

12767

No. _____

Supreme Court of Illinois

Cook et al.

vs.

Heald et al

71641  7

205

Theodore T. Cook ed.

vs

Alexander H. Heald et al

12767

1859

et

~~Heald & Heald~~

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George M. Williams

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
12th Monday, (being the 12th day) of

March in the year of our Lord one thousand eight hundred and
Eighty Seven and of the Independence of the said United States the
Eighty First

Present, Honorable

George M. Williams Judge of the 7th Judicial

Circuit of the State of Illinois. }

Charles J. Baven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest;

W. L. Church Clerk.

1 Be it remembered that heretofore, to wit, on the ninth day of February in the year of our Lord, one thousand eight hundred & fifty seven, Alexander H. Herald & Levi H. Waterhouse by Geo. A. Ingalls Esq, their solicitor filed in the office of the Clerk of the Court aforesaid their certain Petition which is in the words & figures following, to wit,

To the Honorable the Circuit Court of Cook County

The Petition of Alexander H. Herald & Levi H. Waterhouse of the City of Chicago, County of Cook and State of Illinois, Respectfully sheweth unto your Honor that on or about the twenty sixth day of June Eighteen hundred and fifty six, your Petitioners being mechanics, to wit, masons, one Theodore F. Cook of the City of Chicago in the County and State aforesaid, entered into an agreement in writing with your Petitioners, which said writing, together with the written specifications thereto attached was duly signed by your Petitioners by the name and style of Herald and Waterhouse and by the said Theodore F. Cook by the name and style of T. F. Cook. In and by which said specifications and agreement your Petitioners in consideration of the payments to be made by the said Cook, agreed to build, finish and complete in a careful, skilful and workmanlike

1. manner, to the full and complete satisfaction of William W. Beeghly, Superintendent, the masonry work of a Pressed brick front dwelling to be erected on Tabash Avenue, in conformity with and as set forth in said specifications and Contract above referred to, which said Contract and specifications are hereto annexed marked "B." and which your Petitioners pray may be made a part of this Petition.

1. And your Petitioners further show unto your Honor that the said Theodore F. Cook, in consideration of the work to be done and materials furnished by your Petitioners as aforesaid agreed with your Petitioners in said contract to pay your Petitioners for said work and materials the sum of twenty seven Hundred and eighty one dollars, as the work should advance on estimates of the work and materials furnished & inwrought into the building, reserving however fifteen per cent of the contract price until the whole work is completed, when the whole is to be paid, provided the superintendent shall certify in writing that they are entitled thereto, that is to say that your Petitioners were entitled to their payment, either partial or complete for materials furnished as aforesaid & labor performed under said contract and specification.

And your Petitioners further show unto your Honor that in and by the terms of said

contract and specifications the said Cook reserved the right to alter or modify the design of said work and in case of such alteration or modification, the said Cook reserved the right to alter or modify the design of said work and in case of such alteration or modification, the said Cook by said writing agreed to pay your Petitioners what the extra labor and materials required by such modification should reasonably be worth.

And your Petitioners further show unto your Honor that on or about the first day of July Eight hundred and fifty six they commenced the prosecution of said work and the furnishing of said materials for the same in conformity with the requirements of said contract and specifications, and have now completed the same in conformity with said contract and specifications, and also at the request of the said Cook furnished 5300 bricks for a cistern to said house, which your Petitioners aver were reasonably worth the sum of forty seven dollars and seventy cents, and also at like request furnished for said cistern seven barrels of Rosendale cement which your Petitioners aver was reasonably worth the sum of twenty eight dollars, and also at like request furnished for said cistern five and one half barrels of Illinois cement which your Petitioners aver was reasonably worth twelve dollars and

thirty eight cents. And at like request performed nine and one half days mason work on said cistern which your Petitioners aver was & is reasonably worth the sum of twenty six dollars and twelve cents, and at like request furnished twelve days common labor on said cistern which your Petitioners aver was reasonably worth the sum of eighteen dollars, and at like request furnished one half days teaming materials for said cistern which your Petitioners aver was reasonably worth one dollar and fifty cents, and at like request did and performed extra stone work in foundation of dwelling which your Petitioners aver was reasonably worth the sum of seven dollars and fifty cents, and at like request did and performed extra work on said dwelling in the alteration of Breast and Furnace therefor which your Petitioners aver was reasonably worth the sum of ten dollars making in all for said extra work the sum of one hundred and fifty one dollars and twenty cents.

And your Petitioners further show unto your Honor that all of said extra work has been fully completed by your Petitioners, as well as the work specified in said contract & specification, and that all of said contract and extra work has been approved by said Wm W. Baynton Architect and superintendent by his certificate

in writing in conformity with the requirements of said contract specifications, which said certificate is hereto annexed and which your Petitioners pray may be made a part of this petition.

And your Petitioners aver that the Lot or parcel of land on Wabash Avenue upon which said pressed brick front dwelling was to be erected by your Petitioners in and by the terms of said specification and agreement with the said Cook, is properly described as follows - Twenty five feet front and rear off the South side of Sub lot one (1) of lot number four (4) in Block twenty two (22) in the canal trustee's subdivision of fractional section fifteen (15) Town thirty nine (39) Range fourteen (14) of the Third principal Meridian and being in the City of Chicago in the State of Illinois.

And your Petitioners further show unto your Honor that of the sum of two thousand seven hundred and eighty one dollars, due your Petitioners on said contract for furnishing materials & doing the said mason work as set forth in said contract and specifications, the sum of Eighteen hundred and fifty dollars has been paid to your Petitioners, leaving a balance due your Petitioners on said contract aside from the extra work of nine hundred and thirty one Dollars. And your Petitioners further show

unto your Honor that of the sum of one hundred and fifty one dollars and twenty cents due your Petitioners for escha work done by your Petitioners on said dwelling as aforesaid, the sum of one hundred dollars has been paid your Petitioners by the said Cook leaving a balance due your Petitioners on said escha work of fifty one dollars and twenty cents, making an aggregate of nine hundred and eighty two dollars and twenty cents which still remains due to your Petitioners from the said Cook for said contract and escha work on said dwelling as aforesaid.

And your Petitioners further show unto your Honor that your Petitioners have not set the front steps for said dwelling, for the reason that the same have not been finished, and your Petitioners aver that they gave the said Theodore F. Cook notice of their readiness to set the same but they are not finished, and for that reason your Petitioners are unable to furnish the same, And your Petitioners aver that the cost of setting said steps would be twenty five dollars and no more which deducted from their claim as above leaves nine hundred and fifty seven dollars and twenty cents \$957.²⁰/₁₀₀

And your Petitioners further show unto your Honor that the said Theodore F. Cook purchased the above mentioned and described real estate of one Harrison H. Hustad of the City of Chicago

and that the said Husted gave the said Theodore F. Cook an agreement in writing whereby the said Husted in consideration of certain payments to be made by the said Cook the said Husted agreed to make, execute and deliver a deed of said premises to the said Theodore F. Cook

And your Petitioners further show unto your Honor that a part of the purchase money for said premises has been paid by the said Theodore F. Cook to the said Harrison H. Husted but that a portion of the purchase price still remains undue and unpaid.

And your Petitioners further show unto your Honor that they are informed, that Isaac Cook Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurby, Dudley H. Farlan, William Jones, Milton S. Patrick, Thong Wadsworth, Louis J. Flirk, ~~William L. Rogers~~ Henry A. Ballentine, Francis A. Hoffman, and Otto Gulpeck

claim to have some interest or lien on said premises, above herein described, but your Petitioners are not fully advised of the nature of such pretended claim or lien - Wherefore your Petitioners pray that all of said persons and parties last above enumerated, may be

made parties defendants to this proceeding with the said Theodore F. Cook and that a summons may issue out of this Honorable Court to them directed, commanding them to be and appear before this Honorable Court to answer as required by the Statute in such case made and provided

And your Petitioners pray judgment against the said Theodore F. Cook for the amount so due your Petitioners as aforesaid with interest thereon and that said judgment may be a lien upon said premises hereinbefore described with the dwelling house thereon situated, to the whole value of said dwelling house and to the extent of the interest of the said Theodore F. Cook in said above described lot or parcel of land at the time of the making of said contract for the mason work and materials for said dwelling, between the said Theodore F. Cook and your Petitioners as aforesaid, and that a sale of said right, estate and interest may be ordered and decreed by this Honorable Court, and the proceeds of such sale be applied to the discharge of said judgment in pursuance of the Statute in such case made and provided, and that the said Defendants Isaac Cook, Horatio N. Heald, Wilson Mettler Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoag, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan,

William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Felt, William I. Burgess, Henry A. Ballentine, Francis A. Hoffman and Otto Gelpeck

be forever barred and foreclosed of and from all claim and interest in and to the premises and appurtenances hereinbefore set forth and described to the prejudice or injury of your Petitioners, and for such further and other relief as this Honorable Court shall deem meet and proper to grant, and your Petitioners will ever pray &c.

Geo. A. Ingalls
Solicitor for Petitioners

Levi H. Waterhouse
Alexander H. Heald

State of Illinois }
County of Cook } ss.

Alexander H. Heald and
Levi H. Waterhouse of said County being first
duly sworn according to law depose and say
that they have heard read the above Petition by
them severally subscribed and know the con-
tents thereof and that the same is true of their
own knowledge, except as to the matters therein
stated to be on their information and belief,
and that as to these matters they believe them to
be true

Subscribed and
sworn to before me

Levi H. Waterhouse
Alexander H. Heald

by the above named
 Alexander H. Heald and Levi H. Waterhouse
 this 9th. day of February A. D. 1857.

L. C. Paine Free

Master in Chancery, Cook Co.

I do hereby enter my appearance, the same as if served
 with process to the June Special Term 1857.

W. J. Burgess.

Agreement and Specifications referred to in
 said annexed Petition marked "A."

Specifications for the Masons.

Work and Materials required for the Erection
 and Completion of a Pressed Brick Front Dwell-
 ing that Theo.^{us} Cook is about to have built on

Special Reference will be had by the Contractor
 to the following Specifications, and the accom-
 panying Design, as made by Wm. W. Bognillon
 Architect, and which consists of the following
 drawings, viz.

Plan of Foundation
 " " Basement
 " " 1st Floor
 " " 2nd do
 " " 3rd do.
 Front Elevation

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

Superintendents and their Duties: Wm W. Boginton or his assistant Architects, are declared to be the Superintendents of the Work for the owner; their duties will consist in giving, on Demand, such interpretations, either in language, writing or drawing, as in their judgment the nature of the work may require having particular care that any and all work done, and Material used for the Work, be such as is hereinafter described: in giving, on demand, any certificates that the Contractor may be entitled to, and in settling all deductions of, or additions to the Contract price, which may grow out of alterations of the Design, after the same is declared to be contract,

also determining the amount of damages which may accrue from any cause, and to particularly decide upon the fitness of all Material used and Work done.

