

14385


No. _____

Supreme Court of Illinois

Thomas

vs.

Kinzey et al.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 132

1865

Thompson
1862

vs

King

Prepared

STATE OF ILLINOIS, }
THIRD GRAND DIVISION, } ss.

Supreme Court, }
April Term A. D. 1862. }

DANIEL S. KINSEY, Plaintiff in Error, }
vs. } Defendant's Brief.
HUSHAI THOMAS, Defendant in Error, }

The first assignment of error assumes that Kinsey, the plaintiff in error, interposed a demurrer in the Court below, which was considered and overruled. Such was not the case. The abstract shows (pp. 5, 6 and 7) that Fitch, one of the defendants below, filed an answer, to which the petitioner filed a replication; that Kinsey also filed an answer, which was stricken from the files, and that the "defendants not answering," demurred to the petition, which demurrer was overruled. The Plaintiff in Error has not ventured to have the demurrer really filed incorporated with his transcript, as its inspection would rebut the assumption that Kinsey demurred below. We suppose, however, that the only question (were there a question about the fact) would be whether he demurred specially, and this is not pretended to be shown by the record. A defendant against whom a bill is taken, *pro confesso*, stands in the same position in maintaining a writ of error as if he had appeared in the Court below and filed a general demurrer. The validity of a judgment by default or decree, *pro confesso*, depends upon the question whether the declaration or bill is sufficient upon general demurrer. If the defendant in such judgment or decree have a defence which must be specially set forth by demurrer, plea, or answer, he cannot rely upon it on error. (3 Scam. 347.)

It is admitted that the petition below was defective in this that, while it shows an agreement to furnish such lumber and material as the defendant below should request, to be paid for within a reasonable time after delivery, it does not show that such request was to be made within three years. We think this the only defect, as an agreement to pay within a reasonable time might be construed to be an agreement to pay within one year from delivery, inasmuch as an action might be maintained on such an agreement almost immediately after delivery. But even if the petition be held as deficient in its allegation of the time of payment as in its allegation of the time of delivery, it is contended that the defendant below should have taken advantage of the defect by a special demurrer, plea or answer.

We maintain that the petitioner below brought himself within the terms of the enacting clause of the statute of Mechanics Liens, and that the defendant below who here relies upon a proviso contained in a clause subsequent to the enacting clause is now too late with his defence.

The Statute of Mechanics Liens enacts that "any person who shall, by contract with the owner of any piece of land or town lot furnish labor or materials for erecting or repairing any building or the appurtenances of any building on such land or lot shall have a lien," &c.

The petitioner below certainly brought himself within this enacting clause.

The second section contains a proviso restricting the nature of such contracts.

The question whether it was necessary for Kinsey to avail himself of a neglect to allege the items of this proviso finds no solution in the general principle that defects of form are to be taken advantage of by special, those of substance, by general demurrer. If it appear from a bill for specific performance that the agreement for the sale of lands sought to be enforced was a parol agreement, the bill is certainly defective in *substance*, and shows the complainant's case to be obnoxious to a complete statutory bar, yet this defect cannot be taken advantage of by any general form of pleading, but must be specially relied on by demurrer's plea or answer. (*School Trustees vs. Wright* 12 Ill. 441.) The same is true where the pleader shows his own cause of action to be barred by the Statute of Limitations. (*Id.*) The principle seems to be that when an act valid at law is subsequently subjected to statutory restrictions, it is necessary for a defendant in his pleadings to rely specially upon these restrictions. This same principle is applied to pleadings under Statute. The enacting clause of a Statute establishes a general principle

of law. Sometimes such principle is qualified in its very origin by a proviso in the enacting clause, and in this case a plaintiff must bring himself within the proviso. But where provisos are introduced into subsequent clauses the rights or immunities claimed under them must be specially set forth by the defendant. Otherwise the plaintiff's pleading is cured. These general principles as set forth by Chitty (Pleading Vol. 1 p. 223) have received the sanction of this Court in *Chicago, Burlington and Quincy R. R. vs. Carter*, (20 Ill. 390.) They are also recognized as regulating the practice of the Supreme Court of the United States in *The Margaret* (9th Wheaton 426) and in *Two Hundred chests of Tea, Smith claimant* (9th Wheaton 430.)

They are adopted even in indictments where the highest certainty is requisite. Archbold, in his treatise on criminal pleadings, remarks, (v. 1, p. 86,) "If there be any exception contained in the same clause of the act which creates the offence, the indictment must show negatively that the defendant, or the subject of the indictment, does not come within the exception. But if an exception or proviso be in a subsequent clause or Statute, or although in the same section, yet if it be not incorporated with the enacting clause by any words of reference, it is in that case matter of defence for the other party and need not be negatived in the pleadings."

The question above presented has never been decided by this Court, as may be shown by reference to the cases which affirm the necessity of making a case under the proviso of the Statute.

In *Logan vs. Dunlap*, (3 Scam., 188,) there was a demurrer below, whether general or special does not appear. In *Miller vs. Smith*, (*Id.*, 544) there was a special demurrer below. In *Cook vs. Heald*, (21 Ill., 425,) *Id vs. Vreeland*, (21 Ill., 431,) *Id vs. Rofinot*, (21 Ill., 437,) there were special demurrers below. In *Senior vs. Brebnor*, (22 Ill., 252,) there was a trial and verdict below. This Court states that the contract was insufficient, but it does not appear whether the insufficiency was relied on below. In *McClurken vs. Logan*, (23 Ill., 80,) there was a demurrer below, whether general or special does not appear from the report. In 23 Ill., 473, there are a number of decisions in which one David Radcliff was plaintiff in error, where the principles of strict construction are applied to Mechanic's liens, but it does not appear what proceedings took place below. In *Brady vs. Anderson*, (24 Ill., 112,) specially relied upon by complainant as parallel with the present case, there was a special demurrer below and afterwards an answer. The decree was reversed because of a variance between the contract stated and that proven. In *Moser vs. Mott*, (24 Ill., 198,) and *Burkhart*

vs. Reisig, (*Ib.* 529,) there were special demurrers below. In Sutherland vs. Ryerson, (*Ib.* 517,) the question could not arise. Defendant attempted to set up a Mechanic's lien in an answer, and answers in chancery are not demurrable. This Court decided that the lien should have been set up by cross bill. In Philips vs. Stone, (25 Ill., 80,) it appears that there were other pleadings and proof below, the character of which is not stated. In the several cases cited, (25 Ill., 169,) the nature of the pleadings below does not appear from the report. The same is the case in Scott vs. Keiling, (25 Ill., 358.)

These are all the cases that can be relied upon as showing any failure of the petitioner to allege the requisites required by the Statute. It does not clearly appear from any one of them as reported, that any decree has been reversed on account of a complainant's failure to bring himself within the terms of this proviso where such failure had not been in some manner specially relied upon in the Court below.

It is therefore assumed that the above question has not received that full judicial consideration which precludes argument. It will doubtless be attempted to take advantage of the circumstance that this Court, in deciding cases where the proviso had been specially relied upon by defendants below, has used general expressions to the effect that "the petitioner must bring himself within the Statute," "must show such a contract as the Statute requires," &c. This language wrested from its connection with the facts and pleadings in the cases in which it was used, would conflict with the view herein defended; but can only, it is submitted, be relied upon to show that the Statute in question is to be strictly construed. Strict construction, however, does not, as we have seen by reference to the law of criminal pleadings, exclude the application of the principle above contended for.

The above argument applies in its full extent to the question of extension of time of payment. The petition and account show that the materials were to be delivered upon request; that they were shortly thereafter so delivered, the last delivery occurring Nov. 10, 1857, and that within a reasonable time, that is to say on Dec. 3, 1857, Kinsey executed a six months note for the unpaid balance. The time of payment was not extended as much as the Statute allows. In Nibbe vs. Brauhr, (24 Ill., 268,) this Court affirms the right of parties to extend the time of the performance of a contract without damage to the lien. It can hardly be less allowable to extend the time of payment, the limit fixed by the Statute being observed. Whether the suit below was brought in time can be no question between the parties to this record. (*Turney vs. Sanders*, 4 Scam., 527.)

II. It is maintained that the defendant in error waived his lien by taking a chattel mortgage for the security of his note. Mechanic's liens stand in this respect upon the same footing as vendor's liens, and are waived in the same manner. The law, however, as stated by Judge Story, (Equity Jurisp, vol. 2, § 1226,) is, that "even the taking of a distinct and independent security, as for instance a mortgage on another estate, or a pledge of other property, has been deemed not to be conclusive evidence that the lien is waived." The taking of such security seems to be *prima facie* evidence of a waiver, which may be rebutted by showing that it is the intention of the parties that the lien shall remain despite such a transaction. The note in question specifies that it is given in consideration of lumber for Kinsey's house. Evidence was introduced below to show that it is the custom of material men to require notes in this form for the preservation of their liens. The question, however, was decided against us, and we were obliged to take subject to the claims of Fitch, the creditor who made the defence. Of this decision, which is favorable to Kinsey in that it makes the premises subject to the demand of his creditors in preference to our own, we have not complained. Kinsey cannot complain, because the waiver of the lien, if such took place, was a matter of defence and proof, and Kinsey stands in default, and can make no independent defence.

III. It is assigned that the decree erred in fixing a period of thirty instead of ninety days for the payment of the debt. (\$179,82.) On referring to Link vs. Architectural Iron Works, (24 Ill., 551,) we are unable to find it there decided as claimed that such a decree is erroneous. This Court seems to fix a rule to be regarded in the exercise of the sound discretion of Circuit Courts. In the case there stated, it does not appear from the printed report, that any time at all was given for the payment of the debt which amounted to the large sum of \$3119. The fact that in sections 10, 15 and 26 of the Mechanic's Lien law the decision of the Court is styled a judgment, seems in some instances to have induced courts to enter up judgment for the amount found due without giving any time for payment; while in other instances decrees have been rendered fixing periods of payment in accordance with the usual practice in foreclosure cases. That the length of the period depends upon the sum, and is matter of judicial discretion seems to appear from the language of this Court in the case in 24 Ill., 551. In the future exercise of this discretion, Circuit Courts will feel compelled to abide by the suggestions there made by this tribunal, but that it is not intended to reverse all former decrees where shorter periods have been fixed for the payment of small sums, appears from Donaldson vs. Holmes, (23 Ill., 85) where this Court sustained a decree for the payment of \$725 in sixty days.

But even if wrong in our view, we are within the saving phraseology of the decision in 24 Ill., 551. It is there remarked that "the law gives the Sheriff ninety days within which to make the money or a sale, and this when the defendant has a year to redeem the land"—and inferred that the defendant should have the lifetime of an execution to make his payment. In this case the decree provided for a special execution, to be issued upon non-payment as upon a judgment at law. The execution thus issued and set forth in the abstract gave the Sheriff ninety days to make the money.

IV. The fact that such a special execution was awarded, is made the ground of a special assignment of error. Upon this point it is sufficient to say that the practice has been recommended by this Court in *Kelley vs. Chapman*, (13 Ill., 534). The objection that the decree does not specify the time within which the special execution is to be executed and returned, is answered by reference to the direction of the decree that such execution be issued *as upon a judgment at law*.

V. The petitioner below was compelled to take the premises subject to a heavy mortgage debt, and the decree provides that in case the proceeds of the sale under the special execution are insufficient to pay the debt, a general execution shall issue for the residue. This is in accordance with section 26 of the Lien Law, and the phraseology of our decree is in this respect nearly identical with that rendered by this Court in *Garret vs. Stevenson*, (13 Ill., 281).

GEO. W. SHAW,
Attorney of Defendant.

6 No 132

Danl S Kinsey

vs

Mushai Thomas

Defendants Brief.

Filed April 24th 1862

L. Leland
Clk.

STATE OF ILLINOIS, }
THIRD GRAND DIVISION, } ss.

Supreme Court, }
April Term A. D. 1862. }

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It is admitted that the petition below was defective in this that, while it shows an agreement to furnish such lumber and material as the defendant below should request, to be paid for within a reasonable time after delivery, it does not show that such request was to be made within three years. We think this the only defect, as an agreement to pay within a reasonable time might be construed to be an agreement to pay within one year from delivery, inasmuch as an action might be maintained on such an agreement almost immediately after delivery. But even if the petition be held as deficient in its allegation of the time of payment as in its allegation of the time of delivery, it is contended that the defendant below should have taken advantage of the defect by a special demurrer, plea or answer.

We maintain that the petitioner below brought himself within the terms of the enacting clause of the statute of Mechanics Liens, and that the defendant below who here relies upon a proviso contained in a clause subsequent to the enacting clause is now too late with his defence.

The Statute of Mechanics Liens enacts that "any person who shall, by contract with the owner of any piece of land or town lot furnish labor or materials for erecting or repairing any building or the appurtenances of any building on such land or lot shall have a lien," &c.

The petitioner below certainly brought himself within this enacting clause.

The second section contains a proviso restricting the nature of such contracts.

