

14333

No. _____

Supreme Court of Illinois

Kinney

vs.

Sherman.

STATE OF ILLINOIS,

COURT,

and Division.

No. 134

143233

Kennedy

75

Sherman

1862

DePue

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M. Nelson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Judges. }

Grant Hendrick }
Prosecuting Attorney. }

Carlos Hansen Prosecuting Attorney.

Anthony J. Loring Sheriff of Cook County.

Attest, Wm. J. Carter Clerk.

Be it remembered that heretofore, to wit: on the 26th day of August in the year of our Lord One thousand eight hundred and fifty one, there was filed in the office of the Clerk of the Superior Court of Chicago, a certain amended petition for Mechanic's Lien in the words & figures following, to wit:

State of Illinois
Cook County } To the Honorable Judges
of the Superior Court of Chicago.

Humbly complaining
sheweth unto your Honors, your Petitioner James
Kinney of the town of Evanston, County of Cook and
State of Illinois, Carpenter and builder that on
or about the first day of October A. D. 1858. one
Andrew J. Sherman acting in his own behalf and
as agent of Clark Wright, applied to your petitioner
to build and erect a dwelling house on Block Sixty
four (64) in the Town or Village of Evanston in the
County of Cook and State of Illinois: that the
said house was to be built in the following manner
from the foundation or basement stone up: the
first portion of which was to be twenty feet wide
and twenty feet deep and the central of which
was to be twenty feet wide in the first story and twenty
feet deep, and the back or kitchen part was to be
a one story addition twenty five feet wide and
twelve feet deep, with a piazza four feet wide
across the front and two sides of said front
portion of said house.

The said front portion and the said central
part except five feet on each side of said central
part, was to be sixteen feet studs with two by four
plate on top of said studs, the roof to be brown
pitch shingle roof, the roof on the kitchen part
to be a single or shed roof with a pitch but one way:
the whole building to be sheathed and clapboarded
and to be lathed and plastered two coats, and
painted white outside and inside two coats.

The lower story to be divided into the following

And your petitioner further saith that it was agreed by and between the aforesaid parties that the said house should be completed by the first of May A.D. 1839. and that the amount of money then remaining due on said contract if any should be paid to your petitioner by the said Andrew S. Sherman and said Carl Wright.

And your petitioner further sheweth unto your Honors that after the aforesaid agreement was made and entered into the said A. S. Sherman acting as aforesaid, requested your petitioner to build said house in some respects different from the aforesaid plan, by making alterations and improvements in the same, to wit: that the house should be built four feet wider, and two feet and eight inches higher, than specified in the first mentioned plan; that brackets should be put under the cornices of the two story part of said house: that the kitchen part be made feet deeper, and to be a story and a half instead of one story high: and that the roof instead of being a gable or shed roof, should be a double roof with a ridge, and that the upper part of the same to be finished into a bed room and a store room, that fire brick piers be made to sustain the weight of said house, and that the whole inside finish of said house should be made in a better and more costly style: to wit: that it should be wainscoted with double faced architraves, with band mould and back band, and that the finish should be put on after the plastering was done.

That there should be made eighteen pairs of

And your petitioner further saith that it was agreed by and between the aforesaid parties that the said house should be completed by the first of May A.D. 1839. and that the amount of money then remaining due on said contract if any should be paid to your petitioner by the said Andrew S. Sherman and said Carl Wright.

And your petitioner further sheweth unto your Honors that after the aforesaid agreement was made and entered into the said A. S. Sherman acting as aforesaid, requested your petitioner to build said house in some respects different from the aforesaid plan, by making alterations and improvements in the same, to wit: that the house should be built four feet wider, and two feet and eight inches higher, than specified in the first mentioned plan; that brackets should be put under the cornices of the two story part of said house: that the kitchen part be made feet deeper, and to be a story and a half instead of one story high: and that the roof instead of being a gable or shed roof, should be a double roof with a ridge, and that the upper part of the same to be finished into a bed room and a store room, that fire brick piers be made to sustain the weight of said house, and that the whole inside finish of said house should be made in a better and more costly style: to wit: that it should be wainscoted with double faced architraves, with band moulds and back band, and that the finish should be put on after the plastering was done.

That there should be made eighteen pairs of

Windows blinds for said house.

That instead of folding doors there should be sliding doors, and otherwise exactly make them those mentioned in the first plan for said house.