The Contractor being bound in all cases, to remove all improper Work or Materials upon being directed so to do, by the Superintendent.

But the Contractor, if after having been directed as above, to remove the same, should refuse or neglect so to do, shall not only suffer a deduction from the Contract Price of the Difference in value of proper and improper Work and Materials, but shall also be Liable for all Damages of whatsoever nature or kind that may result from such cause. The above provisions to apply in the same way to all Materials or Work Used, Made or Fixed, without the knowledge of the Superintendent.

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

The owner reserves the right to alter or modify the Design, and to add to, or diminish from the Contract price, the difference to be

adjusted as provided above.

The owner being bound in all cases to recognise the acts of his Superintendents, not only as regards extra work, but also to the sufficiency of the Design, the Contractor being in no case responsible for any accident resulting to the work from a Defective Design — which fact must be determined by an arbitration of Three disinterested men, chosen indifferently, and if found that the damages resulted from a want of proper care on the part of the Contractor, then and in such case, the damages and loss shall be paid for and made good by him; but if found that the accident or damage resulted from an improper Design, then and in such case, all damages shall be sustained by owners; which, in all cases must be Real, and in no case Constructive Damages to be allowed.

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

Dimensions of the Building as represented by, and figured on the Drawings.

Heights —	Basement Story	To be 8' 9"	feet
Principal	do	do 11' 3"	do
Second	do	do 12' 9"	do
Third	do	do 10' 3"	do
Fourth	do		do
Fifth	do		do

This Building is intended to be a good substantial dwelling and must be finished throughout as herein after described, ~~which is necessary~~ and anything shown by the Drawings and not hereinafter particularly reserved, or described, which is necessary to complete the Mason work of the building, is to be done at the cost of the contractor, notwithstanding such mason's omission.

On basement Grade of Building.

Top of first floor of joist to be fixed on a level with the present surface of the earth.

Excavations.

The entire area of the proposed Building, as required by Plans, to be dug out one foot deep below the natural surface of the earth.

Excavations for footing of walls to be dug below the first named excavation.

All other excavations for drains and cisterns, and for foundation of piers, and for vaults of water-closets, as required by plans.

All the excavated earth to be thrown out front & rear in proportion as it may be wanted to grade about the building.

Contractor to properly level off the Earth so as

to turn the water from the walls, and refill the excavations for Drains, after the same is put in and properly fixed. The drains to extend from rear to the centre of Wabash Avenue & will be formed of plank made by the Carpenter.

Rubble Stone Work.

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

Footings of all main walls from the bottom of benches, to be composed of larger stone, and will be. high and thickness see section, and must be well settled in the earth with a heavy instrument of wood, and laid in a mortar made as above described.

Piers in the cellar square and deep; built of good square stones, and the top of each to be covered with a

Bearing Walls for the support of the

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

Best Stone.

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

The cut stone work will be made a separate contract, all of which will be cut to accurate dimension & delivered on the ground near the place of building. After the stone are thus delivered the Contractor for the masonry is to take charge of the same & see that no damage is caused from want of proper care.

Brick Work.

All walls shaded red on the Plans, are to be of bricks, of the thickness and size marked on Plans, laid in the best manner with solid head and bed joints & thoroughly slushed up every second course & filled solid.

The front of the building will be faced with Chicago press-brick all thoroughly tuck pointed.

All brick used for facing the outside Walls, must be hard burned, all soft brick to be rejected from the work.

Fire walls to extend six inches above the roof.

Owners will furnish at the time they are wanted, in all cases where the roof is to be of Felt and Composition, a sufficient amount of 2x4 inch scantling to surround the whole roof of building, and which must be built in the fire walls by Contractor in such manner as the lower side of the piece will be flush with the top of the roof boards.

All chimneys to be built as shown by drawings and where there is shown to be left for fire grates, there is to be brick trimmers formed for the support of the hearths & at each floor there is to be a projection of 4 inches so as to have at least 8 inches between the smoke flues & timbers, all the flues to be smoothly plastered on the inside, and have stove pipe chimbles with tin stoppers, as directed, and be finished above the roof.

Seasoned Lath to be worked in the joints of the brick of the outside walls of the stories, one to each 12th. course.

Iron Anchors.

For each of the Piers, and for at least every ten feet of the dead walls, to be carefully worked in the masonry, and secured to the timbers of each of the floors and roof.

These Anchors will be all Pin Anchors, made to wit: Pin 8 inches long of $\frac{1}{8}$ " round iron, the Shank to be - 20 - inches long, properly welded around the Pin, and will be fastened to the timber with two spikes.

Those for the Stone Lintel of Fronts to be extra heavy, and must be long enough to reach the second joint from the stone to be anchored. Straps of $\frac{3}{8}$ " $\times$ $1\frac{1}{2}$ " Iron to be placed on the Timbers of each floor and roof where the same lie upon and meet on division walls, these Straps must be 20 inches long, American Iron, and have 4 spikes each.

Plastering.

All throughout the building to be of the best quality, Plaster of Paris finish.

The 1st & 2nd stories will be 3 coat work, all the rest 2 coat work, all of which must be thoroughly floated the 1st coat & browning, & the last coat will be polished with true angles & corners. There will be a good proportion plain moulded stucco cornices in the parlor front hall on 1st & 2nd floor

x front chamber.

Finally the whole Job to be fully completed in a careful, skillful, and workmanlike manner, and every material to be furnished therefor, and any thing shown by the Plans related to, or is necessary to complete the masonry of the building, and not herein before particularly reserved or described, is to be done at the cost of the Contractor, notwithstanding such omission.

Time.

Owner to give possession of the ground on or before the First day of May A.D. 1856. Contractor must agree to build the walls and chimneys ready for roof on or before Aug. 1st 1856 and fully complete the plastering of the building within thirty days after the same is declared by the Superintendent ready for lathing, and must complete the whole job of masonry within thirty days.

The Cornicing will be of such style & in such rooms as shall hereafter be determined upon by the proprietor or Superintendent— Cost of which is to be in addition to the contract price.

Said work, in no case, shall be considered as finished unless the same is so reported to the Superintendent and accepted by him. The owner hereby agreeing to have in readiness all necessary time

ber and Carpenter's work as they may be wanted, so that, in no case, the masonry shall be hindered for want of the same, and will put on each floor of joist on all the building within days after the walls are made ready to receive the same, and in case he should fail to do so, ^{then, and in such case} he hereby agrees to extend the time for finishing said work, ^{in a} Pro Rata proportion for such delay, and will, also, pay all damages resulting to the Contractor from such cause of delay: Provided, the Contractor shall, at the time of such delay, Notify the Superintendent in writing of the extent thereof, and the damages to him arising therefrom, and, if required by owner, must prove the same.

Damages.

And in order to secure the execution of the work in the manner, and at the times specified, it is hereby distinctly declared, that the Damages arising from the non-fulfillment of the contract as regards time, shall be a fair Rent of the Premises for each and every day the work remains unfinished, and which sum of Damages shall be deducted from the Contract price.

Payments.

To be made on the work as may be hereafter agreed

These Articles of Agreement, Made and entered into, this Twenty sixth day of June A.D. 1856 between Heald & Waterhouse of the first part, Building Mason of the City of Chicago and Theo Cook Esq, of the same place of the second part.

Witnesseth, That the said Heald & Waterhouse or his executors, administrators and assigns, for and in consideration of the payment hereinafter to be made to him by the said Theo Cook or his executors, or administrators do on his part, Contract, and Agree to Build, Finish and Complete, in a careful, skillful and workmanlike manner, to the full and complete satisfaction of Wm W. Beightson Superintendent and by and at the times mentioned in the foregoing specifications The masonry work of a Pressed brick front dwelling to be erected

as aforesaid, so as fully to carry out the design of said work, as it is set forth in the foregoing specifications, and the plans and drawings therein especially referred to. Said specifications and plans and drawings, being hereby declared part and parcel of this contract.

And the said Theo Cook or his executors, administrators or assigns, for and in consideration of the said Heald & Waterhouse furnish materials and fully and faithfully executing the aforesaid work, so as fully to carry out the design for the

same as set forth by the specifications, and according to the true spirit, meaning and intent thereof, and to the full and complete satisfaction of W^m H. Baynton or his assistant Superintendent as aforesaid, and at the times mentioned in the foregoing specifications doth hereby agree to pay the said Heald & Waterhouse the sum of Twenty seven hundred & eighty one (\$ 2781) Dollars in the following manner

As the work advances the Superintendent is to make out estimates of the work & materials furnished & inc wrought into the building & the said Theo. Cook is to pay the amt of said estimate reserving fifteen per cent until the whole contract is complete as aforesaid.

Provided the said Superintendent shall certify in writing that he is entitled thereto.

In Witness Whereof, the parties hereto have set their hands the day and year first above written.

Heald & Waterhouse
(T. F. Cook)

Certificate of Architect referred to in said
annexed Petition.

To the Building House as per Contract 2781.00
" " Work in foundation 7.50
" " Work at King Breast & Furnace 10.00

" 5300	Bricks in cistern @ 89. per M	47, 76
" 5300	Basegate Cement " 84, 00 " bbl	28, 00
" 5300	" " 82, 25 " "	12, 38
" 5300	Masons on Cistern " 82, 75 " day	26, 12
" 5300	Labor " " 81, 50 " "	18, 00
" 5300	Teaming " " 3, 00 " "	1, 50
		82932, 20

And afterwards, to wit, on the day and year last aforesaid, to wit, February 9th 1857 The said Petitioners by their said Solicitor filed in the office of the Clerk of the Court aforesaid their certain Petition which is in the words and figures following, to wit,

Alexander H. Heald and
Levi H. Waterhouse

vs.

Cook County Circuit
Court of the March Term.
A.D. 1857

Theodore F. Cook, Isaac Cook,
Horatio W. Heald, Wilson Mettler
Jacob P. Dibble, Ira C. Barber,
Henry P. Brewster, Charles J. Hoyt,
Charles H. Stillwell, Francis H. Benson,
Joel Gurley, Dudley H. Garland,
William Jones, Nelson S. Pakick,
Shong Wadsworth, Louis J. Hite,
Henry A. Ballentine,
Francis A. Hoffman, and
Otto Gelpack

Petition for a
Mechanics Lien

The Clerk will please issue

Summons in the above entitled cause to the above named Defendants to answer Petition filed herein, returnable at the next March Term

Geo. D. Ingalls
Solicitor for Petitioners

And thereupon afterwards, to wit, on the day & year last aforesaid, there was issued out of the office of the Clerk of the Court aforesaid and under the seal thereof the People's certain writ of Summons directed to the Sheriff of Cook County to execute and clothe in the words and figures following, to wit,

State of Illinois }
County of Cook } ss.