The question whether it was necessary for Kinsey to avail himself of a neglect to allege the items of this proviso finds no solution in the general principle that defects of form are to be taken advantage of by special, those of substance, by general demurrer. If it appear from a bill for specific performance that the agreement for the sale of lands sought to be enforced was a parol agreement, the bill is certainly defective in *substance*, and shows the complainant's case to be obnoxious to a complete statutory bar, yet this defect cannot be taken advantage of by any general form of pleading, but must be specially relied on by demurrer's plea or answer. (*School Trustees vs. Wright* 12 Ill. 441.) The same is true where the pleader shows his own cause of action to be barred by the Statute of Limitations. (*Id.*) The principle seems to be that when an act valid at law is subsequently subjected to statutory restrictions, it is necessary for a defendant in his pleadings to rely specially upon these restrictions. This same principle is applied to pleadings under Statute. The enacting clause of a Statute establishes a general principle

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The above argument applies in its full extent to the question of extension of time of payment. The petition and account show that the materials were to be delivered upon request; that they were shortly thereafter so delivered, the last delivery occurring Nov. 10, 1857, and that within a reasonable time, that is to say on Dec. 3, 1857, Kinsey executed a six months note for the unpaid balance. The time of payment was not extended as much as the Statute allows. In Nibbe vs. Brauhr, (24 Ill., 268,) this Court affirms the right of parties to extend the time of the performance of a contract without damage to the lien. It can hardly be less allowable to extend the time of payment, the limit fixed by the Statute being observed. Whether the suit below was brought in time can be no question between the parties to this record. (*Turney vs. Sanders*, 4 Scam., 527.)

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III. It is assigned that the decree erred in fixing a period of thirty instead of ninety days for the payment of the debt. (\$179,82.) On referring to Link vs. Architectural Iron Works, (24 Ill., 551,) we are unable to find it there decided as claimed that such a decree is erroneous. This Court seems to fix a rule to be regarded in the exercise of the sound discretion of Circuit Courts. In the case there stated, it does not appear from the printed report, that any time at all was given for the payment of the debt which amounted to the large sum of \$3119. The fact that in sections 10, 15 and 26 of the Mechanic's Lien law the decision of the Court is styled a judgment, seems in some instances to have induced courts to enter up judgment for the amount found due without giving any time for payment; while in other instances decrees have been rendered fixing periods of payment in accordance with the usual practice in foreclosure cases. That the length of the period depends upon the sum, and is matter of judicial discretion seems to appear from the language of this Court in the case in 24 Ill., 551. In the future exercise of this discretion, Circuit Courts will feel compelled to abide by the suggestions there made by this tribunal, but that it is not intended to reverse all former decrees where shorter periods have been fixed for the payment of small sums, appears from Donaldson vs. Holmes, (23 Ill., 85) where this Court sustained a decree for the payment of \$725 in sixty days.

But even if wrong in our view, we are within the saving phraseology of the decision in 24 Ill., 551. It is there remarked that "the law gives the Sheriff ninety days within which to make the money or a sale, and this when the defendant has a year to redeem the land"—and inferred that the defendant should have the lifetime of an execution to make his payment. In this case the decree provided for a special execution, to be issued upon non-payment as upon a judgment at law. The execution thus issued and set forth in the abstract gave the Sheriff ninety days to make the money.

IV. The fact that such a special execution was awarded, is made the ground of a special assignment of error. Upon this point it is sufficient to say that the practice has been recommended by this Court in *Kelley vs. Chapman*, (13 Ill., 534). The objection that the decree does not specify the time within which the special execution is to be executed and returned, is answered by reference to the direction of the decree that such execution be issued *as upon a judgment at law*.

V. The petitioner below was compelled to take the premises subject to a heavy mortgage debt, and the decree provides that in case the proceeds of the sale under the special execution are insufficient to pay the debt, a general execution shall issue for the residue. This is in accordance with section 26 of the Lien Law, and the phraseology of our decree is in this respect nearly identical with that rendered by this Court in *Garret vs. Stevenson*, (13 Ill., 281).

GEO. W. SHAW,
Attorney of Defendant.

v No 132

Danl. S Kinsley

vs

Nashai Thomas

Defendants Brief

Filed April 28th 1860
L. Gilman
Clk.

State of Illinois }
Third Grand Division } ss.

In the Supreme Court of said State in
and for said Grand Division at the Spring
Term thereof A.D. 1862

Daniel S. Kinzey Plff. in Error

impleaded with

Isaac N. Fitch

Edson S. Pierce

Isaac B. Rowe

Harry McArthur

Dexter Rich

John Loken

John Wilkins &

James Evans

vs.

Hushai Thomas Deft. in Error

To the clerk of said Court

In the above entitled cause in behalf of said
Daniel S. Kinzey Plff. in Error against the said
Hushai Thomas Deft. in Error, you will please
issue a writ of Scire Facias, directed to the
Sheriff of Henry County in said State notify-
ing the said Defendant Hushai Thomas, to appear
before said Court to answer said Plff. in the
premise at the next term thereof.

Henry County }
March 22^d 1862 }
at Cambridge }

J. J. Beardsley & J. B. Carpenter
Attys for Plaintiff in Error

Over

⁶ 132
Paul S. Kurye
by
Hushai Thomas

Recipe

Filed Dec. 24, 1862
L. Island
Ch.

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Henry County, GREETING:

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

Aushai Thomas

plaintiff, and Daniel S. Kinzey & others

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

Daniel S. Kinzey

as we are informed by his complaint 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

Aushai Thomas

that he 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 he 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

Aushai Thomas

notice, together with this writ.

Witness, The Hon. John W. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24 day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Iceland

Clerk of the Supreme Court.

David S. Ringley

No. 132 vs.

Hushai Thomas

SCIRE FACIAS.

FILED... Mch 30... A. D. 1862

A. W. Belmont Clerk.

Sherriff's fee	50
Services	60
Mileage	10
Return	120
<hr/>	
Amount to Henry	
Sherriff	
of Henry County	

I have served the within writ of scire facias
 by reading the within to the within named Hushai
 Thomas in presence of S. J. Steele and Jacob Young
 this 29th day of March 1862,
 Adam K. Henry Sheriff of Henry County Illinois

J. J. Brown doley
 J. W. Carpenter
 1845

87 1/2 acres of the south-west quarter of section nineteen (19), in Township seventeen (17), north of Range three (3), East 4th P. M., and the said Kinzey on his part promised, in consideration of the above agreement of your petitioner to pay your petitioner within a reasonable time after obtaining such materials such sum of money thereby as the said materials should be reasonably worth.

Your petitioner further shews that under the provisions of said contract and in exact fulfillment with the said contract, he furnished to the said defendant the lumber, shingles, sash, glass, and other building and fencing materials specified in the contract heretofore in-
serted, and he also paid a part of the price of the same, to-wit: the price therein specified, that is to say, in such manner and at such times as he was bound to do by the said contract.

ABSTRACT OF CASE IN THE CIRCUIT COURT OF HENRY COUNTY.

HUSHAI THOMAS, COMPLAINANT,
vs.
DANIEL S. KINZEY, ET. AL., DEFENDANTS, } *MECHANICS LIEN.*

Page of Record 1. Pleas before HON. J. WILSON DRURY, at a regular term of the Circuit Court in and for the County of Henry, in the State of Illinois, October term, A. D., 1858.

STATE OF ILLINOIS, } ss.
HENRY COUNTY. }

CIRCUIT COURT, }
October Term, 1858. }

To the HON. JNO. W. DRURY, Judge of the said Court, humbly complaining, sheweth, your petitioner, Hushai Thomas, of the County of Henry and State of Illinois, that on or about the seventh day of July, in the year A. D., eighteen hundred and fifty-seven, your petitioner, being then and there a dealer in Lumber and Building Materials, made a certain contract in parol with one Daniel S. Kinzey, whom your petitioner prays may be made a party defendant to this suit, whereby your petitioner agreed in consideration of the stipulations of the said defendant, hereafter stated, to furnish to the said defendant such lumber, shingles, glass, sash, and other building and fencing materials as he should be thereunto by the said
Page 2. defendant requested, to be used by the said defendant in erecting and constructing a certain dwelling house and the appurtenances thereof, on a certain tract of land situated in the County of Henry and State of Illinois, and described as follows: The east

fifty acres of the south-west quarter of section nineteen (19), in Township seventeen (17), north of Range three (3), East 4th P. M., and the said Kinzey on his part promised, in consideration of the above agreement of your petitioner to pay your petitioner within a reasonable time after obtaining such materials such sums of money therefor as the said materials should be reasonably worth.

Your petitioner further avers, that under the provisions of said contract and in exact fulfillment with the said contract, he furnished to the said defendant the lumber, shingles, sash, glass, and other building and fencing materials specified in the account hereunto annexed, marked Exhibit "A," and made a part of this petition, at the times therein specified, that is to say, in such manner and at such times as he was thereunto by the said defendant requested, for the purpose of constructing the said dwelling house and appurtenances on the said tract of land above described, and that the said materials were used by the said defendant in the erection and construction of the said dwelling house and appurtenances on the said tract of land above described.

And your petitioner further avers, that on the third day of December, in the year A. D., eighteen hundred and fifty-seven, which was a reasonable time after such materials were obtained, the said defendant, having made several partial payments, as by the annexed bill of items will appear, an account was stated between your petitioner and the said defendant, and a balance found to accrue in favor of your petitioner on said contract, amounting to the sum of Two Hundred and Fifty-four and 40-100 Dollars, and that it was then agreed by your petitioner that the time of payment of the said sum should be extended six months, (that is to say for a period less than one year) in consideration whereof, and for the further security of your petitioner, the said defendant made his certain promissory Page 3. note, hereunto annexed, and made part of this Bill under the style of Exhibit "B," whereby he, the said defendant, agreed to pay to your petitioner the said sum of money last mentioned, at the time above stated, with interest at the rate of twenty per cent. from date until the time of payment, in which said note it was stated by the said Defendant, that the said sum of money therein promised to be paid, was for lumber for his, the said defendant's, house, on which note there are endorsed receipts of certain subsequent payments.

And your orator avers that with the exception of the subse-

quent payments, the receipt of which is by endorsement acknowledged, the amount by the said promissory note agreed to be paid to your petitioner, remains unpaid and constitutes the sum still due on the said contract; that the said defendant has wholly neglected and refused to pay the said last mentioned amount to the great injury of your petitioner, that is to say within six months after the time when by the terms of said extension the said sum become due and payable, and that this suit is brought within six months of the maturity of said note.

Your orator further avers that he is informed that the said defendant has some equitable interest in the said premises above described, by reason of being the obligee in a certain bond executed by one Isaac Fitch, who has now the legal estate in the said premises, and whom your petitioner prays may be made a party defendant in this suit, but what the precise nature of the said interest is, he is not as yet informed, and upon this point prays discovery.

And your petitioner avers that the said defendants sometimes allege and pretend that the said Kinzey has failed to fulfill the stipulations of the said obligation, and forfeited all right to obtain a conveyance of the said premises, by making tender of the payments in the said obligation specified: whereas, your orator charges the contrary thereof to be the truth, and that no such failure has occurred, or if such failure has occurred, all forfeiture therefrom resulting has been waived, and that there exists an understanding between the said defendants, that the said Kinzey shall have a conveyance of the said premises from the said Fitch, by making the said payments.

Page 4. And your petitioner further avers, that on or about the 25th day of October, A. D., 1857, the said Fitch mortgaged the said premises to one Edson Pierce. And your orator is informed that Harry McArthur, Isaac Rowe and Dexter Rich, Trustees of Schools within and for Township number Seventeen, north of Range Three, east of the 4th P. M., claim the said premises by virtue of a mortgage, alleged to have been executed to them, by the said Kinzey, which said mortgage, your Petitioner alleges to be inferior in point of priority to his own lien. And your Orator further avers that one, Richard Amsden, claims to have some title in the said premises, but what the nature of the said title is, your Orator is not informed, and on this point, prays discovery.

And your petitioner prays that the said Pierce, and the said Amsden, and the said Trustees of schools, be made parties defendants in this petition, charging that their claims, and incumbrances, are inferior in priority to his own.) All which acts, doings and pretences, of said defendants, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your Petitioner, in the premises, in consideration whereof, and to the end that the said defendants may, upon their several and respective corporal oaths, full, true, direct and perfect answer, makes to all and singular the matters herein before stated and charged as fully, in every respect, as if the same were herein repeated, and they thereunto, particularly interogated, and that not only as to the best of their respective knowledge and remembrance, but, also, as to the best of their several and respective information, hearsay, and belief, and that the said Kinsey may come to a fair and just account, and be decreed to pay unto your Petitioner, the sums due on the said contract, within a short time, to be fixed by this court, or, in default thereof, that your Petitioner have the benefit of a material mans lien, and the interest of the said Kinsey, in the said premises be sold, and the proceeds of the said sale applied to the satisfaction of the said Debt, and that your Petitioner may have such other and further relief in the premises, as the nature of his case shall require, and to your Honor shall seem meet. May it please your Honor to grant unto your Petitioner the most gracious writ of summons of the State of Illinois, commanding the said defendants to appear before this Honorable Court, on a day therein fixed, to answer all and singular, the premises, and perform, and abide such order and decree as to your Honor shall seem meet, and your Petitioner will ever pray.