That the front door should be a double door instead of a single one that the window should be hung with weights, and that an extra window should be put into the back kitchen. That the front stairs should be winding instead of straight that an extra chimney should be built. That the ban or shouls be moulded and made of thicked stuff and in a better style: all of which said changes, alterations and additions and improvements were made from time to time during the progress of the building of the house aforesaid by your petitioner, and were not intended to be included in said first agreement, for which said changes, additions, alterations and improvements the said A. D. Sherman on his own behalf and as such agent promised to pay your petitioner as much as the same were reasonably worth in addition to said contract price of three hundred dollars for building the said house: according to the first mentioned plans and agreements, and that the same should be paid for at the same time and in the same manner as the said original contract price for building said house.

And your petitioner further says that such improvements, changes, additions and alterations were made by your petitioner on said house, and as herein after set forth & the improvement changes and additions actually made in pursuance of such agreement, were reasonably worth the sum of eight hundred and twenty one dollars.

And your petitioner further sheweth unto your Honor that he commenced said building about month of November A.D. 1838.

And your petitioner further saith that by reason of the aforesaid additions, alterations and improvements to be made he was unable to finish said building on the first day of May aforesaid, afterwards & before the first of May 1839. About the 30th of April A.D. 1839. And the said St. J. Sherman acting for himself and as such agent consented and agreed with your petitioner to extend said time of completion. And the said Sherman did give & allow to the said petitioner further time to finish and complete the said building and other work, and allowed the said petitioner to progress with work upon said house without objection & the said petitioner did progress with work upon said house with the approbation & assent of said Sherman acting as aforesaid & with as much rapidity & despatch as the performance on the part of said Sherman would allow, until about the first day of July A.D. 1839. the time herein after mentioned when the said Sherman refused to perform his part of said contract as herein after set forth. And your petitioner insists & contends, that by such extension he had in contemplation of law a reasonable time beyond the said 1st day of May to complete & finish said house which your petitioner alleges would have been till about the middle of July A.D. 1839. at which time he might & would have completed the same if the said Sherman had not failed to perform his part of said agreement as herein after set forth.

And your petitioners further saith that at
several times, since the commencement of said house
he has asked and demanded money of the said An-
drew J. Sherman on his own account as agent of said
Clark Wright to enable him to build & complete the
said house, but your petitioners charges that the said
Sherman refused to furnish money to your petitioners
as by the terms of the Contract aforesaid he had
agreed to do, and your petitioners charges that
by reason of such ~~charges~~ ^{refusal} on the part of said
Sherman acting as aforesaid, your petitioners was
greatly hindered and delayed in building said
house and making the improvements and altera-
tions aforesaid.

And your petitioners for the said saith that he
continued to work on said house and the improve-
ments and alterations until about the first of July
A. D. 1839. when your petitioners applied to the said
A. J. Sherman for money to enable him to com-
plete said house, and improvements, and your
petitioners alleges that said Sherman refused
to pay your petitioners any money whatever then
requested as aforesaid to pay for said work, labor
and materials, and utterly refused to comply with
his said agreement, or to pay your petitioners any
money on account of said work, by reason of
which non compliance of the said Sherman to
perform his agreements and undertakings, your
petitioners was prevented from completing the
said house and improvements and alterations
in this he did not make and put up the balusters
and hand rail of the front stairs, and did not
hang the blinds, although the same were made
and complete except the painting, and your

Petitioner alleges that in all other respects that
said house and improvements and additions were
completed and finished in conformity with the
said contract and the directions of the said Sherman
a bill of which said work and materials on said
alterations and improvements expended is hereto
annexed and made part of this petition.

And your petitioner further alleges that
there is now a balance due and owing to him
for work and material aforesaid for building
the aforesaid house, including both the original
contract price and the price and amount of the
alterations, additions and improvements of the sum
of Eighteen hundred and forty one dollars forty cents.
($\$1841 \frac{44}{100}$)

And your petitioner further saith
that at the time of entering into the contract
aforesaid, the land upon which said house was
erected was jointly owned by the said Andrew S.
Sherman and said Clark Wright of the City of
New York in the County and State of New York,
and who your petitioner ^{may} be made party
defendant to this petition.

And your petitioner is informed and believes
and so alleges the truth to be that at the time of
entering into the contract and agreement aforesaid,
with the said A. S. Sherman, the said
Clark Wright had an understanding and
agreement (whether verbal or written your petitioner
is unable to state) with the said A. S. Sherman
concerning the building of said house upon
the lot aforesaid, by which agreement the said
house was to be built on the joint account of the

said Andrew J. Sherman & said Clark Wright.
and that the said Wright was to be part owner of
said house when the same should be completed
by your petitioned as aforesaid, and that the said
A. J. Sherman, acted in the making of said
contract as well for the said Clark Wright as for
himself.

