer of the bill which was taken *pro confesso*, and is therefore erroneous. *Forquer vs. Forquer, 21 Ills. 294.*

The decree is erroneous and inequitable in ordering a distribution of the residue of the proceeds of sale among the defendants, the sale including separate individual property of D. V. N. Radcliff.

The service by publication on D. V. N. Radcliff was insufficient. The record shows no sufficient appearance. *East vs. Rose, 17 Ills. 276.*

Rudolph Stals.
is,
Griffin St als.

Points for off,

1

Radcliff et al } State of Illinois.
vs. } Supreme Court.
Griffin et al } January Term, 1860.

Cases No. 19, 20, 21, 22, 23, & 24 of the present term present so many identical questions that they may well be considered together.

The points in which the cases differ will be noticed hereafter.

All the proceedings before the Court were the same before in each case. The final decree in each was evidently made from the same model.

The attempt to give the defendant better affirmative relief, not merely against the complainant but against his co-defendants on his answer only ~~was~~ ^{was} entirely unauthorized. As a reply to the bill the treatises & cases uniformly deny the answer any affirmative force, & much more so where it raises issues between the co-defendants alone. It would indeed be monstrous if a defendant could ^{obtain relief against} ~~find~~ his co-defendants on his mere answer to a bill to the prayer of which they were willing to submit.

* In view of a decree for \$103,57, they find a decree against them & their property for \$100,000 - 9th without even a legal intimation of any such procedure

Take the case No. 19. The Complainant claimed a lien for only \$103,57 & to this the debts, the Radcliffs, might have been quite willing to submit, intending to comply with the terms of a decree giving the complainant the prayer of his bill. In the first decree the Radcliffs did object, but not succeeding in their objections, submitted. The mere putting in of an answer does not indicate that the respondent does more than respond to the bill. The fundamental principle of all remedial actions is that the party from whom any thing is claimed shall have notice of that claim. This notice is indispensable. The defendant who seeks relief against his codefendant is not exempt from the general rule, he must give reasonable, sufficient notice of his claim for relief & must present that claim in the proper, established method. Even if affirmative relief could be had on an answer, there must be notice; & this notice does not arise from the fact of being codefendants. It is evident that one defendant can not be held to be cognizant of the nature of a codefendant's answer, merely by

the filing of that answer. - But it is conceived that the law goes further than the denial of affirmative relief between codefendants without a cross bill; - there can be no adjudication at all between such defendants without the raising of the issues by the appropriate remedy expressly provided for such cases - a cross bill. If the relief which the decree sought to give Butler could be given, ~~the~~ all occasion for the use of cross bills would be gone. They would be quite superseded. And the existence of cross bills is nearly conclusive that they are the appropriate ~~remedy~~ instruments for relief between codefendants against the complainant.

The relief to Butler was not merely on an answer, ~~but~~ ~~it~~ without any issue or opportunity for an issue, (by means of a cross bill) between him and his codefendants, but it has this aggravating feature that his answer was filed when the ~~plffs.~~ errors were not in court, ~~when~~ ^{being} after a final decree had been rendered on the bill at the same term. After judgment or final decree rendered the defts

are no longer in court. The matter in question becomes res judicata & ceases to be a lis pendens.

After the Radcliffs had been refused their motion to open the pro confesso decree rendered against them at the October Term 1858, after the issue presented by the bill had been determined by decree, without notice in any form to the Radcliffs, at the same term the decree was opened, the answer of Cutler filed & a decree rendered charging the property sought to be bound, held by the lien, with an additional \$5000! Whether or not the Radcliffs in error can complain that their motion to set aside the first decree was refused, certainly they can complain that that decree was at the same term, without notice to them superseded by one which saddled their property with a double burden.

But even if the proceedings in obtaining the decree complained of had been regular, if opportunity had been given to the Radcliffs to controvert the allegations of Cutler's answer,

But this answer shows that Radcliff had advanced money
 as well as Cutler & that it was Cutler's against a lien for
 R's advances.

still the remedy sought by him
 could not be granted to him in such a
 case. The proceeding was one to enforce
 a mechanic's lien - & surely money ad-
 vanced to aid in building a hotel
 is neither work, labor or materials
 in any proper sense. How does Cutler's
 answer show a mortgage. The money
 was advanced both before & after
 the ~~absolute~~ assignment of Griffin's
 lease to Radcliff & Cutler. ~~There is~~
~~nothing to show that the assignment~~
~~of the lease was not quite absolute.~~
 Moreover the answer states that the
 money was taken a lien on Griffin's
 interest in the lease. After the as-
 signment he had no interest in it,
 yet a part of the money was advanced
 after that assignment, i. e.,
 was advanced by Cutler to him -
self & D. V. N. Radcliff, & it is not
 pretended they were partners. Still
 further the lease on which Cutler's
 lien is claimed, does not cover block
 116 - the separate property of Radcliff
 & of Cutler, yet the decree extends
 Cutler's alleged lien beyond his very
claim, to the separate property of

D. V. N. Radcliff. His property is condemn-
ed to be sold to satisfy a lien on
it which is not asserted or claimed.

As the decree on Butter's answer
must be in the nature of a pro con-
fesso decree, ^{as against co. debtors.} it was at his peril
that he took it. He could take only
what the answer would in terms
sustain, - on the principle applying
in all cases that whoever will
take a Bill pro confesso takes
only what the allegations of the bill
claim.