HUSHAI THOMAS.

G. W. SHAW, Att'y for Pl'tf.

Petitioners' account exhibit for materials furnished, marked exhibit "A."

Page 6. Petitioners exhibit B, which is as follows :

\$254.40.

GENESEO, Dec. 12th, 1857.

Six months after date, I promise to pay to the order of H. Thomas, (It being for lumber for my house) two hundred and fifty-four 40-100 dollars, value received, with interest, at 20 per cent. per annum.

D. S. KINZEY.

Received, on the within (in wheat sold) June 1st, 1858, one hundred and three 19-100ths dollars, (\$103.19.)

Received, Sept. 7th, 1858, on the within note, paid Martin seven dollars, (\$7.00.)

Page 8. Summons to Defendants to appear, &c.

Page 9. Return of Sheriff thereon.

Petitioner asks leave to amend Petition, making new parties, Defendants and Dec. 15, 1858, Petitioner files his amended petition making new parties.

Page 10. Summons to said additional Defendants, to appear, &c.
Return of Sheriff thereon.

Page 11. Service of Edson Pierce, defendants by publication, &c.

Motion of the Petitioner to strike the answer of Defendant

Page 12. Daniel S. Kinzey from the files, because not filed in apt time.
April Special Term, A. D. 1859.

Answer of Isaac Fitch agreed also to be considered the answer of Edson Pierce, filed, and is as follows :

STATE OF ILLINOIS, }
HENRY COUNTY, } ss.

HENRY COUNTY CIRCUIT COURT, }
April Special Term, A. D. 1859. }

The separate answer of Isaac Fitch, one of the defendants to the petition of Hushai Thomas. And now comes the said defendant, and reserving to himself all manner of benefit, by exception, or otherwise, to the said petition for its many imperfections, errors, insufficiencies and uncertainties, for answer thereto, or to so much thereof, as he is advised that it is necessary for him to answer to,

Page 13. answering says :

That it is true, that on the twenty-eighth day of November, A. D. 1857, the said Daniel S. Kinsey, with Elizabeth, his wife, did execute to this Respondent, a deed in fee simple, for the said premises, in said Petition mentioned, which said Deed duly executed and acknowledged, was delivered by said Kinzey, to this respondent, on the day aforesaid, and on the fifth day of December, next thereafter, filed for record, in the office of the Recorder of Deeds, of said county of Henry, and that the respondent did then, and there, on the delivery of said Deed to him, give to said Kinzey a bond or obligation to recovery said premises, to said Kinzey, upon the payment to this respondent, by said Kinzey of the sum of twelve hundred and thirty dollars, with ten per cent. interest, on the twenty-fourth day of October, next thereafter, which period has elapsed, and the said Kinzey has utterly failed to pay said sum of money, or any

part thereof, to this respondent, and that the same is now justly due to this respondent.

Respondent further answering, says, that certain differences and controversies have arisen between said Kinzey, and this respondent, as to the amount which said Kinzey of right ought to pay to your respondent, upon the said obligation, and that the same has been compromised, and that this respondent, for the purpose of avoiding a litigation with said Kinzey, has consented to discount or release to said Kinzey a portion of his said demand, and to take a judgment or decree in this Honorable Court, by consent of parties, for the sum of nine hundred and ninety-six and 74-100ths dollars, with eight per cent. interest thereon, from the twenty-fourth day of October last, until paid, and that upon the payment of said sum of money, by said Kinzey, to your respondent, he is ready and willing to reconvey said premises, and until said payment be made, he is justly entitled to hold the said premises free from all claim or incumbrance by said petitioner, or any other person.

Respondent further answering says, that it is true, that on, or about the 24th day of October, 1857, he did mortgage the said Page 14. premises to Edson Pierce, to secure the payment to him of the note of this respondent for the sum of eleven hundred and twenty-five dollars, with ten per cent. interest one year after the date thereof.

Respondent further answering, says, that the said petitioner ought not to have a lien upon said premises, to the injury of this respondent, because he did not within six months after the last payment upon his original contract with said Kinzey, if any such contract existed as he hath alleged, for building materials became due, file his petition for a mechanic's lien, according to the Statute in such case made and provided, and hath by his laches waived his right to such lien, if any existed.

Respondent further answering, says, that said Petitioner ought not to have a lien upon said premises, because he, the said petitioner, did, on the twelfth day of December, A. D., 1857, take from the said Kinzey other and distinct security for his said Debt, if any he have, in an amount and to the extent to the said Petitioner satisfactory, to wit: A Chattel Mortgage, a copy of which is hereto attached, marked "A," and made a part hereof, and that the property described in said mortgage, was, as your respondent believes, sufficient to pay his said Debt, that said Chattel Mortgage,

was duly executed and acknowledged, on the twelfth day of December, 1857, before W. T. Allan, a Justice of the Peace, in and for the town of Geneseo, in said county of Henry, and that said Kinzey was then and there a resident of said town; that said mortgage was given upon ten stacks of wheat and two hundred bushels of corn, more or less, and the said property, so mortgaged, as aforesaid, has either been appropriated to the payment of said Debt of said Petitioner, or by said petitioner negligently lost by him. This respondent therefore prays to be hence discharged with his reasonable costs.

ISAAC FITCH.

W. SANFORD, Att'y for FITCH.

STATE OF ILLINOIS, }
HENRY COUNTY. } ss.

Isaac Fitch being first duly sworn, says that all the several matters and things set forth in the foregoing answer, as from the information of others, and belief of himself, he believes to be true, and that all the several other matters and things therein stated, are true in substance, and in fact.

ISAAC FITCH.

Subscribed, and sworn to, before me, this 18th day of April, 1859.

J. M. HOSFORD, Notary Public. [L.S.]

Exhibit "A," referred to in above answer, is a chattel mortgage, in common form duly acknowledged, and in substance, as set forth in said answer.

April 22nd, 1859, Petitioners' motion to strike Defendant Kinzey's answer from the files—motion sustained, and the same stricken from the files.

Defendants not answering, demur to the Petition. Demur overruled.

John Liken, James M. Evans and John Wilkins, move the Court for leave to be made party defendants to said Petition.

Leave granted.

April 28th, A. D., 1859, Petitioner files replication to answers of Defendants, Isaac Fitch and Edson Pierce.

Report of evidence, reported by Master in Chancery, not deemed important, for the consideration of questions raised in this case, and the same is here omitted.

The said Chattel Mortgage is also embodied in Master's Report, being a mortgage from said defendant Kinzey, to petitioner,

on ten stacks of wheat and two hundred bushels of corn, to secure the due payment of the note described in the Petitioner's petition, Page 31. and duly acknowledged and recorded.

Page 32. November 18th, 1859, Petitioner files exceptions to Master's Report, substantially setting forth, that the Masters finding that petitioner is not entitled to the lien prayed, is against the evidence and that the evidence reported, shows the petitioner is entitled to the relief sought.

The exceptions to Master's report, are not here literally embodied in this abstract, as they are not essential to the consideration of the questions raised on this record.

Page 33. Nov. 19th, 1859, the Clerk of said court, to whom said case was referred to assess damages, files his report as follows:

The clerk of said Court to whom said cause was referred to assess damages on the note filed with Plaintiff's Petition, reports that there is now due thereon, the sum of one hundred and seventy-nine 32-100ths dollars.

T. WILEY, JR.

November, 19th, 1859.

Nov. 27th, 1859, at the October Term of said Court, the following Decree was entered in said cause :

STATE OF ILLINOIS, }
COUNTY OF HENRY. } ss.

CIRCUIT COURT, }
October, A. D., 1859. }

HUSHAI THOMAS,

vs.

DANIEL S. KINZEY, ISAAC N. FITCH, ED- }
SON S. PIERCE, ISAAC B. ROWE, HARRY } Petition for Lien,
McARTHUR, DEXTER RICH, JOHN LI- }
KEN, JOHN WILKINS, JAMES EVARTS. }

This cause came to be heard, and it appearing from the Records of this Court, that at the Special April Term, A. D., 1859, Daniel S. Page 34. Kinzey had made answer in said cause, which answer had been stricken from the files of this Court, and that, at the said Special Term, John Liken, John Wilkins and James Evans had filed an application, to be made parties in this cause, which application was granted, and the said John Wilkins, John Liken and James Evans, ruled to answer within sixty days, and that the said Wilkins, Liken and Evans, had made default, and filed no answer in said cause, and further appearing that the said Isaac B. Rowe, Dexter Rich and Harry McArthur, had been served with process, but had not appeared in the said cause, the said defendants were called, and made default. The said Petition was therefore taken pro confesso, as to them, and the said cause referred to the Master in Chancery of the

said Court, for the taking of testimony, as between the said Fitch and Pierce, and the said Plaintiff, and the said Master, having taken testimony in the said cause, and reported unfavorably to the Petitioner, the said Petitioner filed exceptions to his said report, which exceptions were allowed against all the said defendants, except the said Fitch and Pierce, and the said report confirmed as to the said Fitch and Pierce, in consideration whereof, it is hereby adjudged and decreed, that the said Thomas have a mechanic's lien, as prayed in the said petition, (subject to the mortgage liens of the said Fitch and Pierce) upon the premises described in the said Petition, to wit:— Upon the East fifty (50) acres of the Southwest Quarter of Section nineteen, (19) in township seventeen (17) north of Range three (3) east of the fourth (4th) Principal Meridian.

And it appearing that the indebtedness of the said Kinzey, to the said Thomas, was embodied in the Note attached to the said Petition, it was ordered that the Clerk of said Court, do assess the damages on said note, and the said Clerk having reported that there is due, on the said note, the sum of one hundred and seventy-nine 32-100ths doll's, it was ordered, adjudged and decreed that the said Kinzey pay the said sum to the said Thomas, within the period of thirty days from the date of this decree, with legal interest, and that he also pay the costs of this cause, within the same time, and that in default of said payment, a special execution issue, directed to Page 35. the Sheriff of the County of Henry, and commanding the sale of said premises, and that the interest of the said Kinzey in said premises be sold, and that the purchaser obtain the said premises, subject to the lien of the said Fitch and Pierce, but independent of all claims of the Trustees of Schools, and the said John Liken, John Wilkins and James Evans, and that the debt and costs of this suit, be paid from the proceeds of said sale, and the surplus, if any, paid to the said Kinzey, and, also, that the purchaser, at said sale, be entitled to a writ of Possession. And, in case the proceeds of said sale shall be inadequate to the payment of the said debt, that then, an execution be issued for the unpaid residue, to be levied upon the lands and tenements, goods and chattels, of the said Kinzey, as in cases of Executions issued on judgements at Law.

J. W. DRURY.

Dated this 19th day of Nov., 1859.

December 29th, A. D. 1859, by virtue of said Decree, an Execution and fee bill, issued out of the office of the Clerk of said Court.

Decree

which execution is in the words and figures following, to wit :

The People of the State of Illinois—To the Sheriff of Henry County, greeting :

We command you, that of the following lands and tenements of Daniel S. Kinzey, to wit : The east fifty acres of the Southwest quarter of Section nineteen, in township seventeen, north of Range three, east of the 4th P. M., and all his interest and equity of redemption, therein, subject however, to a certain mortgage, in favor of Isaac N. Fitch and Edson Pierce, in your county, you cause to be made, the sum of one hundred seventy-nine and 32-100ths dollars, which, on the 19th day of November, A. D. 1859, Hushai Thomas recovered in the Circuit Court of said county, against the said Daniel S. Kinzey, with legal interest thereon, from said date, until paid, also the further sum of forty and 90-100ths dollars, which Page 36. were adjudged to the said Hushai Thomas, by said Court, for his costs, in that behalf expended, whereof the said Daniel S. Kinzey stands convicted, as appears to us of record, and that you have the said sums of money, with interest and costs, at our Clerk's office, within ninety days of the date hereof, together with the writ.

Witness, Thomas Wiley, Jr., Clerk of our said Court, and the seal thereof, at Cambridge, this 29th day of Dec. A. D., 1859.

THOMAS WILEY, JR., Clerk,

By W. L. DALRYMPLE, Dep't.

[L.S.]

Execution returned, June 4th, 1860, to the office of the Clerk of said Court, with the following return endorsed thereon, to wit :

Page 37. By virtue of the within writ, I have this day levied on the within described Real Estate, Jan'y 2nd, 1860, and advertised the same for sale, three weeks, in the *Geneseo Republic*, a weekly newspaper published in said county, and sold the same at Public Auction, to H. Thomas, Pl't'f, herein, for sixty dollars, that being the highest bid for the same, which amount pays the costs in this suit and eleven and 25-100ths on the judgment, and I return this, unsatisfied as to the balance.

P. H. SNIFF, Sh'f, Henry County.

By J. F. DRESSER, Deputy.

April 4th, 1860, writ of possession in this case, is issued by the Clerk of said Court, and is in the words and figures following, to wit :

STATE OF ILLINOIS, } ss.
HENRY COUNTY.