And your petitioned says that he is informed
and believes and so alleges the truth to be that
the said Clark Wright is or was at the time of
the commencement of this suit either sole or
part owner of said house.

And your petitioned says that at the time
said contract was made he had no knowledge
of the interest of the said Clark Wright in and
to the premises aforesaid.

And your petitioned is informed and
believes and so charges the truth to be that the
said Clark Wright at the time of entering into
the contract aforesaid held the title to said
Block in his own name, and that there was at
the aforesaid time of making said contract and
still is a verbal understanding or written agree-
ment (your petitioned is unable to state which)
between the Wright and the said A. J. Sherman
that the said Andrew J. Sherman was at that
time to have a one half interest, or some interest in
and to the aforesaid Block of land and the
house erected thereon; and that he ever since
now has such interest in said Block and that
he had & still has the possession of the same and
claimed to be the owner thereof jointly with said
Clark Wright as aforesaid above stated.

And your petitioned further says that he

has been informed and believes and so alleges the truth to be, that the said Clark Wright, and the said A. S. Sherman have in their possession or under their control papers and letters showing how the said property is held, and who are the owners, papers and letters also showing how and for whom the aforesaid house was built, and what interest the said Sherman and the said Wright have in and to the same.

And your petitioner prays that the said Andrew S. Sherman and the said Clark Wright disclose and show to this Honorable Court all such letters papers and agreements. And that they may answer and disclose to this Honorable Court, what interest the said Clark Wright had in and to the Block of land aforesaid, at the time the aforesaid contract was made, and also what interest the said Andrew S. Sherman had at the time of the first mentioned contract aforesaid was made in and to the Lot or Block of land aforesaid. And also what he had at the time of the commencement of this suit. And also what interest the said Clark Wright had in said Lot at said time.

And that they may also answer and disclose whether there was any agreement or understanding between the said Wright and the said Sherman in reference to any interest either equitable or otherwise to accrue to either party at a subsequent time, and also that the said A. S. Sherman and the said Clark Wright may make a full answer and discovery of all or any agreements between them as to the

building of said house, whether the same was
written or verbal, expressed or tacit, and what
the same was, whether the said Wright ever had
any interest in and to the same and what it was
at the time the said house was being built, or is.
And what the extent of the said Sherman and the
said Wright's interest now is in and to the said
land and in and to the said house.

And your petitioners pray judgment
for the said sum of Eighteen hundred forty one
+ 46/100 dollars and that the same may be made
a lien upon said house and the said Block
of land in accordance the Statute in such
Case made and provided, and that process
may issue against the said Andrew J. Sherman
and the said Clark Wright in the usual form
and that your Honors will grant unto your
petitioners such other and further relief as may
be according to equity and good conscience and
your petitioners will ever pray

H. B. Hard
Sol for Compt.

James Kinney by
H. N. Eldridge his atty

James Kinney

Extra Work on the aforesaid House
according to the second plan:

Extra work below with from first plan	170.00
" " " Heights " " "	100.00
" " " Brackets " " "	75.00
" " " Chimneys	26.00
" " Inside finish " " "	41.00
" " Sliding doors " " "	20.00
" " Overhanging Windows " " "	24.00
" " " Front Stairs " " "	10.00
" " " Heights of back Kitchen "	175.00
" " " Length of " " "	25.00
" " " One Window " " "	7.00
" " " Front door " " "	20.00
" " " Brick Pier in Cellar " "	19.00
" " " "	10.00
" " " 2 door frames and four window frames in Cellar	10.00
" " " 18 pair Window blinds at \$5. per pair	90.00
	<u>821.00</u>

James Minney by
N. N. Elrod his atty.

And afterwards to wit: on the 15th day of March
in the year of our Lord one thousand eight hun-
dred and Sixty two, the said Defendants by their
Solicitor filed in the office of the Clerk of said
Court their certain demurrer in the words and
figures following, to wit:

Superior Court of Chicago
March Term A.D. 1862.