The People of the State of Illinois, to the Sheriff of said County - Greeting:

We command you that you summon Theodore F. Cook, Isaac Cook, Horatio W. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Wilson S. Patrick, Strong Wadsworth, Louis J. Fitch, Henry A. Ballentine, Francis A. Hoffman and Otto Gelpcke if they shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House in Chicago, in said county, on the First Monday of March next, to answer unto Alexander H. Heald

* And now comes the said Wilson Mettler and Jacob D. Dibble two of the above named Defendants in this cause by Shumway, Waite and Towne their Attorneys and present their appearance herein and waive service of process on them herein
 Attorneys for Mettler, Shumway, Waite & Towne

and Levi H. Waterhouse in their Petition filed in this Court for a Mechanics Lien

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same

Witness, William L. Church, Clerk of our said Court, and the seal thereof at Chicago afore said, this ninth day of February A.D. 1857
 Wm L. Church Clerk



And afterwards, to wit, on the 12th. day of February in the year last aforesaid the said Wilson Mettler & Jacob D. Dibble two of the said Defendants by Shumway, Waite & Towne their Attorneys filed their appearance in said cause, which is in the words & figures following, to wit,

Theodore F. Cook, Harrison
 H. Husted, Isaac Cook,
 Horatio N. Heald, ^{Wilson} Mettler
 Jacob D. Dibble, Ira C. Barber
 Henry P. Brewster, Charles J. Hoyt,
 Charles H. Stillwell, Francis H. Benson,
 Joel Gurley, Dudley H. Farlan,
 William Jones, Milton S. Patrick,
 Spong Wadsworth, Louis J. Hitz,
 Henry A. Ballentine, Francis A. Hoffman,
 & Otto Gelpecke
 vs.
 Alexander H. Heald and
 Levi H. Waterhouse

Cook County
 Circuit Court
 of the March
 T. 1857

Petition
 for a Mechanics
 Lien

*

*

And afterwards, to wit, on the 28th day of February in the year last aforesaid the said writ was returned into the Court aforesaid by said Sheriff endorsed as follows to wit, I served this writ on the within named Isaac Cook & Theodore F. Cook by delivering a copy hereof to each of them the 13th day of Feb. 1857. also on the within named Horatio N. Heald, Ira C. Barber, Charles J. Hoyt, Charles H. Stillwell, Francis A. Benson, Joel Gurley, Dudley H. Farland, Strong Wadsworth, Louis J. Hitz, Francis H. Hoffman, & Otto Gilpeck by delivering a copy hereof to each of them the 19th day of February 1857. The remaining Defendants not found in my County the 28th day of Feb. 1857. Fees - 13 services - 6.50. 13 copies 6.50. - 13 miles .65 - 1 return .10 - \$13.75
 Paid by Plff's atty. John L. Wilson, Sheriff
 By John H. Dart, Deputy

And afterwards, to wit, on the 6th day of March in the year last aforesaid the said defendant Isaac Cook by his atty. filed his certain plea in said cause which is in the words and figures following, to wit,

Isaac Cook, Theodore F. Cook
 Et al

ads

Alexander H. Hall &
 Levi H. Waterhouse

In the Cook Circuit
 Court

Mechanics' Lien

The Plea of Isaac Cook

one of the Defendants to the said Petition in this cause..

This Defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Complainant's Petition mentioned and contained to be true in such sort, manner & form as the same are therein set forth & alleged for Plea to the whole of said Petition says that before the commencement of this suit, on the ninth day of February in the year eighteen hundred and fifty seven, one Henry Threland exhibited his Petition in this Court against the Defendants in this cause the said Theodore F. Cook, Harrison H. Husted, Isaac Cook, Horatio R. Heald, Wilson Metter, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Judge H. Farlan, W^m Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Fritz, Henry D. Ballentine, Francis H. Hoffman & Otto Gelpcke, setting forth among other things that he the said Henry Threland had by & under contract made with said Theodore F. Cook done work & labor and furnished materials in and towards the erecting of a building upon certain premises which are the same building, lands and premises set forth in the said Petition in this cause - to the amount and value of \$2493⁴⁵

and which had become due under said contract within six months next preceding the filing of such Petition - And praying among other things that a lien might be established on said Lands & premises in his favor for the said amount and the same sold to satisfy the same as by the said Petition now remaining pending in this Court not dismissed or otherwise disposed of will more fully & at large appear, and this Defendant insists that the said claim of the said Henry Threland hath become by the filing of his said Petition a lien and charge upon said lands & premises, and that all such liens under the Statute should be made against said Lands and premises in the same suit by interpleading & not otherwise.

All which several matters & things this Defendant doth aver & pleads the said Petition so filed by the said Henry Threland and now pending in this Court, in bar to the said Complainants present Bill and demands the Judgment of the Court whether he shall be put to make any further or other answer thereto And prays to be hence dismissed with his costs and charges in this behalf sustained

Farnsworth & Burgess
Sols.

J. Cook

State of Illinois }
County of Cook }

Isaac Cook being duly sworn says
that the Plea above by him subscribed is true in
substance & fact

Subscribed & sworn to before
me March 6. 1857

(I. Cook)

Wm L. Church, Clk.

And afterwards, to wit, on the 21st day of
March in the year last aforesaid certain of the
above named defendants filed their appearance
in said cause in writing which is in the words and
figures following

Alexander H. Heald and
Levi H. Waterhouse

vs.

Theodore F. Cook
and others

Cook County Circuit
Court of the March 5. 1857
Petition for Mechanic's
Lien

And now come the said
Defendants William Jones, Milton S. Pakick,
and Henry P. Brewster and enter their appear-
ance in this cause

Jones & Pakick
By C. B. W. Lull, atty.

And afterwards, to wit, on the 26th day of
March in the year last aforesaid the said Petition

as by Geo. A. Ingalls filed in the Court aforesaid in
said cause their certain demurrer to the said Plea of
the said defendant Isaac Cook, which demurrer is
in the words and figures following, to wit,

In the Cook Circuit Court

Alexander H. Heald and
Levi H. Waterhouse

vs.

Theodore F. Cook, Isaac
Cook and others

Petition for a
Mechanics Lien

The Demurrer of the Com-
plainants in this cause to the plea of Isaac Cook
one of the Defendants in this cause -

And the said Complainants as to the
said Plea of the said Defendant Isaac Cook to the
said Petition, not confessing all or any of the mat-
ters and things in the said Defendant Isaac Cooks
answer to be true in manner and form as the
same are therein set forth and alleged doth demur
thereto, and for cause of Demurrer sheweth -

First - That the said Isaac Cook hath not shown
or alleged in & by his said Plea that the Complain-
ants in this cause had any notice of the filing of the
Petition of Henry Ireland for a lien upon the
premises described in said Plea

Second - That the Complainants in this cause
are not bound in law to interplead in the case
of the said Henry Ireland as stated in the said

"Plea of the said Isaac Cook, but on the contrary have a right under the Statute to commence original proceedings by Petition and Summons as therein provided, regardless of Petitions of other parties.

Third. — That Complainants in this cause are not permitted by Law to have their claims adjusted and allowed against the premises in said Petition described except by the commencement of a suit by the filing of a petition and the issuing of a summons as by the Statute in such cases made and provided —

And the said Complainants further say that the matters and things contained in the said Plea of the said Isaac Cook in manner and form as therein set forth are not sufficient in law to bar or preclude the said Complainants from having or maintaining their aforesaid suit against the said Defendant Isaac Cook & that said Complainants are not bound by law to answer said Plea. And this the said Complainants are ready to verify. Wherefore by reason of the insufficiency of the said Plea in this behalf the said Complainants pray judgment and their damages, by reason of the not performing of the said several promises and undertakings in the said Petition charged and alleged, to be adjudged to them &c.

Geo. A. Ingalls
Complainants Solicitor

And afterwards, to wit, at the March Term of said Court, to wit, on the 9th day of April in the year last aforesaid, the following, among other proceedings, in said Court, were had and entered of Record in said Cause, to wit,

A. H. Heald, and Levi H. Waterhouse,

vs.

Theodore F. Cook, Isaac Cook. Et al

{ Pet for Injunction

And now

come the said Petitioners by Geo. A. Ingalls, their Solicitor and the said Defendant Isaac Cook by W^m J. Burgess his Solicitor also comes and the Court having heard Counsel on the demurrer of the said Petitioners to the Plea of the said Defendant Isaac Cook by him herein pleaded and having also carefully inspected the said plea as well as the demurrer thereto and being now fully advised in the premises, finds that the said ^{defendants} Isaac Cook's plea is insufficient in law to bar or preclude the said Petitioners from having and maintaining their aforesaid action in that behalf, the demurrer is therefore sustained.

And afterwards, to wit, on the 16th day of April in the year last aforesaid the said defendant Isaac Cook by his counsel filed in the Court aforesaid in said cause, his separate answer to the petition of the said Plaintiffs

filed therein which answer is in the words and figures following, to wit,

In the Cook Circuit Court

Alexander H. Herald

& Levi H. Waterhouse

vs.

Theodore F. Cook, Isaac

Cook et al

Mechanics' Lien

The separate answer of Isaac
Cook to the Petition in this cause.

This Defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to the said Bill of Complaint for the many errors, uncertainties and other imperfections therein contained for answer thereunto or unto as much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, he answering says that he has no knowledge whether or not on or about the 26th day of June A.D. 1856 - the said Theodore F. Cook and said Petitioners made and entered the written agreement attached to the said Bill of complaint, but he is acquainted with the signature of said Theodore F. Cook and believes it is executed by him. That he has no knowledge of the hand writing

of said Petitioners and cannot either admit or deny whether the same was executed by them — and requires proof thereof —

And this Defendant further answering says that he has no knowledge or information save from said Bill of Complaint whether or not the said Petitioners on or about the first day of July A.D. 1886 commenced the prosecution of said work & the furnishing said materials for the same in conformity with the requirements of said contract & specifications nor whether at the time of filing said Petition they had completed the same in conformity with said contract, and therefore can neither admit or deny the same but requires strict proof thereof. — This Defendant however admits that said Petitioners have done some work on said premises & furnished some materials in & towards the erection of said building but whether as extra work or under said contract, nor how much the same is worth he has no knowledge save from said Bill of Complaint and cannot state as to the same, and therefore requires strict proof thereof.

And this Defendant further answering says that he admits upon information that the said Theodore F. Cook purchased from said Fluck the said land & took a written agreement from him therefor — upon which a balance of the purchase money yet remains unpaid as charged

in said Bill.