The people of the State of Illinois, to the Sheriff of said county greeting :

Whereas, Hushai Thomas has lately in the Circuit Court of said county, by the judgment of said Court, recovered against Daniel S. Kinzey, et al., an messuage of land, to-wit: The East fifty acres of the Southwest quarter of Section nineteen, township seventeen, North of Range 3, East of the 4th P. M., which said premises, are unjustly withheld from the said Hushai Thomas, by the said Daniel S. Kinzey et al., and whereas, it appears by the record of said Court that the said Hushai Thomas is entitled to the immediate possession of the said premises. Now, therefore, we command you that without delay, you deliver to the said Hushai Thomas, his agent, or attorney, possession of the said premises, with the appurtenances, and that you certify to our next court, to be held on the 3d Monday of ^{page 38.} April, in what manner you have executed the same. Witness, T. Wiley, Jr., Clerk, and the seal of said Court, this 4th April, A. D., 1860. T. WILEY, Jr., Cl'k. [L.s.]

Upon which writ is the following return :

"I have executed the within writ, by reading the same to the within named Daniel S. Kinzey, and demanding possession of the within described premises which he refused to surrender, April 6th 1860. I therefore notified him, that I should forcibly take possession of said premises, on Monday, April 9th, 1860, unless he should surrender them by that time. Thursday, April 12th, 1860, I formally took possession of said premises, and removed most of the household goods of said Kinzey from the house, and delivered the possession of the same, to Isaac Fitch, as agent of Hushai Thomas, in obedience to the within writ.

April 12th, 1860.

P. H. SNIFF, Sh'f, Henry Co., Ill.

By J. F. DRESSER, Deputy.

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Wingey vs Thomas

abstract

1841

Filed April 18, 1842
J. Leonard
Clerk

State of Illinois
Henry County

Henry County Circuit Court
of the October Term A D 1858

Pleas before the Honorable J. Wilson Drury Judge of the Circuit Court of the State of Illinois, at a regular term of the Circuit Court in and for the County of Henry in the State of Illinois, begun and holden at the Court House in the town of Cambridge on Monday the fourth day of October A D 1858

Present Honorable J. Wilson Drury Judge
Thomas Wiley Jr Clerk
J. D. Dwyer Sheriff

Be it remembered that on the 23rd day of September A D 1858 came the Petitioner in the following entitled case by G W Shaw his Atty and files his Petition in the following case which said Petition is in the words and figures following to wit

State of Illinois
Henry County

Circuit Court
October Term 1858

Petition

To the Hon J. W. Drury Judge of the said Court, humbly sheweth your petitioner ^{pey} Nathan Thomas of the County of Henry State of Illinois, that on or about the twentieth day of July in the year Eighteen hundred and fifty seven, your petitioner, being then a dealer in lumber & building materials, made a certain contract with one Daniel S. Krueger, whom your petitioner prays may be made party defendant to this suit, whereby your petitioner agreed in consideration of the reputation of the said defendant hereinafter stated, to furnish to the said defendant, such lumber, shingles, gips, sash and other building and fencing materials, as he should be demanded by the said Defendant

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requested, to be used by the said Defendant in erecting and constructing
a certain dwelling house, and the appurtenances thereof, on a certain tract
of Land situated in the County of Henry and State of Illinois and described
as follows, The East fifty acres of the South West quarter of Section No. 1
(19) in Township Seventeen (17) North of Range Three (3) East 4th of
and the said King, on his part promised in consideration of the above
agreement of your Petitioner to pay your Petitioner within a certain time
after obtaining such materials, such sums of money therefor as the same
should be reasonably worth

Your Petitioner further avers, that under the provisions of said contract
and in exact fulfillment with the said Contract, he furnished to the
said Defendant, the lumber, shingles, oak, glass, and other building and
finishing materials specified in the account hereto annexed, marked by the
"A" and made a part of this petition, at the times therein specified, that is
to say, in such manner, and at such times, as he was thereto by the
said Defendant requested, for the purpose of constructing the said dwelling
house and appurtenances on the said tract of land above described, and that
the said materials were used by the said defendant, in the erection and
construction of the said dwelling house and appurtenances on the said tract
of land above described

And your Petitioner further avers, that on the third day of December in the
year A D Eighteen hundred and fifty seven, which was a reasonable
time after such materials were obtained, the said Defendant having made
several partial payments, as by the annexed bill of items will appear,
an account was stated between your petitioner and the said defendant,
and a balance found to accrue in favor of your Petitioner in said account
amounting to the sum of Two hundred and fifty four & ⁴⁰/₁₀₀ Dollars
and that it was then agreed by your petitioner, that the balance
of the said sum should be extended six months (that is to say, a
period less than one year) in consideration whereof and for the better
security of your Petitioner, the said defendant made his certain
promissory note hereto annexed, & made part of this Bill, under the
style of Exhibit B

Whereby he the said Defendant agreed to pay to your Petitioner the said sum of money last mentioned, at the time above stated, with interest at the rate of twenty per cent from date, until the said payments, in which said Note, it was stated by the said Defendant that the said sum of money therein promised to be paid was for and for his the said Defendant's honor, on which Note there are incurred a number of certain subsequent payments

And your Orator avers, that with the exception of the subsequent payments, the receipt of which is by instrument acknowledged the amount by the said promissory Note agreed to be paid to your Petitioner remains unpaid and constitutes the sum still due on the said contract, that the said defendant has wholly neglected and refused to pay the said last mentioned amount to the great injury of your Petitioner, that is to say within six months after the time when by the terms of said extension the said sum became due & payable, and that this suit is brought within six months of the maturity of said note.

Your Orator further avers that he is informed that the said Defendant has some equitable interest in the said premises above described, by reason of being the obligee in a certain Bond, executed by one Isaac Fitch, who has now the legal estate in the said premises, and whom your Petitioner prays may be made a party defendant in this suit, but what the precise nature of the said interest is, he is not as yet informed, and upon this point prays discovery

And your Petitioner avers that the said Defendant sometimes alleges and pretends that the said Kinzey has failed to fulfill the stipulations of the said obligation, and forfeited all right to obtain a conveyance of the said premises by making tender of the payments in the said obligation. Whereas your Orator charges the contrary thereof to be the truth, and that such failure has occurred, or if such failure has occurred, all forfeitures therefrom resulting has been waived, and that there exists an agreement between the said Defendants that the said Kinzey shall have a conveyance of the said premises from the said Fitch, by making the said payments

The part here
enclosed in Brackets
is the Amendment
Filed Dec 15/58

(And your Petitioner further avers that on or about the 25th of October 1858
the said Fitch mortgaged the said premises to one Edwin Pierce, and your Court
is informed that Henry McArthur, Isaac Rowe and Dexter Rich of
Schools within and for Township No Seventeen, North of Range Three
of the 4th P.M., claim the said premises by virtue of a Mortgage alleged to
have been executed to them by the said Kinzey, which said mortgage
your petitioner alleges to be inferior in point of priority to his own.
And your Court further avers that one Richard Ansdan claims to have
title in the said premises, but what the nature of the said title is your Court
is not informed, and on this point prays discovery.
And your petitioner prays that the said Pierce and the said Ansdan and the
said Trustees of Schools be made parties defendants in this petition, charging
that their claims and encumbrances are inferior in priority to his own)
All which acts doing and pretences of said defendants are contrary to equity
and good conscience, and tend to the manifest wrong and injury of your
Petitioner in the premises, in consideration whereof, and to the end that the
said defendants, may upon their several and respective corporal oaths,
full, true, direct and perfect answer make to all and singular the matters
herein before stated and charged, as fully in every respect, as if the same
were herein repeated, and they thereunto particularly interrogated, and that
not only as to the best of their respective knowledge and remembrance, but
also, as to the best of their several and respective information, hearsay and
belief, and that the said Kinzey may come to a fair & just account and
be obliged to pay unto your petitioner the sums due on the said contract
within a short time to be fixed by this Court, or in default thereof that
your petitioner have the benefit of a material man's lien, ^{the intent} and of the proceeds
in the said premises he sold and the proceeds of the said sale applied to the
satisfaction of the said debt, and that your petitioner may have such other
& further relief in the premises as the nature of his case shall require, and
to your Honor shall seem meet. May it please your Honor to grant unto
your Petitioner the most gracious writ of summons of the State of Illinois

commanding the said Defendants to appear before this honorable Court on
 a day therein fixed, to answer all and singular the premises and perform
 & abide such order and decree as to your Honor shall seem meet
 And your Petitioner will ever pray
 W^m Shaw Atty for P^{ty} Newell Thomas

"Exhibit A"

Mr Daniel S King General 1857
 Bot of the Thomas

July	7	464 ft D Boards	28	12	99	
		316 " Flooring	32	10	11	
		2 1/2 " No Shingles	\$ 5	12	50	35 60
"	11	288 ft Lath Boards	18	5	84	
		150 " D Corn "	28	4	20	
		1 ps 3/4 - 12 - 18				
		1 " 3/4 - 14 - 21				
		1 " 3/4 - 18 - 27				
		16 " 3/4 - 18 - 288 = 354 -	21	7	43	
		18 " Nails	6	60		17 1/2
		32 ps 2/4 - 12 - 256				
		3 ps 3/4 - 14 63 = 319	21	6	70	
		1 Door		1	70	
		24 S Gla Sash 3/10	11	2	40	
"	20	200 ft Boards	21			
Sep	32	16 ps 2/8 - 16 - 336				
		9 " 7/16 - 18 - 162				
		23 " 2/4 - 12 - 184				
		12 " 2/4 - 14 - 168				
		4 " 9/16 - 16 - 192				
		14 " 2/4 - 16 - 154 - 1136	20	22	72	

Sept	"	624 ft	Cull Brns	16	9 98	32 71
	23	600 "	" "	"	9 60	
		2	M Shingles	5	10 00	
		776 ft	Cull Brns	16	12 42	
"	26	1200 "	6 Siding	23		
Oct	2	19 ft	3/4 - 16 - 304			
		3 "	1/4 - 16 - 63			
		24 "	3/4 - 16 - 264 - 631	20		
"	3	20 "	3/4 - 18 - 240 ft	20	4 80	
		2	M Shingles	4.50	9 00	
"	6	30 ft	3/4 - 16 - 220			
		1 "	3/6 - 14 - 14			
		1 "	3/6 - 12 - 12 = 246	20		4 92
"	8	11 ft	3/4 - 18 - 132			
		2 ft	3/4 - 20 - 28			
		6 "	3/6 - 14 - 84 = 244	20	4 88	
		258 ft	Boards Ck	30	6 24	
		32 "	W Flooring	26	83	
		8 ft	3/4 - 16 - 88	26	1 76	
		12	L 1/2 Sash	8	96	14 67
"	10	504	D Flooring	32	16 13	
		1	M Shingles Saw ^a		5 35	31 38
"	15	200 ft	Flooring	32		6 40
"	16	120	L Ck 1/2 Sash 1/2	18	21 60	
		3	4 Pume Doors	2.75	8 25	
		1/2	Doz 3/10 Glap	50	25	
		56 ft	Flooring (Am)	26	1 46	
		24 "	Siding	23	55	
		43 "	Plank	20	86	
"	17	4	M Sath	3.20		12 10
"	20	2	M Lv	3 20	6 40	

		64 ft	Flaming	23	1 47	
Oct	26	12	L Leth Gls Sack $\frac{9}{12}$	18		
Nov	4	1/2	$\frac{1}{6}$ - 20 - 60			
		1/2	$\frac{1}{6}$ - 10 - 30			
		20 "	$\frac{2}{4}$ - 16 - 320			
		1 "	$\frac{2}{4}$ - 14 - 9			
		1 "	$\frac{4}{4}$ - 16 - 21			
		1 "	$\frac{4}{4}$ - 20 - 27 = 447	20	8 94	
		4 "	$\frac{2}{6}$ - 20 - 80			
		300 ft	Boards	20	6 00	
		24 "	Flaming	32	77	
		1/2	Sattl Shingles	4.50	6 75	22 44
"	10	25/2	$\frac{2}{4}$ - 16 - 275 ft	20	5 50	
		1/2	M Shingles	4.50	6 75	12 25
	14	48 ft	Flaming	32	1 54	
		164 "	Fencing	20	3 28	4 82
					\$ 324 60	
Oct	2	By	22/2 $\frac{2}{6}$ - 18 - 396	20	7 92	
"	29	"	12 L $\frac{9}{12}$ Sack	18	2 16	
Nov	4	"	21/2 $\frac{2}{4}$ - 12 - 168			
		"	2 " $\frac{3}{6}$ - 16 - 24			
		"	1 " $\frac{3}{6}$ - 12 - 18			
		"	3 " $\frac{2}{6}$ - 14 - 42 - 252	20	5 04	
"	10	By	10 " $\frac{2}{4}$ - 18 - 120			
		"	2 " $\frac{2}{4}$ - 20 - 28			
		"	4 " $\frac{2}{6}$ - 14 - 56 - 204		4 00	
"	21	"	Leach		50 00	
Dec	3	"	"		5 00	
"	"	"	Error		1 00	
					\$ 354 40	

Rec^d pay^d by note for balance by month Dec 12/57
 W. H. Thomas

\$254.40

Given Dec 12th 1857

Six Months after date I promise to pay to the order of No Thomas (all being for Sumner for my (mine) Two hundred & fifty four ⁴⁰/₁₀₀ Dollars Value Received, with interest at 20 per cent per annum