Andrew J. Sherman
& Clark Wright
at
James Kinne
Mechanic's Lien
Demurrer

The demurrer of
Andrew J. Sherman and Clark Wright to the
Amended petition of James Kinne petitioned -
These Defendants respectively by protesta-
tion (not confessing or acknowledging all or any
of the matters and things in the said Amended
petition to be true in such manner and form
as the same are therein set forth and allege do
demur thereto and for cause of demurrer
show, that the said amended petition by
showing that no definite time was specified for
the completion of the work does not bring the
alleged contract within the Statute giving a
Mechanic's Lien, and that said petitioned hath not
in and by his said ^{Amended} petition, made or stated such
cause as doth or ought to entitle him to any such
recovery or relief as is therein sought and prayed
for or upon or against these Defendants.
Wherefore these Defendants respectively

demanded the judgment of this Honorable Court
whether they shall be compelled to make any
further or other answer to the said amended
petition, or any of the matters and things therein
contained and pray to be hence dis'missed with
their reasonable costs in this behalf sustained.

Geo Woodbridge Jr
Sole for defts

And afterwards to wit, on the 13th day of the month
and year last aforesaid, said day being one of the
days of the March Term of said Court the following
among other proceedings were had and entered of record
in said Court to wit

James Kinney Mechi Lien
Clark Wright 9/45
Andrew W. Sherman

This day again comes said
petitioner by ~~head~~ his attorney and said de-
fendants by William Woodbridge & Grant their
attorneys also come and the cause coming out now
to be tried upon the demurrer of said Defendants
to the amended petition filed herein and Counsel
being heard thereon, and the Court being fully
advised sustains the demurrer, and Plaintiff
electing to stand by his petition the Court orders

judgment on the demurrer, whereupon it is ordered
that suit be and is hereby dismissed at costs said
plaintiff.

Wherefore it is considered that said defendants
do have recovered of and from said plaintiff their costs
in this behalf expended and have accepted therefor.

State of Illinois
County of Cook & J. Thomas B. Carter
Clerk of the Superior Court of Chicago, within
for the County of Cook and State of Illinois
do hereby certify that the foregoing is a full
true & complete transcript of the amended
petition & demurrer thereto on file in my office
& order of judgment entered of Record in said
Court. in a certain cause wherein James Kin-
ney was plaintiff and Andrew J. Sherman
& Clark Wright defendants

Witness my hand & the seal
of said Court at the City of
Chicago in said County
this 12th day of April
A.D. 1862
Thomas B. Carter Clerk



Supreme Court of Illinois
April Term A.D. 1862

James Kinney
vs

Andrew J. Sherman &
Clark Wright

And now comes the said
plaintiff in error by Hurd Booth & Potter
and says that there is manifest error in
the foregoing record & judgment in this

The Court Erred in sustaining the
demurrer of the said Sherman & Wright

Hurd Booth & Potter
Attys for Pffr in Error

And now come the said defend-
ants in error by Williams, Woodbridge
& Grant their attys and say that
in the foregoing record and judgment
there is no error

Williams Woodbridge & Grant
for Defts in error -

Jan 1862
Am

Oliver

Filed April 22 1862
L. Leland
Clerk

H. D. Head
Fees \$4.50 paid
L. B. Bates
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior Court for the County of Chicago Cook - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago County, before the Judge thereof, between

plaintiff, and

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid

James Kinney

as we are informed by his complaint ~~to~~ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caten, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25 day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

S. Seland
Clerk of the Supreme Court.



James Keimcy

No. 134

vs.

Andrew T. Sherman

C. Clark Wright

WRIT OF ERROR.

FILED A. D. 186

Clark

Supreme Court of Illinois

James Kinney
Plaintiff in Error

vs.

Andrew J. Sherman &
Clark Wright
Defendants in Error

Error to Superior Court
of Chicago

Will the Clerk issue a
writ of Error to Cook County in this case
G. Chas. Booth & Walter

James Kimball
Plaintiff

vs
Andrew Sherman &

Colt. Wright

Defendants in an

Receipt

"

Filed Clk. 25, 1862

L. Veland

Clk.

Chicago March 24 1862

Clerk Supreme Court
Ottawa Ills.

Dear Sir

Enclosed

find a Receipt for writ of Error
to Cook County in Cause of James
Kinney v. A. J. Hanna et al.

Also five dollars (\$5.) dock
fee

Gaus & Co.

Hurd, Booth & Butler

STATE OF ILLINOIS,
SUPREME COURT

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Court of Chicago, Cook County, before the Judge thereof, between

plaintiff....., and

defendant....., it is said that manifest error hath intervened, to the injury of the said

James Keiney

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, 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

Andrew J. Sherman

& Clark Wright

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Sherman & Wright

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two.

S. Seland
Clerk of the Supreme Court.

James Rummy

No. 134 vs.

Andrew T. Sherman
& Clark Wright

SCIRE FACIAS.



FILED.....A. D. 186

.....
Clerk.