And this Defendant further answering says that he has no knowledge or information save from said Bill of Complaint whether or not the said Boyington & Wheelock ever approved of said work & granted said certificate & that he is unacquainted with the hand writing of ^{said} Boyington & Wheelock & therefore can neither admit or deny that the certificate attached to said Bill is in their hand writing & issued & made by them - & requires strict proof thereof.

And this Defendant further answering says that on or about the second day of October A.D. 1856 the said Theodore F. Cook made, executed, duly acknowledged and delivered to this Defendant a certain indenture of Mortgage of that date conveying said premises to this Defendant in mortgage to secure an indebtedness of eight thousand dollars, due this Defendant, which was duly filed for record in the Recorder's office of said County on the 2^d day of October A.D. 1856 and entered in Book 27 of Mortgages on page 418 as by reference to said Indenture of Mortgage & the records of said office will more fully and at large appear.

And this Defendant further answering says & insists that the lien of said Mortgage upon said Lands and premises attached & became

vested before the lien of said complainants for said Work, Labor & Materials claimed in said Bill if any such lien they have.

And this Defendant further answering says that he did on the 23^d day of December A.D. 1856 & before the lien of said Petitioners so attached as aforesaid, file in the office of the Clerk of the Cook County Court of Common Pleas his bill of complaint on the Chancery side of said Court to foreclose said Mortgage making said Theodore F. Cook & H. R. Fernald Parties defendants thereto - that due personal service of process was had upon them in said suit to answer said bill and such proceedings were afterwards had in said cause in said Court that at the January Term thereof A.D. 1857 a decree was rendered directing the sale of said lands and premises to satisfy the amount of said Mortgage indebtedness \$8145. & costs of suit, as by the records and proceedings of said Court reference being thereunto had will more fully appear, that afterwards and on the 29th day of January A.D. 1857. L. C. Paine Esq. Master in Chancery in & for said County under & by virtue of said decree did proceed in pursuance thereof to offer said Lands & premises for sale and the same were thereupon then & there duly struck off & sold to William J. Burgess and he became the purchaser thereof

of which said Freeer duly made to said Burgess a certificate & filed in the Recorder's office of said county on the day of a duplicate thereof, and reported said sale to the said Court of Common Pleas by his report filed the day of A.D. 1857. as by the records of said Court and Recorder's office reference being thereto had will more fully appear.

And this Defendant insists upon the pendency of said suit & decree & sale therein as a bar to this suit and prays that he may have the same benefit therefrom as though he had pleaded such pendency in bar of this suit & upon this point he prays the judgment of this Court. And this Defendant insists upon the point that the said Burgess should be made a party defendant to this bill & craves the same benefit from this point as though he had pleaded to said bill - for want of parties -

And this Defendant further answering says that as he is advised it nowhere appears from said bill that the time for the completion of said contract for the building of said house set out in said bill was not extended more than three years from the making of the same, and he insists upon this point the same as though he had demurred to that part of the bill setting up said contract &

prays the judgment of the Court thereupon.
 And this Defendant having fully answered
 prays hence to be dismissed with his costs & charges *vs.*
(J. Cook)

State of Illinois }
 County of Cook } ss.

I, Julius G. Lombard a Notary
 Public for the City of Chicago in said County and
 State do hereby certify that on this 15th day of April
 A.D. 1857. came before me Isaac Cook above named
 who being ^{by me} duly sworn doth depose & say that the
 above answers by him subscribed is true in sub-
 stance & fact.

Julius G. Lombard
 Notary Public

And afterwards, to wit, at the April Term of
 said Court, to wit, on the 29th day of April in the
 year last aforesaid the following, among other
 proceedings, in said Court, were had and
 entered of Record in said cause, to wit,
 Alexander H. Heald & Levi H. Waterhouse

vs.

Thodore F. Cook, Isaac Cook Etal

} Pet for Mech. Lien

Ordered on motion

that the said Plaintiffs have leave to file a Supplemental
 Petition making William T. Burgess a party Defendant in
 above entitled cause & that it be continued to the next
 term of this Court.

And afterwards, to wit, on the 12th day of June in the year last aforesaid, the said Petitioners by their counsel filed their Supplemental Petition in the Court aforesaid in said cause, which is in the words and figures following, to wit,

To the Honorable the Circuit Court of Cook County —

The Supplemental Petition of Alexander H. Heald and Levi H. Waterhouse of Cook County in the State of Illinois, Complaining respectfully show unto your Honor that on the 9th day of February 1857 your Petitioners exhibited their original Petition in this Honorable Court for a Mechanic's Lien and making Theodore F. Cook and others Defendants in said suit, that afterwards, to wit, on the day of A.D. 1857 these Complainants were permitted by an order of this Honorable Court to file their Supplemental Petition in this cause making William J. Burgess Party Defendant in said cause.

And your Petitioners show unto your Honor that since the filing of said Original Petition they have been informed that the said William J. Burgess has or claims to have some interest in the lands and hereditaments in said Petition described, but as your Petitioners are not fully advised of the nature of such pretended claim.

Wherefore your Petitioners pray that the said William T. Burgess may be made a party Defendant with the other Defendants in said Original Petition and that a Summons may issue out of this Court to said William T. Burgess to appear before this Honorable Court to answer said Original Petition as by the Statute in such cases made and provided

And your Petitioners pray judgment against the said William T. Burgess that he be forever barred and foreclosed of and from all claim and interest of in and to the premises and appurtenances in said Original Petition described, to the prejudice or injury of your Petitioners and for such further and other relief as this Honorable Court shall deem meet and proper to grant and your Petitioners will ever pray

Alexander H. Heald
by Geo. D. Ingalls
his Solicitor
Levi H. Waterhouse
by Geo. D. Ingalls
his Solicitor

I do hereby enter my appearance in this cause the same as if served with process

issued upon this bill.

June 12, 1852

W. T. Burgess

And afterwards, to wit, on the 22nd day of June
in the year last aforesaid the said Petitioners by
their said Solicitor filed their certain Replication
to the answer of the said Defendant Isaac
Cook in said cause which is in the words and
figures following, to wit,

Cook Circuit Court

Alexander H. Heald and
Levi H. Waterhouse

vs

Theodore F. Cook
Isaac Cook Etal

Mechs. Lien

The Replication of Alex-
ander H. Heald and Levi H. Waterhouse Com-
plainants, to the answer of Isaac Cook one of the
above named Defendants in this Cause.

These Repliants saving and reserving
unto themselves all and all manner of ad-
vantage of Exception to the manifold in-
sufficiencies of the said answer for repli-
cation thereto saith that they will aver and
prove their said Petition to be true, certain
and sufficient in the Law to be answered
unto and that the said answer of the said

Defendant is uncertain, untrue and insufficient to be replied unto by this Repliant. Without this that any other matter or thing whatsoever in the said answer contained, avoided, traversed or denied is true —

All which matters and things these Repliants are and will be ready to aver and prove as this Honorable Court shall direct — And humbly pray as in and by their said Petition they have already prayed

Alexander H. Heald and
Levi H. Waterhouse by
Geo. D. Ingalls their
Solicitor

And afterwards, to wit, on the 23rd day of June in the year last aforesaid, the said Defendant W^m J. Burgess filed in the office of the Clerk of the Court aforesaid his certain Pleas in said cause which are in the words and figures following, to wit,

In the Cook Circuit Court

Alexander H. Heald and
Levi H. Waterhouse

vs

Theodore F. Cook Etal

} Mechs. Lien

The Plea of William J. Burgess, Defendant, to the Bill of Complaint

of said Heald & Waterhouse in this Cause as amended,

This Defendant by Protestation = not confessing or acknowledging all or any of the matters and things in the said Complainant's said Bill as amended to be true in such sort, manner and form as the same are therein and thereby set forth and alleged, doth plead thereunto and for plea saith that heretofore to wit, on the 22nd day of December A.D. 1856 Edward L. Conly & Thomas P. Byrn filed in the Cook County Court of Common Pleas their certain Bill of complaint or petition and amendment thereto filed on the 17th day of April A.D. 1857 by said Petition as amended setting forth among other things - That on or about the 20th day of August A.D. 1856 Theodore F. Cook of Chicago aforesaid by a verbal contract of that date employed said Conly & Byrn to furnish gas-pipe for a certain dwelling house then in process of erection by said Theodore F. Cook on a certain piece of land situate in said City of Chicago thereafter described - That by the terms of said verbal contract the said Conly & Byrn were to receive for the materials aforesaid as much as the same worth - That the same were to be furnished immediately thereafter and paid for as soon & as fast as

delivered & applied. That in pursuance of said Contract they furnished for said house & applied in & towards the erection of the same on the 21st day of August A. D. 1856, materials worth the sum of sixty nine Dollars & thirty cents which remained due and unpaid at the time of filing said Petition - That Henry Ireland, Benjamin F. Chase, Alexander H. Heald, Levi H. Waterhouse, Peter F. Rofinot, Thomas Rice, John I. D. Gibson, Frederick S. White, Benjamin W. Raymond, Samuel D. Ward, William W. Boyington, Otis L. Wheelock, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Shilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Shong Wadsworth, Louis J. Flitt, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, John Pfeifer, James McGraw, William T. Burgess, Leurgus Sherman & Carlos S. Sherman

had or pretended to have and claimed some right, title or interest in said premises above described either by way of mortgage judgment or Mechanic's Lien under the Statute or in some other way. And that the said building was situated on the South

Twenty five feet of Sub Lot one in Lot four in
Block twenty two in fractional Section fifteen
Township thirty nine North Range fourteen
East of the third principal Meridian - That at
the time of making said contract said Theo-
dore F. Cook was and at the time of filing
that Bill still remained the owner thereof -
- and praying, among other things that the
lien of said Comly & Byrn might be established
upon said building & premises upon which
the same was erected to the amount due them
for said materials & furnishing said gas-
pipe as therein aforesaid, and the estate and
interest of the said Theodore F. Cook therein
declared liable to be sold to satisfy the same.
And that unless the same and costs of suit
be paid by said Cook or some other of the
Defendants therein named that a sale of
said premises ^{or} of whatever estate or interest
said Theodore F. Cook might have therein
might be made and that the proceeds of
such sale or so much thereof as might be
necessary might be applied to the payment of
said debt so due said Comly & Byrn or
for such other or further relief as the nature
of the case might require and that process
might issue against the said Henry Keeland
Benjamin F. Chase, Alexander H. Heald

Levi H. Waterhouse, Peter F. Refinos, Thomas Rice
 John I. D. Gibson, Frederick F. White, Benjamin
 W. Raymond, Samuel D. Ward, William W.
 Boyington, Otis L. Wheelock, Isaac Cook, Horatio
 N. Heald, Wilson Mettler, Jacob D. Dibble, Ira
 C. Barber, Henry P. Brewster, Charles J. Hoyt,
 Charles H. Silwell, Francis H. Benson, Joel
 Gurley, Dudley H. Farlan, William Jones, Milton
 S. Patrick, Thong Wadsworth, Louis J. Flitz, Henry
 A. Ballentine, Francis A. Hoffman, Otto
 Gelpcke, John Pfeifer, James McGraw, William
 J. Burgess, Lycurgus Sherman & Carlos S.
 Sherman

as by the said
 Petition as amended still pending in the
 Cook County Court of Common Pleas not
 dismissed or judgment rendered thereon or
 otherwise disposed of, reference being thereunto
 had will more fully and at large appear.