D S Ringey

Rec^d in the notes (in wheat sold) June 1st 1858. One hundred & three

Rec^d Sept 7th 1858 in the within note (paid Martin Seven Dollars

And afterwards to wit on the 23rd Sep A D 1858 a summons issued out of the Office of the Clerk of said Court, which is in the Words and figures following, to wit

Summons

State of Illinois
Henry County

The People of the State of Illinois. To the Sheriff of said County Greeting. We command you to summon Daniel S Ringey, Isaac Fitch if to be found in your County, to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Cambodge on the 1st Monday in the Month of October to answer a bill of complaint, filed in our said Circuit Court, on the behalff side thereof, against them by Koushai Thomas

And have you this and thus this writ, and make return thereon in what manner you execute the same

Witness J Wiley Jr Clerk of our said Circuit Court, and the seal of said Court at Cambodge this 23rd day of Sept in the year of our Lord one thousand eight hundred and fifty eight

J Wiley Jr Clerk

And upon which summons appears the following endorsement to wit
 "I have received the within summons by delivering a copy to the within named
 Isaac Fitch, and to Daniel B. Kuzey by leaving a copy with Catharine [?]
 a member of his family, a free white person over the age of 14 years [?]
 place of abode, and at the same time informing her of the contents [?]
 Sept 24 1858 J. F. Decker Sheriff Henry County

And afterwards, to wit at said term of said Court and on the 20th day of [?]
 the following proceedings were had in said Cause to wit:

Harshai Thomas }
 Daniel B. Kuzey } Sen
 Isaac Fitch }

At this day came the Plaintiff by Shaw his Attorney
 and the Defendants by Gato their Attorney, and this cause coming on to
 be heard, the plaintiff by his Atty moves the Court for leave to amend by
 making new Defendants. Whereupon It is ordered by the Court that this
 cause be continued

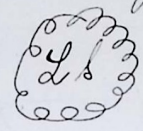
And afterwards to wit on the 15th day of Dec 1858, the said Plaintiff having
 filed his Petition as amended and making new Defendants thereto, a
 summons issued out of the Office of the Clerk of said Court in the words
 figures following to wit

2^d Summons

State of Illinois }
 Henry County }
 The People of the State of Illinois, To the Sheriff of said County
 Greeting. We command you to summon Edwin Pierce, Henry Mc [?]
 Isaac Rowe Dexter Rock Trustees of Schools of Tp. Sixteen N. of R. [?]
 three O'Clock of the 4th PM if to be found in your County, personally to be

and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Cambridge, the 2^d Monday in the month of April next to answer to a bill of complaint filed in our said Circuit Court, in the Chancery side thereof against the said by Koushai Thomas, and have you then and there this writ, and return thereon in what manner you execute the same

Witness my hand for Clerk of our said Circuit Court, and the seal thereof at Cambridge this 15th day of Dec in the year of our Lord One thousand eight hundred and fifty eight



Thomas Wiley Jr Clerk
By W^m L Dabrymple Deputy

And upon which summons appears the following enclosures

"I have served the within summons by delivering a copy of the same to the within named Henry McArthur, Dexter Rich & Isaac Rose this 8th day of January 1859
P. H. Sniff Sheriff of Henry County

"I cannot in my County find the within named Edson Pierce he is non-resident
P. H. Sniff Sheriff of Henry County

Whereupon service was had on said Edson Pierce by publication of notice, which notice and certificate of publication are in the words and figures following to wit

State of Missouri }
Henry County }

In the Circuit Court of said County
April Term A D 1859

Koushai Thomas

} Petition for Lien

Daniel S. Kuzey Isaac Fitch
Edson Pierce Henry McArthur
Dexter Rich Isaac Rose

Affidavit having been filed in the above entitled cause satisfactorily showing that Eason Pierce, one of the above named Defendants is a non resident of the State of Illinois, and summons having been issued returnable 1st April Term 1859. Now Public Notice is hereby given to the said Eason Pierce, that unless he shall be and appear before the Circuit Court for the County of Henry, on the first day of the next term thereof, to be held at the Court House in the Town of Cambridge, on the second Monday of the Month of April 1859, and plead answer or demurrer to the Complaint Bill herein filed, the matter therein contained, will be taken for confessed as to him, and a decree rendered according to the prayer of said Bill
 Dated at Cambridge this 19th of Jan A.D. 1859

J Wiley for Clerk

A A Dunn & Co Publishers and Proprietors of the Henry County Chronicle do hereby certify, that a notice of which the annexed is a true copy, was published, in the said Henry County Chronicle for four successive weeks, that the date of the first publication was January 27th 1859 and the date of the last publication was February 22 1859, that the Henry County Chronicle is a Newspaper of general circulation, published at Cambridge Henry County Illinois by A A Dunn & Co Publishers & Proprietors
 A A Dunn & Co P & P

And afterwards to wit, at a term of said Court held in the month of April A.D. 1859 the following proceedings were had, ^{on the 15th day of April} in said Court

Kushie Thomas

vs
 Daniel S. Ringey et al

} Petition for Lien

At this day came the Plaintiff by his atty and the defendants by Sanford & Gates their attys, and the cause coming on to be heard. Motion is made to strike the answer of D S Ringey from the files, which said Motion is in the words and figures

following to wit
State of Illinois }
Henry County }

Circuit Court Special April Term
A D 1839

Koushai Thomas

^{vs}
Daniel S Kinzey
et al

Petition for Leave

And now comes the said Plaintiff and moves for
the removal of Daniel S Kinzey one of the Defendants in this cause
be stricken from the files of this Honorable Court, because he says that
the said Kinzey as well as the other Defendants in this cause were
by order of this Court ruled to answer by the opening of Court in the
morning of Friday the Eighth day of April A D 1839. and that
the said answer was not filed until the Thirteenth day of April
A D 1839. all of which by reference to the records of this Court will fully
appear

G. W. Shaw Atty for Plff

Answer of Isaac Fitch, which is also accepted as the answer of Eden
Rice as will appear by the stipulation of the parties. Verdict appended

State of Illinois }
Henry County }

Henry County Circuit Court
April Special Term A D 1839

The separate answer of Isaac Fitch one of the defendants to the
of Koushai Thomas

And now comes the said defendant, and moving to himself
of benefit by exception or otherwise to the said Petition for
imperfections, errors, insufficiencies and uncertainties for amendment
or to so much thereof as he is advised that it is necessary for him

to answer to, answering says,
 That it is true, that on the Twentieth Eighth day of November 1857, the said Daniel S. Kinzey with Elizabeth his wife did give to this Respondent a deed in fee simple for the said premises as set forth in the petition mentioned, which said Deed duly executed and acknowledged was delivered by said Kinzey to this respondent on the day aforesaid, and on the fifth day of December next thereafter, filed for record in the Office of the Recorder of Deeds of said County of Henry, and that this respondent did then and there, in the delivery of said deed to him give to said Kinzey a bond or obligation to recover said premises to said Kinzey upon the payment to this respondent by said Kinzey of the sum of Twelve hundred and thirty dollars with two per cent interest on the twenty fourth day of October next thereafter, which period has elapsed and the said Kinzey has utterly failed to pay said sum of money, or any part thereof to this respondent, and that the same is now justly due to this respondent.

Respondent further answering says, that certain differences and controversies have arisen between said Kinzey and this respondent as to the amount which said Kinzey of right ought to pay to your respondent upon the said obligation, and that the same has been compromised and that this respondent for the purpose of avoiding a litigation with said Kinzey has consented to dismount or release to said Kinzey a portion of his said demand, and to take a judgment or decree in this Honorable Court by consent of parties, for the sum of One hundred and Ninety six ⁷⁴/₁₀₀ Dollars with eight per cent interest from the twenty fourth day of October last until paid, and that the payment of said sum of money by said Kinzey to your respondent he is ready and willing to recover said premises, and until payment be made he is justly entitled to hold the said premises free from all claims or incumbrance by said petitioner or any other person.

Respondent further answering says, that it is true, that on or about the 24th day of October 1857 he did Mortgage the said premises to Edna Kinzey

to answer to, answering says,
 That it is true, that on the Twentieth Eighth day of November 1857, the said Daniel S. Kinzey with Elizabeth his wife did give to this Respondent a deed in fee simple for the said premises as set forth in the petition mentioned, which said Deed duly executed and acknowledged was delivered by said Kinzey to this respondent on the day aforesaid, and on the fifth day of December next thereafter, filed for record in the Office of the Recorder of Deeds of said County of Henry, and that this respondent did then and there, in the delivery of said deed to him give to said Kinzey a bond or obligation to recover said premises to said Kinzey upon the payment to this respondent by said Kinzey of the sum of Twelve hundred and thirty dollars with ten per cent interest on the twenty fourth day of October next thereafter, which period has elapsed and the said Kinzey has utterly failed to pay said sum of money, or any part thereof to this respondent, and that the same is now justly due to this respondent.

Respondent further answering says, that certain differences and controversies have arisen between said Kinzey and this respondent as to the amount which said Kinzey of right ought to pay to your respondent upon the said obligation, and that the same has been compromised and that this respondent for the purpose of avoiding a litigation with said Kinzey has consented to discontinue or release to said Kinzey a portion of his said demand, and to take a judgment or decree in this Honorable Court by consent of parties, for the sum of One hundred and Ninety six ⁷⁴/₁₀₀ Dollars with eight per cent interest from the twenty fourth day of October last until paid, and that the payment of said sum of money by said Kinzey to your respondent he is ready and willing to recover said premises, and until payment be made he is justly entitled to hold the said premises free from all claims or incumbrance by said petitioner or any other person.

Respondent further answering says, that it is true, that on or about the 24th day of October 1857 he did Mortgage the said premises to Edna Kinzey

to receive the payment to him ¹⁴ of the note of this respondent for the sum of Eleven hundred and twenty five Dollars with ten per cent interest a year after the date thereof

Respondent further answering says, that the said Petitioner ought not to have a lien upon said premises to the injury of this respondent because he did not within six months after the last payment upon his respondent's contract with said Ruzey if any such contract existed as he has for building materials become due file his Petition for a lien according to the Statute in such case made and provided and by his Taches waived his rights to such lien if any existed

Respondent further answering says that said Petitioner ought not to have a lien upon said premises because he the said Petitioner, did on the twelfth day of December A D 1857 take from the said Ruzey other and distinct security for his said debt if any he have in an instrument and to the extent to the said Petitioner satisfactory to wit, a Chattel Mortgage a copy of which is hereto attached marked "A" and made a part hereof and that the property described in said Mortgage was as your Respondent believes sufficient to pay his said debt, that said Chattel Mortgage was duly executed and acknowledged on the twelfth day of December 1857 before W J Allen a Justice of the Peace in and for the Town of Geneva in said County of Henry, and that said Ruzey was then and there a resident of said Town, that said Mortgage was given upon Ten Stalks of Wheat and two hundred bushels of Corn more or less, and the said property so Mortgaged as aforesaid, has either been appropriated to the payment of said debt of said petitioner, or by said Petitioner negligently lost by him

This respondent, therefore prays to be hence discharged with his costs

W Sanford Atty for Petiti

Isaac Little

State of Illinois

Henry County

Isaac Little being first duly sworn, says that

to receive the payment to him ¹⁴ of the note of this respondent for the sum of Eleven hundred and twenty five Dollars with ten per cent interest per year after the date thereof

Respondent further answering says, that the said Petitioner ought not to have a lien upon said premises to the injury of this respondent because he did not within six months after the last payment upon his respondent's contract with said Ruzey if any such contract existed as he has for building materials become due file his Petition for a lien according to the Statute in such case made and provided and by his Taches waived his rights to such lien if any existed

Respondent further answering says that said Petitioner ought not to have a lien upon said premises because he the said Petitioner, did on the twelfth day of December A D 1857 take from the said Ruzey other and distinct security for his said debt if any he have in an instrument and to the extent to the said Petitioner satisfactory to wit, a Chattel Mortgage a copy of which is hereto attached marked "A" and made a part hereof and that the property described in said Mortgage was as your Respondent believes sufficient to pay his said debt, that said Chattel Mortgage was duly executed and acknowledged on the twelfth day of December 1857 before W J Allen a Justice of the Peace in and for the Town of Geneva in said County of Henry, and that said Ruzey was then and there a resident of said Town, that said Mortgage was given upon Ten Stalks of Wheat and two hundred bushels of Corn more or less, and the said property so Mortgaged as aforesaid, has either been appropriated to the payment of said debt of said petitioner, or by said Petitioner negligently lost by him

This respondent, therefore prays to be hence discharged with his costs

W Sanford Atty for Petiti

Isaac Little

State of Illinois

Henry County

Isaac Little being first duly sworn, says that

the several matters and things set forth in the foregoing answer
from the information of others and belief of Lewis self. he believes to be
true, and that all the several other matters and things therein stated
are true in substance and in fact

Isaac Titch

Given to and subscribed before
me this 18th day of April 1859

EB

J. M. Hoos for a Notary Public

"Exhibit A"

