

Supreme Court,---Second Grand Division.

JANUARY TERM, A. D. 1862.

LEWIS ROACH, LEROY STAPLES, Plt'ff in Error, }
vs } Error to Coles.
LEONIDAS CHAPLIN, Defendant in Error.

BRIEF OF PLAINTIFFS COUNSEL.

The bill of complainant shows that the lumber was furnished to Roach and Staples, and credit given to them, and that the property against which it is sought to enforce a mechanic's lien, belongs to Roach alone, and it is not shown that Staples had any interest therein. Can Roach's property be made liable for the joint debt of himself and Staples in a proceeding of this kind? Our Statute, chapter on Liens, sec. 1, and the amendment of 1861, Laws of 1861, p. 179, allows the lien in case the contract is made, or the labor and materials furnished to the owner of the land or town lot. Here the credit was given, not to the owner, but to him and another, If this view is correct, the demurrer should have been overruled.

Staples was not a party in interest under the definition of the statute. Chapter on Liens, section 21.

The decree should not have been entered upon the overruling of Roach's demurrer. He should have been required to answer, in default of which the bill should have been taken *pro confesso* against him. Miller, et al., vs Davidson, 3 Gil. 528.

The answer of Staples should have been filed in writing.

The petition and bill of particulars filed and made a part thereof, charges that lumber only was furnished. The decree finds that lumber and materials was furnished, from which it is to be inferred that the decree is for something besides what was charged in the petition.

The decree does not find when the materials were furnished, so that it does not appear that they were furnished within the time limited in the amendment of the chapter on mechanic's lien, passed in 1861 (Laws 1861, p. 179,) or, indeed, that they were furnished since the passage of that act. Unless the latter was the fact, this case would be governed, I presume, by the statute as it formerly stood, and, in that event, the decree, according to frequent decisions of this court, would evidently be erroneous. There must be evidence appearing in the record sufficient to sustain the decree. *This Court will not presume that any other proof was made than what was stated in the record; White v. Brown et al. 11 Ill. 365. Ward v. Brown et al. 12 Ill. 282.*

The 14th section of the chapter on liens, provides that if any part of the premises can be separated from the residue and sold without damage to the whole; and if the value thereof should be sufficient to satisfy all the claims, &c., the court may order a sale of that part.

This is a provision in favor of the defendant, and in this case the defendant Roach should have had the benefit of it. There were three lots. The court should have enquired if one was not sufficient to satisfy the claim. There is no redemption from a sale under a decree enforcing a mechanic's lien, and for that reason, a larger amount of land than necessary should not be sold, lest there should be an unnecessary sacrifice of property beyond the power of the debtor to avoid.

F. A. ALLISON,

SHERIDAN P. READ,

Attorney's for Plaintiff Roach.

Roach
v
Chapin
Pff's brief

LEONIDAS CHAPIN, Defendant in Error,
VERSUS
ROBERT ROACH, Petitioner, &c.

JANUARY TERM, A. D. 1885.

County of Second Grand Division

Filed Jan 21-85
Wm. T. Toney
Att

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It
the fact in case the court was made, on the fact and not on the fact of the
the state of Connecticut on each side, and the court was given, not in the court, but to him and another. It
the fact in case the court was made, on the fact and not on the fact of the
the state of Connecticut on each side, and the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It

The state of Connecticut, should have been overruled.
and on each side. Here the court was given, not in the court, but to him and another. It