By all the pleadings the rights
& interest of Radcliff in block 116 are
shown to be equal to Butter's, yet Butter's
advances are decreed to be paid out of
the proceeds of ^{block} this, & the other property, &
then Radcliff is made a distributee
of the ^{residue of the} proceeds of his own property along
with ^{all} the other debtors, among them
Giffin who appears not to have any
interest in the property in con-
troversy. Justice could be done only
by giving to each separate proprietor
the residue of the proceeds of his
own property after the just liens
upon it had been satisfied - The

impossibility of an equitable distribution under the present decree shows conclusively its radical unsoundness. There are four separate titles to the property, one in the Terre St. A & St. Louis R.R. Co., one in the S. C. R.R. Co., one in Amos Center & one in D. W. N. Radcliff. There is no title to the land in F. E. Radcliff or Morgan Griffin. Notwithstanding these uncontroverted facts the decree orders the distribution of the residue of the proceeds of the united sale of ^{all} the property among the heirs, without ~~description~~ discrimination. This is sheer injustice.

Still another radical error pervades the decrees in each case. Stepping entirely beyond every claim presented either by complainant or defendant the decree volunteers an order to pay fifteen other claims which have no other connection with the one presented by the will, than that they were pending in the same court at the same time & some of them against the same described property, but not all. No consolidating order had been made

no order to sell & satisfy a single
claim & return ^{the residue of} the proceeds into court,
to await its order - nothing of the
kind, but an absolute order to pay
claims which it does not appear had
been adjudicated, of the justice or va-
lidity of which no evidence appears,
of which indeed from ~~the~~ any one
of the cases alone nothing can be
known. Such a decree is un-
precedented & utterly unsustainable.

A valid decree must be based on
the pleadings - must conform not only
to the probata but the allegata.

Here not only were there no allegations
touching these claims in either
bill or answers, but the proofs
as preserved in the decree show
not even their existence.

The cruel injustice of such a
decree is palpable. A deft. finds
his property charged by the bill with
a lien of \$100 or \$200. He is content
to confess the lien. He allows the
allegations to go as true. On exam-
ining the decree made on that
confessed bill he finds instead
of \$200 an aggregate of \$5000 de-

ced against his property. If we include the latter claim, in this instance, the aggregate would be about \$10,000. The reasons for the rule that the decree must follow the allegations of the pleading are too obvious to be argued. The whole security of debt, depends upon it.

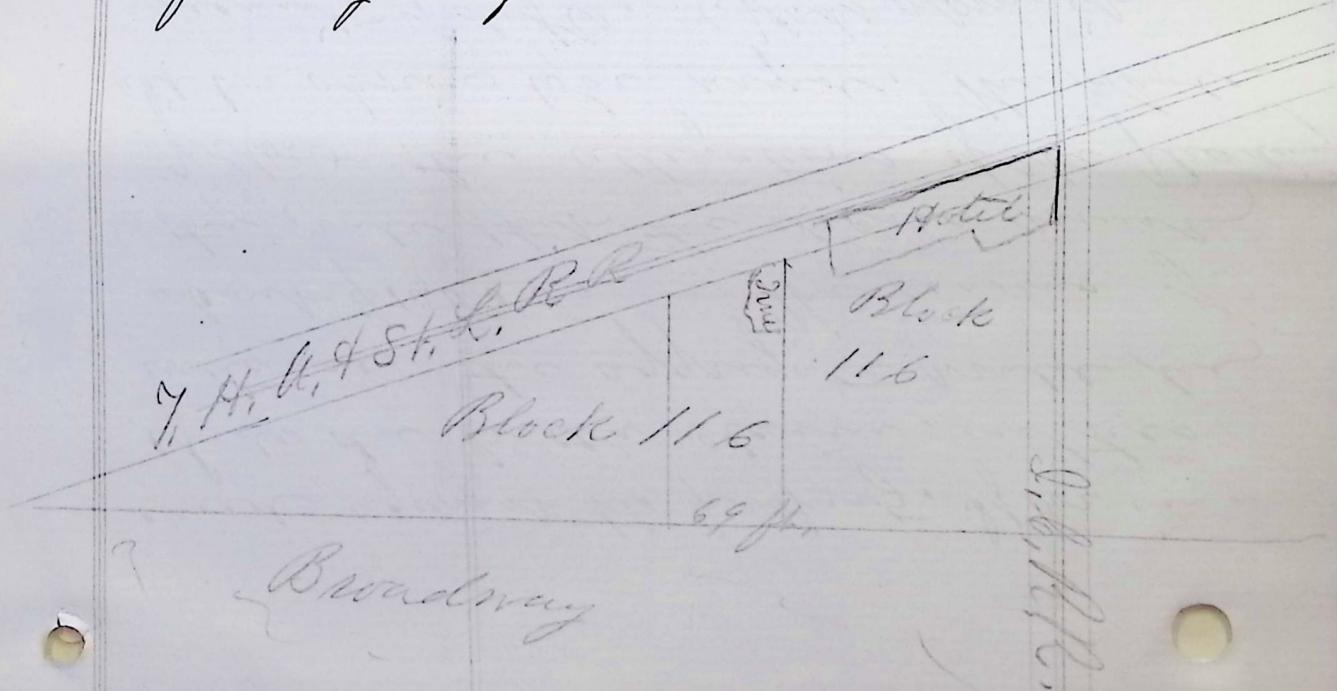
On this point the authorities are numerous & explicit.