Copy of
Chattel Mortgage

This Indenture made and entered into this twelfth day of December
in the year of our Lord One thousand eight hundred and six. Between
Declar S. Kinzey of the County of Henry in the State of Illinois of the
first part and Houshai Thomas of the County aforesaid of the second part
Witnesseth that the said party of the first part for and in consideration of
the sum of Two hundred and fifty four ⁴⁰/₁₀₀ Dollars in hand paid (the
receipt whereof is hereby acknowledged) do hereby grant, sell, convey and
confirm unto the said party of the second part his heirs and assigns all
and singular the following described Goods and Chattels to wit. Ten Stacks
of Wheat being all the Wheat now in stack on the farm of said Kinzey
be the same more or less also two hundred bushels of corn more or less
being the entire crop of corn grown on the farm of said Kinzey most of
which is now in crib on said farm, and the balance remains in the
where grown, and being all the Wheat and Corn now in said farm
which said Kinzey now resides. To have and to hold the above
Goods and Chattels unto the said party of the second part his heirs and
assigns forever Provided Nevertheless That if the said Kinzey party of
the first part his heirs and assigns shall well and truly pay unto
to be paid to said party of the second part his heirs and assigns the
just and full sum of Two hundred and fifty four ⁴⁰/₁₀₀ Dollars
with interest thereon at the rate of ten per cent per annum from

six months after the date hereof. for which the said Kuzey has given his promissory note, that then and thenceforth the present and complete herein contained shall be null and void, Provided also, That the said party of the second part, may by current endorsement on the back of said Mortgage extend the time of payment thereof without prejudice to his or equitable rights, Provided also that the said Kuzey is to retain and have the use of said Goods and Chattels, until the day of payment, and also at his own expense, to keep said Goods and Chattels, until the expiration of said time of payment, if said sum of money, together as aforesaid, shall not be paid, to deliver up said Goods and Chattels in execution to said Thomas or his heirs or assigns, And Provided Also, that if default in payment, as aforesaid, shall be made, or if at any time the possession of the said Goods and Chattels by the said Kuzey shall be deemed hazardous by the said Thomas or his Attorney, or if the said Thomas or his Attorney shall fear diminution of the said Goods and Chattels, or the destruction or the alienation thereof, then the said Thomas or his Attorney, agent, heirs or assigns, shall have the right to take immediate possession of said Goods and Chattels wherever the same may or can be found and sell the same at Public or Private sale, to the highest bidder for cash in hand after giving ten days notice of the time place and terms of said sale, together with a description of the Goods and Chattels to be sold, by at least three advertisements, posted up in public places in the vicinity where said sale is to take place, to make the sum of money and interest promised as aforesaid together with his reasonable costs, charges and expenses in so doing, and if there shall be any overplus, shall pay the same to the said Kuzey or his legal representatives

In Testimony Whereof, the said party of the first part hereunto
 and affixed his seal the day and year first herein Written
 State of Illinois } D S
 Koscius County } W J Allen a Justice of the Peace in and for said County
 certify that this Mortgage was duly acknowledged by the above named
 at my Office in Geneva this 13th day of December A.D. 1857 W J Allen J P

It is mutually agreed that the return answer of Fitch is accepted as the answer of Pierce also

G W Shaw atty for Fitch
W Sampson atty for Pierce

And afterwards to wit at the term last aforesaid, to wit on the 25th day of April A D 1859 the following proceedings were had in said cause

Hezekiah Thomas }
vs } Lien
Daniel S Kinzey }
et al }

At this day this cause being again called the motion to strike answer of Kinzey from the files sustained, because it was not filed in time, and thereupon the said Defendant by their Attornies demurred to the Plaintiffs Petition, which demurrer is on consideration of the Court overruled April 27

At this day of the term aforesaid this cause being again called, came John Loken James M Evans & John Wilkinson file their motion to be made parties defendant to this suit, which said motion is in the words and figures following to wit

State of Illinois
Henry County

Henry County Circuit Court
April Special Term A D 1859

Hezekiah Thomas }
vs } Lien
Daniel S Kinzey }
et al }

And now comes John Loken, James M Evans, John Loken and move the Court to allow them to become parties to the above entitled suit, and aver that since the commencement of this suit to wit, on the fourth day of March A D 1859, they became interested in the subject matter of this suit, and in the premises in the petitioners Petition

18

rescinded, by notice of a purchase of a decree in chancery made by this Honorable Court at the October Term thereof A D 1858 in favor of Henry McArthur, Dexter Rich and Isaac B Rome as trustees of schools for township No Twentieth North of Range Three East of the 4th P M in the County of Henry and against Daniel S Kuzey, Elizabeth Kuzey, Isaac Fitch & E. H. [unclear] and ask a rule to file an answer therein

By W Simpson their attorney

and on their motion. It is ordered by the Court that they be made defendants to this suit. And it is therefore ordered by the Court that they be and are hereby ruled to answer in sixty days, and this cause stands for trial

And afterwards to wit on the 28th day of April 1859, came the said Petitioner by his Atty and files his Replication to the answer of Isaac Fitch and Edmund [unclear] which replication is in the words and figures following to wit

Replication

State of Illinois
Henry County

Circuit Court of Henry County
Special April Term A D 1859

Hezekiah Thomas

"

Daniel S Kuzey
& c

} Petition for Lien

And the said Petitioner not conferring the matter by the said answer covered, but reserving to himself all manner of exceptions to the many insufficiencies and impertinences of the same, in replication that he might not thereby be excluded from the relief claimed in said Petition, for that the said petition is sufficient to be answered, and that he will ever maintain and prove the allegations of the same. Wherefore prays as by said Petition he has already prayed

G W Shaw Sol^r

And afterwards to wit at a regular term of said Court held in the month of October A D 1859 the following proceedings were had

This came having been referred to the master in chancery to take and report the testimony in this cause Now on the day Nov 18. 1859 the said Master in chancery did file his report of the testimony taken in said cause as well as his opinion thereupon, which said testimony and the report of said Master is in the words and figures following to wit

Masters Report
of Testimony

State of Illinois }
Henry County } }

In the Circuit Court of Henry County
and State of Illinois Oct Term A D 1859

Isaac Thomas
vs
Daniel S Kinzey
et al.

The undersigned Master in chancery to whom the above entitled cause stands referred would respectfully report as follows to wit
First appearance James G McStraine, who being duly sworn on his oath deposes as follows viz

- Quest 1st What is your age place of residence and occupation
Ans 1st My age is thirty nine, residence Geneseo & occupation house joiner
- Quest 2nd Do you know the parties to this suit or any of them
Ans 2nd I know Mr Thomas, Mr Kinzey and Mr Fitch
- Quest 3rd Do you know what was the occupation of Ismael Thomas during his lifetime
Ans 3rd He was in the lumber business
- Quest 4th State what if any thing you know concerning his furnishing lumber or materials for Kinzey
Ans 4th I understand from Mr Kinzey that he was getting his lumber from Mr Thomas (last answer objected to) omnibus

Quest 5^h When did you learn this from Kinzey

Ans 5^h When he haul'd the lumber home to where he was having the building made

Quest 6^h Can you state definitely at what time you heard such admissions

Ans 6^h I don't know that I can, not nearer than a month. It was some time in September or October 1857

Quest 7^h Did he make any statement as to what portion of the materials he got from Mr Thomas

Ans 7^h He said he was getting his bill of lumber from Mr Thomas

Quest 8^h Did he make any statements concerning any agreement which he made with Mr Thomas. if so what

Ans 8^h I do not recollect that he did

Quest 9^h Will you state who built Mr Kinzey's house

Ans 9^h I built the house or furnished boards to do it, and worked some on it myself

Quest 10^h At what time was the material delivered

Ans 10^h I think there was lumber delivered there as early as September and as late as November

Quest 11^h State whether this lumber for the house was entirely obtained from Thomas or other persons or from different persons

Ans 11^h I understand from Kinzey that he got from Thomas. I don't know but he might have got some few pieces from other persons, but if he did I do not know that I ever heard him say

Quest 12^h Did he ever make any statement as to the price Thomas had charged him, if so what

Ans 12^h He told me at one time after the building was up, that the lumber was not going to cost him as much as some people told him it would

Quest 13^h Did he ever make any statements, as to who was to furnish the lumber for the house and if so what

Ans 13^h At the time I bargained with him, he stated he was intending to get the lumber of Thomas

Quest 14^h Will you examine the account marked 'Exhibit A' and state whether the items are the materials delivered (last preceding question objected to by Defts - objection sustained

Quest 15^c At what time was the contract made by you with Kinzey to build his house
(Question objected to - objection sustained)

Quest 16^c Have you ever seen Kinzey write his name

Ans 16^c I don't know that I ever stood by and saw him write his name. I received
a note with his name on it at one time, which he acknowledged to be his

Quest 17^c Did he ever make a Note to Thomas in your presence

Ans 17^c I cannot say that I saw the note executed, but I think that Kinzey told
me that he had given a note

Quest 18^c Did you know about the date of the note

Ans 18^c It was the 12th day of December that he gave the note to Thomas

Quest 19^c Examine the signature on the Note marked "B" and state whether it is his
signature

Ans 19^c It resembles the signature on the Note I had of Mr Kinzey

Quest 20^c According to the best of your belief is it his signature

Ans 20^c I think that Mr Kinzey's signature

Cross Examination by Defendant

Quest 1st During the building of the house for Kinzey, what portion of the time did you
spend there

Ans 1st I was there off and on from the beginning to the finishing. I could not say
how many days in all, but should think 25 or 30 days. I conclude I was
not there over a fourth of the time

Quest 2^c What portion of the building materials were delivered on the ground
near there

Ans 2^c I could not say at all

Quest 3^c Might not a large portion of these materials have been purchased
from Lee then Thomas without your knowing it

Ans 3^c Yes they might

Quest 4^c Who brought the materials to Kinzey's place

Ans 4^c Lee brought them himself with his own team, and that I saw delivered

Quest 5^c Was he in the habit of reporting to you where he procured these materials
he delivered them from time to time

- Ans 5th I dont know that he was
- Just 6th Have you any means of knowing where he procured them
- Ans 6th Only, from what he said
- Just 7th By your answer as to what he said, do you mean what you testified in your examination in chief
- Ans 7th Yes
- Just 8th Were you present at the settlement on the 12th day of December 1857
Thomas & Kinzey (Justice waived
- Just 9th Was the note given in a settlement between Kinzey and Thomas
the one marked "B" and executed on the 12th of December 1857
- Ans 9th I cannot say that it was
- Just 10th Were you present at the time the note was given
- Ans 10th All I can say in answer to this question is to refer you to questions & answer
17th in the examination
- Just 11th Did you learn at that time from Kinzey what the note referred to
in answer to question 17th in your direct examination was given for
- Ans 11th At that time I dont think he told me
- Just 12th Did you see Kinzey and Thomas together on said 12th day of December 1857
- Ans 12th I saw them in the same Room, in Mr Thomas Office
- Just 13th Did you not learn from what was said & done between them that they
did have a settlement, upon which that note was given at the time
- Ans 13th I cannot say that I learned that from them
- Just 14th Did you learn from Thomas at that time, or any other time that that
note was taken in settlement between them
- Ans 14th I dont know as I did
- Just 15th Do you know from any source, whatever for what that note was given
- Ans 15th I dont know as any person told me what it was given for
- Just 16th What was the subject of conversation between you and Kinzey at
the time he told you he had given Thomas this note
- Ans 16th He was speaking of the Note he (Kinzey) gave me
- Just 17th What was the note which Kinzey gave you given for
- Ans 17th For Labor done in his house

Just 18th Where did the conversation occur of which you speak

Ans 18th I think it was in Mr Thomas Office

Just 19th For what purpose did you come to Thomas's Office

Ans 19th I came there to get a note of Kinzey,

Just 20th At whose solicitation did Kinzey come there

Ans 20th I cant say

Just 21st Were you and Thomas acting in concert at that time for the purpose of securing your respective debts against Kinzey,

Ans 21st Some few days, perhaps, only a day, before the 13th of December 1857. Kinzey came to me & told me that he was afraid of some claims coming against him or something to that amount & he wished to secure me for the work I had done for him, so far as he could in some personal property. He said something at the same time about securing Thomas in the same way. I think in the morning of the 13th of December 1857 that Mr Kinzey or some person (I think Kinzey) came to me and requested me to go to Mr Thomas's Office for the purpose of putting their property (I did not know what it would be) to secure me for my work. I told them I would be over to the Office. I dont know what time in the day (perhaps shortly) I went over. & when I went there I got a note of Mr Kinzey. There were some papers passed between Kinzey & Thomas. From the conversation between Thomas & Kinzey & Mr Sumner I understood that their matter, whatever it was, was arranged, when I came in or about it, that is between Thomas & Kinzey. There might have been papers and I might have witnessed a paper after I came in, but I have no recollection of it. My paper was signed after I came in.

Just 22nd Dont you know the Note given by Kinzey to Thomas in payment of Thomas's Sumner Bill as well as you know Kinzey's note to the note

Ans 22nd I know about as well, that it was in part for Sumner, but whether in full settlement I dont know. What I mean is that the note was given for Sumner, but not whether in full payment of the Bill.