That summons was duly issued upon
 said Petition and duly served among other
 Defendants as well upon said Heald &
 Waterhouse as this Defendant.

That on the day of June A. D. 1857, the
 said Alexander H. Heald & Levi H. Waterhouse
 filed their answer to said Bill, setting up, among
 other things, the making of the same identical
 contract with said Theodore F. Cook the doing

of the same identical work and furnishing the same identical materials in and towards the erection of the same identical house upon the same identical lands and premises as in the Petition in this cause set forth & alleged which answer still remains of record therein & to which the said Comly & Byrn have filed their Replikation.

And this Defendant avers that the said Theodore F. Cook in said Petition filed by said Comly & Byrn named is the same identical Theodore F. Cook in the Petition in this cause named and not other or different. That the said Alexander H. Heald & Levi H. Waterhouse in the said Petition filed by said Comly & Byrn named

is the same identical Alexander H. Heald & Levi H. Waterhouse who hath filed the Petition in this cause and not other or different.

And that the House, lands & premises in the said Petition filed by said Comly & Byrn are the same identical House, lands & premises in the said Petition in this cause mentioned & not other or different.

All which matters and things this Defendant doth aver and pleads the said Petition so filed by the said Comly & Byrn and now pending in the Cook County Court of Common Pleas & proceedings therein and

thereon had & pending in bar to said Complain-
ants present Bill - And demands the judgment
of the Court whether he shall be put to make
any further or other answer thereto. And
prays hence to be dismissed with his costs & charges
in this behalf sustained.

W. T. Burgess.

State of Illinois }
County of Cook } ss

William T. Burgess of said
County being duly sworn doth depose & say
that he has read the above Petition and knows
the contents thereof & that as to his own acts the
same is true, & as to the acts of others he believes
it to be true

Sworn and subscribed
before me this 23 June 1857

Wm L. Church

Clk

W. T. Burgess

And afterwards, to wit, on the 24th day of
June in the year aforesaid, the said Petitioners
by their said Solicitor filed in the office
of the Clerk of the Court aforesaid their
certain Demurrer to the Pleas of the said
Defendant Burgess in said cause which
is in the words & figures following, to wit,

In the Cook Circuit Court

Alexander H. Heald and
Levi H. Waterhouse

vs.

Theodore F. Cook, William
J. Burgess Etal

Mechanics Lien

The Demurrer of the
Complainants in this Cause to the Plea of William
J. Burgess filed herein —

And the said Complainants as to the
said Plea of the said Defendant William J.
Burgess to the said Petition not confessing
all or any of the matters and things in the said
Defendant William J. Burgess' Plea to be true
in manner and form as the same are therein
set forth and alleged doth demur thereto, and
for causes of Demurrer sheweth —

First That the Complainants in this cause
are not bound in Law to interplead in the
said Case of Edward L. Comly and Thomas
B. Byrne in the said Cook County Court of
Common Pleas, and ask that their claim
may be adjusted and determined at the
same time with that of the said Comly and
Byrne, but on the contrary have a right under
the Statute to commence Original Proceedings
by Petition and summons as therein provided
regardless of Petitions filed and suits com —

menced by other parties in other Courts.

Second. The said Defendant does not show in and by his Plea filed herein that these Complainants in their answers filed in the cause of the said Comly & Byrne in the Cook County Court of Common Pleas asked to have their demands adjusted at the same time with that of the said Comly and Byrne, or that Process was served upon these Complainants before the commencement of this suit.

Third. — The Plea of the said Burgess does not show that the said Petition of Comly & Byrne as originally filed on the 22nd day of December 1856 prayed for a Lien upon the same Land or Lot upon which these Complainants ask for a Lien in this Cause —

And the said Complainants further say that the matters and things contained in the said Plea of the said William J. Burgess in manner and form as therein set forth are not sufficient in Law to bar or preclude the said Complainants from having or maintaining his aforesaid suit against the said Defendant William J. Burgess and that said Complainants are not bound by Law to answer said Plea.

And this the said Complainants are ready to verify —

Wherefore by reason of the insufficiency of the said Plea in this behalf the said Complainants pray judgment and their damages by reason of the non performing of said several promises and undertakings in the said Petition charged and alleged.

Geo. A. Ingalls
Solicitor for Complainant

And afterwards, to wit, on the 16th day of November in the year last aforesaid Henry A. Ballentine one of the Defendants in said cause by J. L. Marsh his Solicitor filed his appearance in the Court aforesaid, in said cause which is in the words & figures following, to wit,

In the Cook Co. Circuit Court

Alexander H. Heald
Levi H. Waterhouse

vs

Theodore F. Cook
Henry A. Ballentine
& al

Mechanics' Lien

Entry of the appear
of Henry A. Ballentine
one of the above named
Defts.

And now comes the said Henry A. Ballentine by J. Leonard Marsh his Solicitor and enters his appearance in this Cause —

J. L. Marsh

And afterwards, to wit, on the day & year last
aforesaid the said Petitioners by their said Soli-
citor filed in the Court aforesaid, in said cause
their certain Replication to the Plea of the said
Defendant, Burgess which is in the words &
figures following, to wit,

In the Cook County Circuit Court

Alexander H. Heald, and Levi H. Waterhouse	Mechanics Lien
vs	Replication of complaints
Theodore F. Cook	to the Plea of William J. Burgess
William J. Burgess et al	

These Repliants saving
and reserving to themselves now and at all times
hereafter all, and all manner of benefit and advan-
tage of Exception which may be had or taken to the
manifest insufficiencies of the said plea of
William J. Burgess one of the said Defendants
for Replication thereunto saith that they will
over, maintain and prove their said Petition
to be true, certain and sufficient in the law to be
answered unto, and that the said Plea of the said
Defendant is uncertain, untrue and insuffi-
cient to be replied unto by this Repliant without
this that any other matter or thing whatsoever
in the said Plea contained material or effec-
tual in the law to be replied unto, and not here-
in and hereby well and sufficiently replied

unto, confessed and avoided, traversed or denied
is true, all which matters and things these Re-
plicants are and will be ready to aver maintain
and prove as this Honorable Court shall direct
and pray as in their Petition they have already
prayed

Geo. A. Ingalls
Solicitor for Complainants
E. Van Buren
of Counsel

And afterwards, to wit, on the 31st day of
December in the year last aforesaid, the said
Defendant Burgess filed in the Court aforesaid
his certain Petition in said Cause which is in
the words & figures following, to wit,

In the Cook Circuit Court

Flotario R. Heald & Levi H. Waterhouse vs Theodore F. Cook Etal	}	Mechanics Lien
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The Petition of William
J. Burgess in the above entitled cause, one of
the Defendants therein respectfully shows to
this Court

That the Petition in this cause is filed
by said Complainants to establish a Mechan-
ics' Lien under the Statute in favor of said

complainants for work and labor done, and materials furnished by them, in and towards the erection of a certain dwelling thereon, upon certain lands therein described as follows—viz. The South twenty-five feet of Lot one in Lot Four, in Block twenty-two (22) in fractional Section fifteen, (15) Township thirty-nine North Range fourteen East of the third principal Meridian.

That the amount and value of the work done by said Complainants have been found by
in this cause to be

And this Defendant, your petitioner further shows that as he is informed and believes, on or about the second day of October A. D. 1856. The said Defendant Theodore P. Cook made, and executed, duly acknowledged and delivered to the said Isaac Cook, a certain Indenture of mortgage, of that date, conveying the said lands and premises above described, to said co-Defendant Isaac Cook, in mortgage, to secure an indebtedness of eight thousand dollars, due the said Isaac Cook, which said indenture of mortgage, was duly filed for record, in the Recorder's office of said Cook County, on the second day of October A. D. 1856. and entered in Book 27 of mortgages, on page 413. as by reference to said Indenture, and the records of said office, as to the contents thereof, will more fully, and at large, appear

And this Defendant, your petitioner, further shows and insists, that as he is informed and believes, the lien of said mortgage upon said lands and premises attached, and became vested, before the lien of said Complainants, or of any of his co-Defendants, if any such, they, or any of them, have, under the Statute, for work and labor done, or materials furnished in or towards the erection of said house, or other improvements or buildings thereon, did attach or accrue to them therefore, thereon —

And this Defendant, your petitioner, further says, that on the 23rd day of December, A.D. 1856. the said Isaac Cook filed in the office of the clerk of the Cook County Court of Common Pleas, his bill of complaint, on the Chancery side of that Court, to foreclose said mortgage, making said Theodore H. Cook and H. N. Heald, parties defendant thereto, that due personal service of process was had upon them in said suit, to answer said bill, and such proceedings were afterwards had in said cause in that Court, that at the January Term thereof A.D. 1857. a decree was rendered, directing the sale of said lands and premises, to satisfy the amount of said Mortgage indebtedness of \$8143.84 costs of suit, as by the said bill now remaining in the said Cook County Court of Common Pleas, and the proceedings and decree thereon had, will more fully and at large appear, reference being thereto had, as to the contents thereof.

That afterwards, and on the 29th day of January, A.D. 1857, L. C. Paine, Sheriff, Master in Chancery in and for said county, under and by virtue of said decree, did proceed in pursuance thereof, to offer said Lands and premises for sale, and the same were thereupon then and there duly struck off, and sold to your petitioner, and he became the purchaser thereof of which, of ~~which~~ said sale, said Sheriff duly made to said Burger, a certificate, and filed in the office of the Recorder of said county, a duplicate thereof, and reported said sale to the said Court of Common Pleas, by whom, the same was afterwards duly confirmed, as by the Record of said Court, reference being thereunto had, will more fully appear—

And your petitioner insists upon this, that if the said suit to foreclose said mortgage, was commenced before the lien of said Petitioner, if any attached upon said premises, then that the said suit, and decree, and sale, therein, is a bar to this suit, and he prays that he may have the same benefit therefrom, as though he had pleaded the same in bar of this suit, and upon this point, he prays the judgment of the Court—

And this Defendant, your petitioner, further insists that in case this Court shall order a sale of said property, then that your petitioner is entitled to be first paid out of the proceeds thereof, the amount of his said bid, and the interest that shall

have accrued thereon, at ten per cent per annum before either the said complainants, or any of the co-defendants are paid, provided such sale shall take place before the right to redeem from said sale, shall expire—

And your Petitioner further insists that if said time for redemption shall expire, and the said premises not be redeemed from said sale, to your petitioner, then that he is entitled to said premises, to hold the same freed from any liens of said Petitioner, in the premises—

And your Petitioner prays the Court to make such order in the premises, as shall protect the rights of your Petitioner, in the Premises—

State of Illinois }
County of Cook } p.