The abstracts in these cases were prepared for the best terms.

In Nos. 72, 73, & 76, as numbered in the abstracts, the property ordered to be sold is not the same as that described in the bills. These describe the property as in section 13, T. 12, north range 7 West. The property decreed to be sold is in ~~any~~ section 13 T. 12 north range 7 East being entirely different, in location. In Nos. 74 & 75 of the abstracts the property on which the liens are claimed as described in the bills bears not the faintest likeness to that set forth in the decrees. Indeed no surveyor could locate the property set out in these bills. The descriptions differ thoroughly.

Further, in these two cases the decrees give specifically more money to the complainants than is asked by them including interest from the date time the bills were filed to the rendition of the decree. - certainly in No. 74.

Again it is conceived that the order of sale under a decree for a mechanic's or material man's lien should include only the single premises & not detached parcels & should include only so much ~~lot~~ land as is necessary for the uses & purposes of the edifice. The decree makes no provision for this, leaving ~~no direction~~ the aggregate property to be sold. It is conceived that the premises ordered to be sold are described somewhat according to the following diagram



The Plffs in error claim that only enough of the rights of any of Block 116 Co furnish suitable yard room for the hotel could properly be sold.

They also claim that the sale of the portion of the block reserved by the exception in the description of it, should from the ~~hotel~~ part on which the hotel stands, should not have been ordered to be sold. The ~~court~~ ^{court} should have ascertained these preliminaries at the hearing & have shaped the decree accordingly. —

The ~~decree~~ ^{bill} was taken pro confesso as to the Plffs in error. In this matter the Complainant at his risk took his decree, and, as has been said, before in this argument, no decree not based on the allegations can stand. ~~These decrees exceed~~ the bill in the relief to better, the payment of the other 15 claims, the distribution of the residue after the sale &c. &c.

As better service by publication on ~~the~~ Radcliff. It will be seen by reference to the abstract that in all the cases the publication was ^{insufficient} either

The prayer for general relief covers only cases made by the bill & does not carry relief beyond the allegata.

for want of affidavit ^{of non residence} or return of
Sheriff, or of affo sufficient affidavit
of publication &c. It is conceived
that the sweeping declaration of the
record that at the May term 1858
the debts appeared by their solic-
itors does not without more show the
appearance of D. V. N. Radcliff — The
true & proper method of appearing was
by a regular entering of appearance
upon the record. Otherwise there
is no safety to debts. The language
of the record should be limited to
those parties who responded to the
alleged bill.

The authorities cited upon the
plaintiff's brief will be found fully to
sustain & bear out the points made &
errors assigned, but a special reference
to them here would be quite im-
practicable. Especial attention is invited
to Fergur vs Fergur 21 Ills. 294, &
to Jones vs. Grant 10 Paige's Ch. R. 348 as
explicit statements of principles of
law applicable to the questions
in issue. Many more might
readily have been added to the brief
if it had been thought necessary.

Should it be objected that the Val-cliffs cannot assign error because they failed to show equity when they moved to set aside the first decree taken on the bill pro confesso against them, the ready reply is. (if it is worth while to notice such an objection) that this remedy now sought is by writ of error. An error in a second decree in the case ~~and in~~ the decree which was sought to be set aside & afterwards in fact set aside on motion of Cutler.

It cannot any more be objected that this is not a proceeding in Chancery. By the express terms of the statute the court is in all things to be governed by the rules in Chancery except where the mode of procedure is prescribed in the statute itself. And in so far as ^{the} remedy is statutory it is to be construed with the greater strictness in favor of the defendant in the bill.

Any attempts to deny that affirmative relief against his verdict, is given to Cutler, must fail, since Cutler

in his answer distinctly sets out an
alleged lien ^{or portion of} on the property described
in the bill to the amount of \$5,419.50
and ~~proves that the~~ ~~bill~~ the decree
recognizes and allows him that
amount above his share as residuary
distributor. At the least, Cutler is
placed but second to the lien holder.
The decree is based on facts alleged
in Cutler's answer and responsive
to the allegations et c. of the bill.

The order of payment of
the 15 other claims cannot be em-
ended as but one ~~order~~ order un-
der a consolidation of the cases,
(if that could have been done), since no
evidence of any consolidation is to
be found in the record.

All of which is respectfully
submitted by

Lester Eaton
of counsel for
the Plffs in error.