Motion made by Defendants Fitch & Pierce for an order on Petitioner requiring him to produce Chattel Mortgages given by Kinzey to Petitioner on or about the 13th day of December 1857. Copies of notice to produce & same, produced before master and admitted to have been served in the state of the copy, by copy. Objection made by the Petitioner to the same made by said defendants for such order

The motion of the Defendants sustained and the plaintiff ordered to produce the said Chattel Mortgage in evidence
Chattel Mortgage executed by Defendant Kinzey to Lemuel Thomas on the 13th day of December 1857, introduced in evidence. Admitted by the Council for Compt - that the Mortgage was made in Genesee Township & that the Justice of the Peace who took the acknowledgment was a duly authorized Justice of the Peace of said Township. The note attached to Lemuel Thomas admitted to be the same set forth and described in said Mortgage

Re Examination of Witness

Quest 1st Did Kinzey state to you after purchasing the Box of Sunkler that he had purchased it all from Thomas excepting a few items

Ans 1st I understood from Mr Kinzey that he got all of his Sunkler from Mr Thomas
James G McElvaine

Next appeared George W Shaw a witness of lawful age, who being first duly sworn in his oath depose and say as follows Viz
I was conversing with Mr Thomas when Mr Kinzey passed. Mr Thomas called him to us, and asked him - Mr Kinzey said I not furnish all of the Sunkler used by you in your house. Did - ent I understand when I had not the articles called for buy them for you at a price Mr Kinzey consented I cannot recollect - Mr Thomas then asked whether he did not agree to give 20 per cent in that note. Kinzey said yes for an extension of time - Mr Thomas asked him what time Kinzey did not state any time but complained that Mr Thomas

did not take certain timber land as security for the debt. Mr Thomas said Perry had a judgment on the land and that there was some agreement as to whether it would be security or not. I then asked Mr King whether Mr Thomas did not contract to furnish him the lumber for a house. He said yes. I then asked him whether he (Thomas) did not make the contract. Some one was calling Mr King say and he went to leave without answering the last question

Cross Examination by Defts

Just 1st When did this embezzlement occur

Ans 1st This Morning

Just 2^a For what purpose were these inquiries made of Mr King

Ans 2^a For the purpose of eliciting statements concerning the facts of the case

Just 3^a For what purpose were the statements deincee & when & where

Ans 3^a Deincee to be used as evidence at this hearing

Geo W Shaw

Here appeared Isaac N Stewart a witness of lawful age who being duly sworn in his oath doth depose and say as follows

Just 1st What is your occupation

Ans 1st Lumber Merchant

Just 2^a How long have you pursued that occupation

Ans 2^a Something like four years

Just 3^a Have you had frequent business dealings with Mr Thomas during that time

Ans 3^a I have not during the whole time - have had more or less dealings with him during the last two years

Just 4^a Have you had opportunities of observing the manner in which he keeps his Books

Ans 4^a I have had opportunities - as I have been frequently in his Office

Just 5^a Are you acquainted with the manner in which he keeps his Books

Ans 5^a I think I saw enough to be acquainted with the manner in which he keeps his Books

Just 6th Is he a correct accountant and your book keeper

Ans 6th I should conclude so from what I saw

Just 7th Do you know whether he kept his own Books in the year 1857

Ans 7th To judge from the hand writing of his day book which I saw I think he did

Just 8th Are you acquainted with his hand writing

Ans 8th I am & have seen him write

Books of account presented for the inspection of witness

Just 9th Are these his Books of Account

Ans 9th I should think they were

Just 10th Are they in his hand writing

Ans 10th Yes Sir

Just 11th Did you ever have any settlement from these Books

Ans 11th We compared accounts and so far as we went towards settlement our accounts agreed and I found them correct

Examination

Just 1st Are the Books produced Mr Thomas Books of Original entry

Ans 1st I do not know Sir

Just 2nd What is the custom of lumbermen in keeping Books of original entry

Ans 2nd I have noticed pretty generally all lumbermen have a memorandum or pocket Book, some call it blotter or pass book which they carry around with them in the yard and make original entries

Just 3rd If you know state what was the custom in Mr Thomas yard

Ans 3rd I dont know

Just 4th Are either of these Books of Mr Thomas such a Book as described by you as a pass book or Book of original entry

Ans 4th These two small Books I should take as Books of original entry such as we used

Just 5th Should you judge that these small Books were the pass books you speak of or the journal to which the accounts were transferred

Ans 5th I should judge they were the original entry books & not the journal

Just 6th Do you identify these two small books as Mr Thomas

Ans 6^c I see Mr Thomas writing in them but they appear to be in two or three different hands

Examination resumed

Just 1st Do you not sometimes put your accounts in your journal just as well as in your pup book

Ans 1st Sometimes in a hurry I might have made some charges in the journal

Just 2^c Have lumbermen in this place any particular custom for taking notes from people for lumber

Ans 2^c I believe that in some cases where I think there is a prospect for lumber and I want to take a lien, I have it mentioned in the note that it is for lumber & materials, and take a description of the lands on which the building is placed

Just 3^a When a note to a lumberman contains any mention of lumber and materials, what is the purpose of that mention

Ans 3^a The object that I have is to save the trouble of proving an account & save the trouble in taking evidence in securing a lien

Just 4^c Are such items always introduced in contemplation of proceedings for a lien

Ans 4^c I don't know as they are

J. N. Stewart

Next appeared Charles Perry, a witness of lawful age who being first duly sworn in his oath testified as follows

Just 1 Are you acquainted with Mr Thomas mode of keeping his books & what opportunities have you had of becoming so acquainted

Ans 1st I was in the same Office with him during a number of years and have done business with him after that

Just 2^a Is he a correct Book keeper

Ans 2^a I remember so

Books here introduced to be identified

Just 3^a Examine these Books and say whether they were his Books of account for the year 1857

- Ans 3^a I should say they were. I think there is no doubt about it
- Just 4^c State whether the pap books and journal are the Books of original entry,
- Ans 4^c These pap books were usually the Books of original entry, but sometimes original entries were made in the journal
- Just 5th State whether Mr Thomas during the year 1857 was his own bookkeeper
- Ans 5th So far as my personal knowledge goes I should think he was
- Grop Examination by Deft
- Just 1st In whose hand writing are these pap books
- Ans 1st Some of them in Mr Thomas hand writing, the greater portion in the hand writing of others

Chas Perry

Books of account of Petitioner Thomas produced and admitted in evidence to prove the account of plaintiff. These Books consisted of two books a journal and ledger

Next appeared Elisha M Stewart a witness of lawful age who being first duly sworn in his oath depose as follows Viz

- Just 1st State your occupation and how long you have been a lumber merchant
- Ans 1st We are here a lumber merchant since 5 or 6 years
- Just 2^a State whether lumbermen have any particular custom in taking notes from their customers for building materials and lumber
- Ans 2^a We have a custom of taking notes, stating that lumber went in a certain dwelling or barn or fence situated in such a lot or such a piece of land
- Just 3^a What is the purpose of making mention in the notes of lumber and building materials
- Ans 3^a It is in case of taking out liens to prove that we have furnished lumber and materials for the building
- Just 4^c State whether such mention in a note has always reference to the taking out of liens

- Ans 4th I cannot say that it always had. We take many notes in that way, and we find in cases we do have to take out less than very handy
- Just 5 Is not the object to always enable you to correct a lien if necessary,
- Ans 5th Yes that was one object

E M Stewart

Show Ally for Petitioner admits that the figure 1 in 10 was changed to 5 was added to the Note by Thomas & by Kinzey's consent after the note was made

The Deed from Kinzey and wife to Isaac Fitch made 28 November 1837 for the premises in question offered in evidence and admitted by the court for Petitioner

The following is a copy of the original Chattel Mortgage admitted in evidence

This Indenture, Made and entered into this Twelfth day of December in the year of our Lord one thousand eight hundred and fifty seven Between Dennis S Kinzey of the County of Henry in the State of Illinois of the first part and Husbini Thomas of the County aforesaid of the second part Witnesseth. That the said party of the first part, for and in consideration of the sum of Two hundred and fifty four $\frac{40}{100}$ Dollars in hand paid the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm unto the said party of the second part his heirs and assigns forever all and singular the following described goods and chattels to wit:

Five stacks of Wheat being all the wheat now in stacks in the farm of Kinzey to the same more or less, also two hundred bushels of corn more or less, being the entire crop of corn grown in the farm of said party of the first part of which is now in ear in said farm, and the balance of the crop in the field where grown, and being all the wheat and corn now in said farm upon which said Kinzey now resides. To have and to hold the above described goods and chattels unto the said party of the second part his heirs and assigns forever. Provided Nevertheless, That if the said

Kingey party of the first part his heirs and assigns shall well and truly pay
 or cause to be paid to the said party of the second part his heirs and assigns
 just and full sum of Two hundred and fifty four ⁴⁰/₁₀₀ Dollars (\$254.⁴⁰/₁₀₀) with
 interest thereon at the rate of ten percent per annum from date hereof
 after the date hereof. for which the said Kingey has given his personal
 note, that then and thence forth true present, and every thing herein contained
 shall be null and void. Provided also, that the said Thomas party of the
 first part may be and is intitled to the back of the said Chattel Mortgage for the
 term of payment thereon without prejudice to his legal or equitable rights
 Provided also, that the said Kingey is to retain possession of, and have the use of
 said Goods and Chattels until the day of payment aforesaid, and also at
 his own expense to keep said Goods and Chattels, and also at the expiration of
 said time of payment, if said sum of money together with the interest aforesaid
 shall not be paid, to deliver up said Goods and Chattels, in good condition to said
 Thomas or his heirs or assigns. And Provided also, That if default in payment as
 aforesaid, shall be made, or if at any time the possession of the said Goods and
 Chattels by the said Kingey shall be deemed hazardous by the said Thomas or his
 Attorney or if the said Thomas or his Attorney shall fear diminution of the said Goods
 and Chattels, or the destruction or alienation thereof, then the said Thomas or his
 Attorney, agent, heirs, or assigns shall have the right to take immediate possession
 of said Goods and Chattels, whenever the same may or can be found, and sell the
 same at Public or Private Sale to the highest bidder for cash in hand after giving
 ten days notice of the time, place and terms of said sale, together with a description
 of the Goods and Chattels to be sold by at least three advertisements posted up in public
 places in the vicinity where said sale is to take place, to make the sum of money and
 interest aforesaid together with his reasonable costs, charges, and expenses
 in so doing, and if there shall be any over plus, shall pay the same to the said Kingey
 his legal representatives

In Testimony Whereof The said party of the first part has hereunto set his hand
 and affixed his seal the day and year first herein written
 Signed sealed and delivered in presence of } D. S. Kingey
 James G. McNamee

State of Illinois }
 County of Henry } J. W. Allen a Justice of the Peace in and for said County
 do hereby certify that this Mortgage was duly acknowledged before me in
 my Office in Illinois this 13 day of December A D 1857
 W J Allen J P

State of Illinois }
 County of Henry } J. J. Wiley Jr Clerk of the Circuit Court of said County
 and Ex Office Recorder, do hereby certify that the within Deed was filed in
 said Office for Record on the 13 day of Dec A D 1857 at 3 o'clock P M and
 that the same was then day duly recorded in Book 29 of Deeds at page 218
 In Testimony Whereof I have hereunto set my name and affixed the seal
 of said Court at Leominster in said County on this 13 day of Dec A D 1857
 J Wiley Jr Clerk

The foregoing is the testimony adduced in the case of Kowhai Thomas vs
 Daniel S Ruzey et al
 J. S. Keimman Master in Chancery

Masters Report

State of Illinois }
 County of Henry } On the Circuit Court of Henry County Illinois
 of the October Term thereof A D 1859

Kowhai Thomas }
 vs } On petition for Mechanics Lien
 Daniel S Ruzey }
 et al }

The undersigned to whom the above entitled case was
 referred for a decision, would respectfully report to the Court, that upon
 the testimony, and examining the proofs and exhibits both upon the part of the
 Plaintiff and the Defendant, he decides that the said Plaintiff is not entitled
 to recover
 J. S. Keimman
 Master in Chancery

And afterwards to wit on the 15 day of Nov A D 1859 came the said Pet. by his Atty and files his Exceptions to the report of said master, in the manner and figures following to wit

Exceptions to Report of Master

State of Illinois }
Hennepin County }

Circuit Court Oct Term A D 1859

Moushai Shumal
vs
Daniel S Kuzey
et al

} Petition for Lien

And the said Plaintiff comes and excepts to the report of the said Master in Chancery and for cause of exception sheweth that the exhibits and testimony on file in the said cause show that the said Plaintiff did by contract with the said Kuzey, in manner and form as in the said declaration shewn, furnish to the said Kuzey the lumber and building materials in the said Petition charged, as in the said petition charged for erecting a dwelling house & improvements on the premises described in said petition, and that said materials were used in the construction of said house & improvements. That the indebtedness of the said Kuzey to the said Plaintiff is stated in the note by the said Kuzey made to said Plaintiff to be for lumber for the house of the said Kuzey, which said note is in said petition described & set forth. That the records of this Court show that the said Daniel S Kuzey came John Loken, James W Evans & John Wilkins were ordered at the April Term of this Court to answer the plaintiffs petition, but that the said John Loken, James W Evans & John Wilkins failed to make any answer, and that the answer of Daniel S Kuzey was stricken from the files of this Court. Said Plaintiff therefore asks a decree pro expensis against said James Evans, John Wilkins & said Daniel S Kuzey, and that the report of the master in reference as it bears relief to the said Plaintiff against said defendants be set aside.