William T. Briggs, who hath subscribed the above petition, being duly sworn, says, that the matters therein stated, to be of his own knowledge, are true, and as to the other matters therein stated, he believes them to be true—

Sworn to, and subscribed
before me, this 31st day
of December, A. D. 1857.

Wm L. Church,
Clerk

And afterwards, to wit, at the November term of
Said Court, to wit, on the 9th day of January A. D.
1858. the following proceedings, among others, were had
and entered of Record therein to wit—
Alexander A. Heald, & Levi H. Waterhouse.

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Thodore H. Cook, Isaac Cook, Anatio M. Heald
Wilson, Mettler, Jacob D. Dibble, Ira C. Barber,
Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, (Mechs
Francis H. Benson, Joel Gurley, Dudley H. Perkins, Lien.
William Jones, Milton S. Patrick, Strong Wadsworth.
Louis J. Kitz, Henry A. Ballentine, Francis A. Hoffman,
Otto Gelpcke, and William T. Burgess

On the
Nineteenth day of December, came the said Complain-
ants, by George A. Ingalls, their Solicitor, and the said
Defendant Isaac Cook, by William T. Burgess, his Solic-
itor, and the said William T. Burgess, in his own
proper person, as one of the defendants herein; and
on motion of Complainants Solicitor, and no objection
being interposed, the issue on the plea of the said
Defendant, William T. Burgess, to the petition of the
said Complainants, filed in this cause, and the
Replication to said plea, were tried by the Court.
And the same was accordingly submitted to the
Court for trial, and after hearing the testimony
by the Court, and the arguments of Counsel, it was
considered and adjudged by the Court, that the

issues on said Plea, and the Replication, be found
for the said Complainants, and that the said plea
be overruled, and on motion of said Complainants
Solicitor, the said Defendants, Theodore H. Cook, Horatio
N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber,
Henry R. Brewster, Charles J. Hoyt, Charles H. Stilwell,
Francis H. Benson, Joel Guiley, Dudley H. Fairlin, William
Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Witz,
Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke,
and William T. Burgess, being three times solemnly
called in open court, came not, nor did any one
for them; Wherefore it was ordered by the Court, it
appearing that the said Defendants had been du-
ly served with process herein, or their appearance
properly entered, that the default of the said de-
fendants be entered of Record, for want of an answer
to said Complainants Petition —

And this cause came on to be heard upon ~~the~~
the Petition amended, and supplemental peti-
tion of the Complainants, and the answer of the
said defendant, Isaac Cook, and the replication
of the said ~~defendants~~ complainants, to said an-
swer, and by agreement of the parties herein, the
issues presented by the pleadings, are hereby submit-
ted to the Court for trial, and the Court after hear-
ing the testimony, and arguments of Counsel,
found the issues for the complainants, and found
that there was due the said complainants, on their

contract with said Theodore H. Cook, for labor, and materials furnished, and performed by said Complainants, on the brick house mentioned in their said petition, over and above all payments the sum of nine hundred and fifty seven dollars, and twenty cents—also the sum of twenty three dollars, and eighty cents, as interest thereon, making in the aggregate, the sum of nine hundred and eighty one dollars—Whereupon the said Defendants moved the Court, for a new trial of this cause—

And afterwards, on the 31st day of December, A. D. 1857. came William J. Burgess into open Court, and filed his petition herein—

And afterwards at the January Special Term of said Court, to wit, on the 30th day of January, in the year last aforesaid, the following proceedings, among others, were had and entered of Record therein, to wit—

Alexander H. Heald & Levi H. Waterhouse—

vs

Theodore H. Cook, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Guley, Dudley H. Harlin, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Ditz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, & William J. Burgess — Mechanics Lien

And now this cause came on to be heard on the application of Isaac Cook, for a new trial, and after argument of counsel, it was considered and ordered by the Court, that the motion for a new trial, heretofore entered in this cause, be overruled to which ruling of the Court, the said defendant excepts and thereupon it is adjudged and decreed by the Court, that the said complainants Alexander H. Heald and Levi H. Waterhouse have a judgment against the said Theodore H. Cook for the amount found to be due at a former term of this Court, and being the sum of Nine hundred and eighty-one Dollars, and that the said Complainants have a Mechanics Lien upon the premises described in the petition of the said Complainants filed in this Cause, the said Real Estate and premises being described as follows—Twenty-five feet front and rear off the South Side of Sub Lot one (1) of Lot Four (4) in Block Twenty-two (22) in the Canal Trustees Subdivision of Fractional Section Fifteen (15) Township Thirty-nine, Range fourteen East of the third principal Meridian, and being in the City of Chicago, in the State of Illinois—with the buildings thereon situated, for the said sum so found to be due the said Complainants as aforesaid, together with their costs and charges by them, in this behalf expended, and have execution therefore, against the said described

premises, and that said premises be sold to satisfy the same, as provided in the Sixty-fifth Chapter of the Revised Statutes of the State of Illinois— And it is further ordered and decreed that if upon the sale of said premises, the proceeds of such sale applied to the satisfaction of the said Execution of the said Complainants, according to their rights in common with coequal creditors, against the same premises, shall be insufficient to pay the same, that then, the said Theodore H. Cook, against whom judgment has been rendered herein, for the amount of said indebtedness, pay to the said Complainants, Alexander H. Heald and Levi H. Waterhouse, the amount of such deficiency, and that the said Complainants have execution therefore— And it is further ordered, adjudged and decreed, that the said defendants, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stitwell, Francis W. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Ditz, Henry A. Ballentine, Francis A. Hoffman, and Otto Gelpcke, be barred of and from setting up any claim or lien upon said premises, and buildings thereon situated—to the prejudice or injury of the lien and claim of the said petitioners, Alexander H. Heald, and Levi H. Waterhouse.

And thereupon this cause is ordered to stand continued for hearing—the Petition of the said defendant, William T. Burgess, filed herein, to be protected, and preferred as Mortgagee of the Mortgage mentioned in his said Petition—

And afterwards, to wit, at the March Term of said Court, to wit—on the second day of April, in the year last aforesaid, the following proceedings, among others, were had and entered of Record therein, to wit—

Alexander H. Heald, and
Levi H. Waterhouse,

April 2nd 1888

vs
Theodore F. Cook, Isaac Cook,
Horatio N. Heald, Wilson Mettler,
Jacob D. Dibble, Ira C. Barber,
Henry P. Brewster, Charles J. Hoyt,
Charles H. Stitwell, Francis H. Benson,
Joel Gurley, Dudley W. Fairlan,
William Jones, Milton S. Patrick,
Strong Wadsworth, Louis J. Ritz,
Henry A. Ballentine, Francis A. Hoffman,
Otto Gelpcke, and William T. Burgess

Mechanics
Lien—

And this cause having come on to be heard at a former term of this Court, and the amount of nine hundred and eighty^{one} dollars, and costs of suit, having been found to be due the said

Alexander H. Heald, and Levi H. Waterhouse, and judgment having thereafter, and at a former term of this Court, been duly rendered on said finding— And the said Defendant, William T. Burgess having filed his petition herein, for a portion of the proceeds of a sale of the premises, on which a lien is had in this Cause, and being, described in the Petition of the said Alexander H. Heald, and Levi H. Waterhouse, and this cause having this day come on to be heard, on the Petition of the said William T. Burgess, and the Court having heard the testimony on the part ~~both~~ of the said William T. Burgess, and the said Alexander H. Heald and Levi H. Waterhouse— And after ^{the} hearing the testimony as aforesaid, and the cause having been by the agreement of the parties respectively submitted to the decision of the Court, without argument of Counsel— And the Court having fully considered the same, and it appearing to the Court from the testimony that the said Theodore H. Cook did on the second day of October, A.D. 1856. execute a Mortgage on the premises, in the Petition of the said Complainants, Alexander H. Heald, and Levi H. Waterhouse, described to Isaac Cook, for Eight Thousand Dollars, and that the Interest of the said Theodore H. Cook in said premises, on the said second day of October, A.D. 1856. before the execution

of the said Mortgage, was worth the sum of Thirteen Hundred and Sixty-two Dollars, exclusive of the house then being erected thereon, by the said Alexander H. Heald, and Levi H. Waterhouse, under their contract— And it further appearing to the Court, that the said Mortgage from the said Theodore H. Cook, to the said Isaac Cook, was foreclosed by proceedings in Chancery, in which Isaac Cook was Complainant, and Theodore H. Cook and Horatio H. Heald were Defendants, and that the said Burgess became a purchaser at the sale under said foreclosure, and received a certificate thereof. And it also appearing to the Court from the testimony, that the said Alexander H. Heald, and Levi H. Waterhouse had on the second day of October, A.D. 1856. performed labor, and furnished materials on their said contract with the said Theodore H. Cook, for the erection of the dwelling-house on said premises, amounting to the sum of Two Thousand Dollars. (\$2000.)

And it further appearing by the testimony so heard by the Court, that the house being erected by the said Alexander H. Heald and Levi H. Waterhouse, upon the said Lot, upon which a Lien is had in this Cause, and the barn also being erected on the same Lot, by the said Alexander H. Heald, and Levi H. Waterhouse, under another contract, and upon which a Lien is also had in Case

number in this Court, were in the first day
 of January, A. D. 1857. with the sum of Ten Thou-
 sand, and Five Hundred Dollars, exclusive of the
 land— And whereas, there were other petitions fil-
 ed by other parties against the same premises, upon
 which a lien is had by the said Alexander H. Heald,
 and Levi H. Waterhouse, and on which Petitions, a
 hearing was had on the same day of the finding
 for the said Alexander H. Heald, and Levi H. Water-
 house, and thereafter, upon which judgments
 were rendered respectively, as well as upon the finding
 in favor of the said Alexander H. Heald, and Levi
 H. Waterhouse, in this cause, and which said sever-
 al judgments are equally a lien upon said premis-
 es, with the judgment of the said Alexander
 H. Heald, and Levi H. Waterhouse, in this Cause—
 One of said judgments being in favor of Henry Cree-
 land, and being for the sum of Two Thousand,
 Six Hundred and Sixteen cents, Dollars, and Nine-
 ty-two Cents— Also a judgment in favor of James
 Mc. Graw, for the sum of Three Thousand and
 Ninety-five Dollars, and thirty-nine cents, in the
 same case with that of Henry Creeland— the said
 Mc. Graw having interpleaded in the case of the
 said Henry Creeland— Also one judgment in favor
 of Peter F. Rofinet and Thomas Rice, against the
 same premises, for the sum of Two Hundred and
 Forty-one Dollars and Fifty cents—and costs of suit.

Also one judgment in favor of William W. Boyington, and Otis S. Wheelock, against the same premises, for the sum of Three Hundred Dollars—Also one other judgment in favor of the same petitioners as in this cause, on another contract, for the erection of a barn on the same premises, as the one described in the Petition in this cause—for the sum of Four Hundred and Sixty Dollars, and Seventy-five cents.

Also one judgment in favor of Benjamin W. Raymond, and Samuel D. Ward, and against the same premises, for the sum of Two Hundred and eighty-four Dollars, and fourteen cents—Also one judgment in favor of John P. D. Gibson, and Frederick H. White, and against the same premises as in this cause, for the sum of One Hundred Dollars, and seventy-two cents—Also one judgment in favor of Benjamin A. Chase, and against the same premises as in this cause, for the sum of Five Hundred and Fifty-eight Dollars, and Sixty-three cents—Now it is ordered, adjudged and decreed that L. C. Paine Freer Esq. (Master in Chancery of Cook County, in the State of Illinois, proceed to sell twenty-five ^{feet} front and rear off the South Side of Sub Lot one (1) in Lot Number Four (4) in Block number Twenty-two (22) in the Canal Trustees Subdivision of Fractional Section Fifteen (15.) Town Thirty-nine (39) North Range fourteen (14) East of the third principal Meridian, being in the City of

Chicago, with the buildings and appurtenances thereon situated, being the same premises described in the Petition of the said Alexander H. Heald, and Levi H. Waterhouse, and upon which a lien is had in this Cause, after publishing the hour, day and place of sale for twenty days immediately prior thereto, in some newspaper published in the City of Chicago, to the highest and best bidder for cash, at the hour appointed for such sale, and make proper conveyances of said premises, as such Master in Chancery, and as special Commissioner hereby, appointed to the purchaser or purchasers thereof, and apply and disburse the money arising from such sale as follows— First to pay the said Defendant, William J. Burgess, the sum of Thirteen Hundred and Sixty two Dollars, together with Interest thereon, at the rate of six per cent per annum, from the second day of October A.D. 1856. to the date of such sale— Provided the said Burgess shall not on or before the payment of said money, part with his interest in said premises, by the assignment of his certificate, or otherwise, and in case the said Burgess shall have so parted with his interest, then the above amount to be paid by the said Master, to the person, who, at that time, shall hold the legal interest acquired by the said Burgess, by his purchase on the sale, under the foreclosure of said Mortgage—

Second, to pay all costs of such sale—
Third, to pay the balance of the money arising from
such sale, on all of the judgments hereinbefore enu-
merated, including interest on said judgments,
and costs—the same being all and equally liens
on said premises—pro rata, according to their respec-
tive amounts—And it is further ordered and de-
creed that in case the proceeds of such sale, shall
be more than sufficient to pay all of said claims
as herein before particularly enumerated, that then
the said Master is directed to pay the balance, or sur-
plus of the money arising from such sale, into this
Court, to await its further order—And it is fur-
ther ordered and decreed that the said William
J. Burgess, his personal representatives and assigns,
be forever barred from having and maintaining
any claims against said premises, except the pay-
ment of the said sum as herein before decreed—

And now on the order being made by the
Court, to enter the foregoing decree, come the said
Complainants, Alexander H. Heald, and Levi H.
Waterhouse, and except to ~~as~~^{to} much of said decree
as directs the payment to the said William J.
Burgess, out of the proceeds of the sale of said prem-
ises, the sum of Thirteen Hundred and Sixty-two
Dollars, with interest thereon, as stated in said de-
cree, prior to the payment of the claim of the Pe-
titions in this Cause, the said Alexander H. Heald,
and Levi H. Waterhouse—

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And the said Burgers moves that the amount found by the jury, as for Interest, be struck en out, of the amount decreed to be paid to the said Complainant, because there was no evidence before the jury, or this Court, that the said Theodore H. Cook ever agreed to pay interest, except what is contained in, or can be inferred from the written contract set out in the bill of complaint in this cause— But the Court holding that in such, the absence of other testimony, sufficient appears on the face of that agreement, it being in writing— And the jury having found that it was performed on the part of the Complainant, to entitle him to interest, denies said motion, and the defendants thereto, except—

And the said Defendants move the Court that the Sale be made with the same rights of redemption as are provided by Law upon sales of real estate, upon executions at Law, which motion the Court denies, and the Defendants except—

And the said Defendants pray the Court, that the payment due H. H. Dusted, as appears from his contract with Theodore H. Cook, and for said premises in evidence in this cause, on the tenth day of June 1857. of twelve hundred and fifty-three Dollars, and seventy-five cents, be first paid to him out of the proceeds of any sale of the premises, under the order of the Court, unless the sum shall have been

paid to him by said T. H. Cook, which motion, the Court denies, and the Defendants except—

And the Defendants except to the Decree of the Court, in this case, and the said William T. Burgess prays an appeal from the decrees and orders of the Court, in this cause, to the Supreme Court, and it is allowed to him, on his filing a bond in the penal sum of two thousand dollars, to the said Alexander H. Heald and Levi H. Waterhouse, with Isaac Cook and Owen Mc. Carthy, as his surety, on or before the first day of June next, conditioned as the law directs—

And afterwards, to wit on the day and year last aforesaid, a certain Stipulation was filed in the Court aforesaid, in said Cause, which is in the words and figures following, to wit—

Alexander H. Heald, and	} Cook Co Circuit Court
Levi H. Waterhouse	} Mechanics Lien—
vs	} Petition of William T.
Theodore H. Cook,	} Burgess, one of the Defend
William T. Burgess et al	} ants in this Cause, to be
	paid part of proceeds of sale
	of premises, on which Lien is had
	in this Cause—

And now comes the said William T. Burgess in his own proper person, and the said Henry Cree

land, by George A. Ingalls, his Solicitor, and it is stipulated between said parties, that it is admitted, as proved, that the said Theodore F. Cook did execute a Mortgage to Isaac Cook, for Eight Thousand Dollars, on the Second day of October, A.D. 1856. and that said Mortgage was foreclosed, by proceedings in the Cook County Court of Common Pleas, and said premises purchased thereunder, by the said Burgess, as stated in his said Petition, and the proceedings of the Records in that cause, is hereby waived. And it is further agreed and stipulated, between the said parties, that the said Alexander W. Heald, and Levi W. Waterhouse had on the ^{said} second day of October, performed work on their said contract, upon the house, upon which they did the Mason work, to the amount of Two Thousand Dollars—(\$2000.) And it was further proved on the hearing of the Petition of William F. Burgess, filed herein, that Theodore F. Cook made a contract with Harrison W. Husted, for the purchase of the premises, upon which a Lien is claimed in this cause, a copy of which agreement is filed in Case No 8528. in this Court, and is made a part of this Stipulation—That the said Theodore F. Cook paid the first payment on said contract, according to the terms thereof, and that on the 2nd day of October following, the time when the said Theodore F. Cook made the said mortgage to the said Isaac Cook, and that from the time

of the making the said Contract, of the said Husted, with the said Theodore H. Cook, for the sale of the Lot, upon which a Lien is claimed in this Cause, to the time of the making the said Mortgage, from the said Theodore H. Cook to the said Isaac Cook, the said Lot had increased in value to the sum of Three Hundred Dollars— And that said Theodore H. Cook's interest in said Lot, on the 2nd day of October, 1856. exclusive of the house and barn being erected thereon, was worth the sum of Thirteen Hundred and Sixty-two Dollars— And that the house and barn being erected thereon, (on said Lot meaning) were worth the sum of Ten Thousand and Five Hundred Dollars, (\$10,500) exclusive of the ground, on the first day of January, A.D. 1858. at that time—

W. F. Burgess,

Geo. A. Ingalls.

Solicitors for Complainants.

And afterwards, to wit, on the 29th day of May, in the year last aforesaid, the said Defendant William F. Burgess, filed in said Court, his certain appeal bond, which is in the words and figures following, to wit—

In the Cook Circuit Court

Alexander H. Heald and

Levi H. Waterhouse

Theodore F. Cook, Isaac Cook,
 Anatis W. Heald, Wilson Mettler,
 Jacob D. Dibble, Ira C. Barber,
 Henry P. Brewster, Charles J. Hoyt,
 Charles W. Stillwell, Francis W. Benson,
 William Jones, Milton S. Patrick,
 Strong Wadsworth, Louis J. Hitz,
 Henry A. Ballentine, Francis A. Hoffman,
 Otto Gelpcke & William T. Burgess

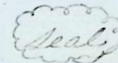
Mechanics
 Lien

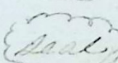
Know all men by these Presents, that we William T. Burgess, as principal, and Isaac Cook and Owen Mc. Carthy, as his sureties, are held and firmly bound unto the said Alexander W. Heald, and Levi H. Waterhouse, in the Penal sum of Two Thousand Dollars, for the payment of which, well and truly, to be made, unto the said Heald and Waterhouse, their heirs, executors, administrators or assigns, we do bind ourselves, our heirs, executors, and Administrators, jointly and severally, firmly by these presents. Signed, sealed and dated this 10th day of May, 1858.

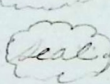
Whereas on the above entitled cause, on the 24th day of March, A. D. 1858. during the March Term, A. D. 1858. of said Court, it was, among other things, ordered, adjudged and decreed, by said Court, that certain Real Estate described in the Petition in this Cause, and in and to which, the said Burgess claimed an

interest, should be sold to satisfy the sum of Nine hundred and Eighty one Dollars, and costs, to be paid to the said Heald and Waterhouse, from which order and decree, the said Burgess hath prayed an appeal to the Supreme Court of this State—

Now therefore, if the said Burgess shall prosecute ~~his~~ appeal with effect, and pay the amount of the judgment costs, interest and damages, rendered, and to be rendered, in case the said judgment or decree shall be affirmed in the Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect—

W. E. Burgess 

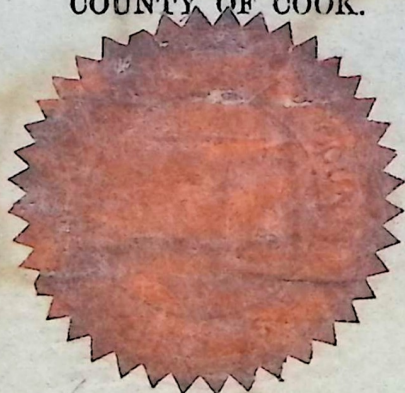
J. Cook 

Owen McCarthy 

[12747-39]

185 Feb

State of Illinois, }
COUNTY OF COOK. } S. S.