G W Shaw Sub for 1859

Report of Clerk

And afterwards to wit on the 19 day of Nov 1859 came the Clerk of said Court to whom this case was referred to assign damages and file his report in the words following to wit

State of Illinois }
Henry County }

Circuit Court October Term A.D. 1859

Hezekiah Thomas
vs
Daniel S. Kinzey
et al

Report of Clerk

The Clerk of said Court to whom it was referred in said case to assign the damages on the note filed with the Plaintiffs Petition would report that there are now due on said note the sum of One hundred twenty nine ³²/₁₀₀ Dollars
Nov 19/59
J. Wiley Jr

Deere

And afterwards to wit on the 27 day of Nov A.D. 1859 at said October Term of said Court the following proceedings were had in said case in the words and figures following to wit

State of Illinois }
Henry County }

Circuit Court October A.D. 1859

Hezekiah Thomas
vs
Daniel S. Kinzey, Isaac N. Fitch
Edwin S. Pierce, Isaac B. Rome
Henry McArthur, Dexter Rich
John L. Chan, John Wilkins, James Evans

Petition for Lien

This case came to be heard, and it appearing from the Records of this Court, that at the Special April Term 1859 Daniel S. Kinzey had made answer in said case, which

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answer had been struck from the files of this Court, and that at the said Special Term, John Loken, John Wilkins and James Evans had filed an application to be made parties in this cause, which application was granted and the said John Wilkins, John Loken and James Evans ruled to answer within sixty days, and that the said Wilkins, Loken & Evans had made answer and filed no answer in said cause, and further appearing that Isaac B. Rowe, Dexter Rich & Henry McArthur, had been named as defendants in process, but had not appeared in the said cause, the said petition was called and made default. The said Petition was therefore taken as true as to them, and the said cause referred to the Master in Chancery of this said Court for the taking of testimony, as between the said Fitch & Pierce and the said Plaintiff. And the said Master having taken testimony in the said cause and reported unfavorably to the petitioner, the said Petitioner filed exceptions to his said report, which exceptions were allowed against all the said defendants except the said Fitch & Pierce, and the said report enforced as to the said Fitch & Pierce. In consideration whereof, It is hereby adjudged and decreed that the said Thomas have a Mechanics Lien as prayed in the said Petition (subject to the Mortgage Liens of the said Fitch & Pierce) upon the premises described in the said Petition to wit upon the East Fifty (50) acres of the South West quarter of Section Nineteen (19) in Township Seventeen (17) North of Range Three (3) East of the Fourth 4th Principal Meridian.

And it appearing that the indenture of the said Ruzey to the said Thomas was embodied in the Note attached to the said petition, it was ordered that the Clerk of said Court do assess the damages on said note, and the said Clerk having reported that there is due on the said Note the sum of One hundred and Seventy nine ³²/₁₀₀ Dollars. It was Ordered and Decreed that the said Ruzey pay the said sum to the said Thomas within the period of thirty days from the date of this decree with legal interest, and that he also pay the costs of this cause at the same time, and that in default of said payment, a special Execution issue directed to the Sheriff of the County of Henry and commanding

the sale of said premises, and that the interest of the said Kinzey in said premises be sold, and that the purchaser obtain the said premises subject to the lien of the said Fitch and Pierce, but independent of all claims of the said Trustees of Schools, and the said John Kinzey, John Wilkins and James Evans, and that the debt and interest thereon be paid from the proceeds of said sale, and the surplus be paid to the said Kinzey, and also that the purchaser at said sale shall take to a writ of possession. And in case the proceeds of said sale shall be inadequate to the payment of the said debt, that then an execution be issued for the unpaid residue, to be levied upon the lands and tenements, goods and chattels of the said Kinzey, as in cases of executions issued in Judgments at Law

Dated this 19 day of Nov A D 1859

J W Drury

And afterwards to wit on the 29 day of Dec A D 1859 by virtue of the foregoing decree an Execution and Fee Bill issued out of the Office of the Clerk of said Court and against the said Kinzey, which Execution is in the words and figures following to wit

Execution

The People of the State of Illinois

To the Sheriff of Henry County Kentucky

We command you that of the following Lands and Tenements of Daniel S Kinzey, to wit. The East Fifty acres of the South West quarter of Section Nineteen in Township Sixteen North of range Ten East of the 4th P.M. and all his interest & equity of redemption therein in your County, you cause to be made the sum of One hundred and ³²/₁₀₀ Dollars, which on the 19 day of November A D 1859 Thomas recovered in the Circuit Court of said County against the said Daniel S Kinzey with legal interest thereon from said date until paid, also the further sum of Forty & ²⁰/₁₀₀ Dollars which

were adjudged to the said Newshai Thomas by said Court for his costs in that behalf expended whereof the said Daniel S Kinzey stands connected as appears to us of record, and that you have the said sum of money with interest and costs at our Clerks Office without money of the date hereof, together with the writ

Witness Thomas Wiley Jr Clerk of our said Court and the seal of said Court at Cambridge, this 29th day of Dec A D 1859

(Signature)

Thomas Wiley Jr
By W L Dabrymple

Fee Bill Oct Term 1858

Fee Rec 5- Dkt suit 10 App 15- Sum 40 fil pas 15-07 ad 40 Fee Bill & copy 50	1 75-
Sheriffs Fee J F Dancer	2 85-
April Term 1859 Dkt 10 Alen Sum 40 fil pas 20 orau 80 notice 50	
Printers fee 4.00 Fee Bill & copy 50	6 50
Sheriffs Fee P Mc Sniff	4 15-
Defts cost	
Ent app 15 Subp 40 fil pas 5- conor 20 affa 10 Fee Bill & copy 50	1 40
Shps fee Sa Dancer 95- Witness Fee J G Mc Shraime 4 days 12 miles 4.60	5 55-
Oct Term 1859 Dkt 10 fil pas 20 aff 20 orau 1.20 Juag 25- Ex Dkt Rec Sal & fee 80	
Fee Rec copy ent & fee 90. Masters Fee 10.00 Wils Fee Mc Shraime . 5 days 12 miles 5.60	15 60
Defts cost fil pas 10 fee bill & copy 50. Dkt fee 2 50	3 10
	10 90

I hereby certify that the above Fee Bill is truly copied from my Book
Witness the Clerk and seal of said Court the 29th day of Dec A D 1859

(Signature)

J Wiley Jr
By W L Dabrymple

Upon which Execution issued, and returned to the Office of the said Clerk on the 4th day of June 1860. appears the following return to wit

were adjudged to the said Newshai Thomas by said Court for his costs in that behalf expended whereof the said Daniel S Kinzey stands connected as appears to us of record, and that you have the said sum of money with interest and costs at our Clerks Office without money of the date hereof, together with the writ

Witness Thomas Wiley Jr Clerk of our said Court and the seal of said Court at Cambridge, this 29th day of Dec A D 1859

(Signature)

Thomas Wiley Jr
By W L Dabrymple

Fee Bill Oct Term 1858

Fee Rec 5- Dkt suit 10 App 15- Sum 40 fil pas 15-07 ad 40	Fee Bill & copy 50	1 95-
Sherriff Fee J F Dancer		2 85-
April Term 1859 Dkt 10 Alen Sum 40 fil pas 20 orau 80 notice 50		
Printers fee 4.00	Fee Bill & copy 50	6 50
Sherriff Fee P Mc Sniff		4 15-
Defts cost		
Ent app 15 Subp 40 fil pas 5- conor 20 affa 10	Fee Bill & copy 50	1 40
Shps fee Sa Dancer 95- Witness Fee J G Mc Shraime 4 days 12 miles 4.60		5 55-
Oct Term 1859 Dkt 10 fil pas 20 affa 20 orau 1.20 Juag 25- Ex Dkt Rec Sal & fee 50		
Fee Rec copy ent & fee 90. Masters Fee 10.00 Wils Fee Mc Shraime . 5 days 12 miles 5.60		15 60
Defts cost fil pas 10 fee bill & copy 50. Dkt fee 2 50		3 10
		10 90

I hereby certify that the above Fee Bill is truly copied from my Book
Witness the Clerk and seal of said Court the 29th day of Dec A D 1859

(Signature)

J Wiley Jr
By W L Dabrymple

Upon which Execution issued, and returned to the Office of the said Clerk on the 4th day of June 1860. appears the following return to wit

By virtue of the return and I have this day levied on the within described Real Estate say \$100. and advertised the same for sale Three Weeks in the Kansas Republic a weekly news paper published in said County and sold the same at Public Auction to the Honorable Mr. J. H. H. for \$100 Dollars, there being the highest bid for the same, which amount I have entered in this writ, and Colored 7²⁵ for in the judgment & I return this unsatisfied as to the balance

P. H. Sheriff, Sheriff Henry County
By J. F. Dwyer Deputy

And afterwards to wit on the 4th day of April A. D. 1860 a Writ of Possession issued out of the Office of the Clerk of said Court, which Writ is in the Words and figures following to wit

State of Missouri
Henry County

The People of the State of Missouri. To the Sheriff of said County Greeting,

Whereas Nicholas Thomas, has lately in the County Court of said County by the judgment of said Court recovered against Daniel S. Nuzey et al an messuage of lands to wit. The East fifty acres of the South West quarter of Section Nineteen Township 17 North of Range 3 East of the 4th P.M. which said premises are unjustly withheld from the said Nicholas Thomas by the said Daniel S. Nuzey et al. and whereas it appears by the record of said Court that the said Nicholas Thomas is entitled to the immediate possession of the said premises. Now therefore we command you that you do not delay you deliver to the said Nicholas Thomas his agent or attorney possession of the said premises with the appurtenances and that you certify to our next Court to be held on the 3rd Monday of April in what manner you have executed the same

Witness J Wiley Clerk and the seal of said Court this 4th April 1860
 J Wiley for Clerk

Upon which Writ appears the following return
 "I have executed the return writ by reading the same to the defendant
 named Daniel S Kinzey and demanding possession of the premises
 described premises, which he refused to surrender April 6th 1860
 I therefore notified him that I should forcibly take possession of said
 premises on Monday April 9th 1860, unless he should surrender them
 by that time Thursday April 12th 1860 I formally took possession of said
 premises and removed most of the household goods of said Kinzey
 from the house and delivered the possession of the same to Isaac Petch
 as agent of Newbair Thomas in obedience to the return writ
 April 12th 1860

P W Smith Sheriff Kentucky Geo M
 By J F Drexler Deputy

State of Illinois
 Henry County



I Amos Gould Clerk of the Circuit Court in
 and for said County, do certify that the above
 and foregoing is a full, true and perfect Transcript
 of all the proceedings had in said entitled case
 as appears from the Records of said Court in
 my Office

Witness Amos Gould Clerk of said Court and the seal thereof at
 Cambridge in said County this 12th day of February A^d 1862

Amos Gould
 By E. S. Bruce

State of Illinois
Third Grand Division } 53

In the Supreme Court in and
for said Division A.D. 1862

And now comes

Daniel S. Kelsey *Pl*
imprisoned vs *Pl* in Error

Hughes Thomas *Def* in Error

And now comes the said *Pl* in
Error by J. S. Beardsley & L. B. Carpenter his
attys and says that there is manifest
error in the record proceedings and
judgment ^{being} of the court below in this
to-wit:

1. The court erred in overruling the
demurrer interposed by the defendant
below to the petition of the complainant
2. The court erred in entering orders
for complainant in the court below
3. The court below erred in decreeing that
the *pl* in error (*def* below) pay the debt
found due to complainant within thirty
days ^{after date of decree,} and in order of default that the
premises described in complainant's
petition be sold to pay the same -
4. The court erred in decreeing that said premises be sold
under a special receiver
5. The court erred in decreeing that in case the premises should
sell for enough to pay the debt & costs that the complainant
have an execution at law for the surplus value

J. S. Beardsley &

State of Illinois
Third Grand Division

Supreme Court
April Term 1861

Daniel S. Kinney
Plff. in Error

Defender in Error

vs
Muskai Thomas
Def. in Error.

And the said
Defendant in Error comes and ^{says} that there is no
error in the records and proceedings aforesaid,
or in giving the judgment aforesaid, and
prays that the said Hon. Court may please
to examine the records and proceedings
aforesaid as to the matters assigned for error,
and that the said judgment aforesaid
be in all things affirmed & stand in full
force strength and effect, the said causes
above for error assigned and alleged, in any way
notwithstanding.

Geo. W. Shurtz

Att. of Defendant

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Mustai Thomas

ats.

Daniel S. Singer,

et al

From Henry Court Court

Filed March 24. 1862.
S. Seland
Clk.