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the papers filed & proceedings had and rendered of record in a certain cause lately pending in said Court on the Common Law side thereof, wherein Merrill H.

Heald Et al are Petitioners — and
Theodore J. Cook Et al are defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this twenty third day of February A. D. 1856

True for Record of 18. Feb 1856

W. L. Church
Clerk.

In the Supreme Court

of April Term 1859.

Theodore F Cook
et al.

vs
Alexander H. Hals
& Levi H. Waterhouse

Appeal from the
Cook Circuit Court.

And now come the
appellants by W. J. Bungep their Attorney
and say that in the record proceedings
and decree aforesaid of the said circuit
court. there is manifest and material
error appearing of record therein in this

1 That the court overruled the demand
of Isaac Cook to the bill -

2 That the court disallowed the plea of
Isaac Cook to the bill -

3 That the supplemental ~~to Bungep~~
against Bungep is defective in not making
the other persons parties. and should not
have been allowed to be filed -

4 That the complainants amended their
bill by making W. J. Bungep a party with-
out leave of the Court -

5 That the petition is defective in not
alleging when the work was done, when
the contract required it to be done - in
not alleging ^{that} the work was to be completed
within ^{three} years from making of contracts.

6 That the court made no order upon the supplemental bill -

7 That the default of Brewster was taken without service of process or his appearance entered -

8 That the court found the issue upon the plea of Bury for the complainant.

9 That the court thereupon ordered the bill to be taken as confessed against him -

11 That the jury found and the court allowed interest -

12 That the court rendered a decree for complainant and directed a sale of said premises

13 That the court directed the said liens mentioned in its decree to be paid upon paying the said Bury -

14 That the court did not hold the proceedings and decree in the mortgage foreclosure suits to be a bar to the said suit

15 That the apportionment of the proceeds of the sale of the premises is not according to law -

16 That the court ordered the liens of persons not parties to the suit to be paid without bringing them before the court in any way in the suit -

And that the Court below rendered
a judgment for the complainants
below whereas it should have dismissed
their bill & decreed against them

Wherefore & for divers other errors
manifest & material appearing of Record
said appellants pray that the said
Decree & order of said Court may
be reversed annulled & altogether
held for naught - & they restore &c

N. Y. Pongee
for Appellants -

Theodore F. Cook et al

Alexander F. Heald et al

And now comes the
said defendants in error and
say that there is no error
in said record and proceeding
as is alleged - & they pray
that said judgment be affirmed
with costs - E. A. Van Buren

G. A. Ingalls

Sumner White House

Attys for the Def in Error

Sup Court
Theodore T. Cook vs
vs
Alexander W. Keelo and
Levi W. Waterhouse Apprs

I
The first error alleged is that the Court
overruled the demand of Isaac ^{Cook} & the Bill
To this we answer, that there was no
demand put in by Isaac ^{Cook} & the Bill -
except as stated in the answer

That the Court overruled the plea of Isaac of Cook
To this plea of Isaac Cook the pe-
titioner replied, it was true by the Court & the
issue was found for the petitioner

The Record does not contain the
evidence in the case, the Court therefore
cannot say there was any error

12 Ill 530

18 " 245

III

To the 3^d assignment of Error, we say -
That Process was made a party by Supple-
mental Bill by order of the Court see p 38.
- No objection can be taken to it at the hearing
! Purp Chan 200-244 4 20127

IV

To the 4th argument of Enon we say
 1 That Burgess voluntarily entered his appeal
 under p 40 - He afterwards pleads to the
 Bill as amended p 42 - Thus by waiving the
 error - The only object of the Supplamental
 Petition was to get him in Court,
 Burgess might have demurred - not having done
 so, he cannot now object -

No one else can, for no one but Burgess
 has appealed

Besides, I see no objection to treating it as
 an amendment so far as the other parties
 are concerned, he having appeared

At all Events it is too late to take
 this objection at the hearing

1 Page Chm R 200-294

4 " " 127

No one but Burgess has appealed, &
 he cannot object to any proceedings
 except so far as they affect him

6 Page Chm 273

7 " 221

Sup Court
~~Contract~~
271 App in Sup
Heads & death house

V
The Petition alleges sufficient facts - It is necessary that the ^{terms of the} contract should be set forth, & that the same was performed - It is only necessary ^{however} to set forth those facts with reasonable certainty - So as to advise the defendant of what he has to meet -

In this case the petitioner alleges, that Theodore T. Cook ^{by the 2^d of June 1856} entered into an agreement with the Petitioners in writing "which said writing together with the written specifications were signed &c" "a which said contract and specifications" "are hereto annexed marked A and which" "you petitioners pray may be made part of" "this petition. See Record page 2"

The written agreement & specifications are annexed & make part of the Petition - The contract therefore as it is ^{is} set forth - This is all the petitioner can do or is required to do

The specifications provide - ~~see p 19~~
that the petitioners, must build the walls
& chimneys ready for roof on a before
~~forest~~ first of August 1856. and complete
the whole job within 30 days after the same
is declared by the Superintendent ready for
plastering - p 19

The petition alleges that they
commenced the work and furnishing the
materials about 1 of July 1856, & have now
completed the same in conformity with said
specifications and agreement.

There is an allegation that
they have performed according to the Contract
& the Contract is set out in full - This
is Supposed -

The Petition also states Contract also
provides that Cook shall pay petitioners,
p 2781 when the Contract is ~~comp~~ Superintendent
shall make estimate, allowing 15 per
cent, & the whole due paid when the Super-
intendent shall certify that he is entitled
to it - p 22 - The Superintendent does cer-
tify to the whole bill p 22. There is no
date to the certificate, but the Petition says
it was done before said work commenced
& that it is presumed to have been proven

It is therefore sufficiently alluded to when the name
was done - at all events the petitioner
is entitled to be paid when the Superintendent
should certify, which he has done

The contract was made 26 June the
1856 and the List was commenced 9th of
February 1857

VI & VII

These errors we understand are not relied
upon - no such facts appear in the record
- Worcester appearance was into p. 29 of the

VIII

To the 8 Error assigned we answer - There is no
bill of exceptions - The evidence given in
the Cause does not appear - The party
complaining must show that there is error

12th 530

18th 245

The cases cited by App't do not apply to the case
in lieu cases

IX

To the 9th we say - The Left Page did not
ask leave to answer - nor did he offer
to answer - The Petitioner therefore had a

perfect right to enter the default - p 58

X

There was no application for a Continuance - If there had been it would be a matter of discretion to grant or refuse it, for which error will not lie

XI

As to the Interest - we cite 20 M. 174 to show 13 M 592 - 2 Comstock 408 Court may refuse Deca

XII

This is a final judgment - We see no objections to Release

XIII

The Court ascertained the value of the ^{Interest of Mortgage} land embraced in the mortgage, to be \$1362 - & directed that the first payment be \$64

XIV

The Petitioners were not parties to the foreclosure suit, & therefore their rights were not affected = 17 M 423

XV

The value of the land appears by the
speculation, that is, Cook's Interest in it
The appointment provided
by the Decree is right

XVI

See printed Points

17 Pl 301 & see Blackwell Statutes Vol 1 -
1098 Sec 12
E. Hunt Esq
of Counsel

The Court may Reform the Decree
20 Pl 174

93 205
Sup Court

Look at

141
Head & Waterhouse

Bruf for oppn

Estab Pm
of Counsel
for Appnt

2 Han 266

cases cited

Filed May 3, 1839
L. Leland
LLK

205

vald & Martenhouse

(12)

J. H. Cook Esq

Recd

Recd April 12 1859
L. Leland
Clerk

In the Supreme Court of the State
of Illinois, April 5, 1859 —

Theodore F. Cook et al
vs.
Alexander H. Heald and
Levi H. Waterhouse

Argument
by Wm. A. Singolby
of Counsel
for Appellees

The Sole appellant William J. Burgess under his 1st and 3rd assignment of errors insists that the Petition is defective in that it is not shown by it, but the work might have been done more than 6 months before the Complainants in the Court below filed the Petition for a Mechanics Lien, or that the work was to be done by the terms of the Contract within 3 years of its Commencement —

Neither of these things are true — See page 19 of Abstract by which it appears that the "Appellees agreed to build the walls of the house on or before August 1st 1856, and fully complete the plastering of the building within 30 days after the same is declared by the Super-

intendant ready for Lathing and
must complete the whole job
within 30 days" This appears in
the Specifications which are made
a part of the Petition and are an-
nexed to it. The petition Shows
that the Appellees were Masons and
agreed to do all of the ~~Carpenter~~
Mason Work, and the plastering by
the terms of the agreement must
have been at least 6 months after
the first day of August 1856, or
September 1st 1856, and Petition
in this Cause being filed Feb. 9th 1857
the time was only 5 months and 9 days
Moreover Isaac Cook is the only one
who subscribed to the Petition, and
Burgess rights are shown by the
Record to depend upon no other
rights but those of Theodore F.
Cook. Burgess in his petition which
appears on the Record in this
Cause (See pages 54-55 & 56) Shows
that I. Cook on 2nd October 56 re-
ceived from T. F. Cook a mortgage of
the premises upon which appellees
claim a lien, for all the interest
which T. F. Cook had, that that

Mortgage was foreclosed and the premises sold on the 29th day of January 1857 to Appellant Burgess. So that at this point the interest of Isaac Cook closed and Appellants filed their Petition Feb. 9th 57; ten days after

Appellant further insists that he should have been brought in to the Case by amendment of and not Supplemental Bill —

To this we answer that the Record does not show that all of the interest of Burgess was acquired before Appellants filed their Petition for a lien, and if so he is properly brought in by Supplemental Bill. Besides the Record shows (See pages 40 & 41) that Burgess voluntarily entered his appearance, and has made no objection by demurrer or plea, and it is too late for him to first make that objection in this Court. See *Stafford Et al vs Howlett and West* 1st Paige R. p. 200 *Lawrence vs. Bolton* 1st Paige R. p. 294 also *Fulton Bank vs. N. Y. & S. Coal Co Et al* 4th Paige 127 "

3
The appellant insists under his 7th assignment of Error that Brewster was defaulted without service. The appearance of Brewster was Entered by O. R. W. Lull Atty. See Record page 29 = Lull appears in the paper filed by him to Enter the appearance of Jones, Patrick, and Brewster, his signing the names of Jones & Patrick before his own was not necessary. Moreover, the Record Shows that Burgess rights if any rest upon those of Theodore F. Cook alone. Brewster is satisfied and makes no objection. If however he concludes to do so he can have his writ of Error within 5 years = Under the 8th assignment Burgess insists that the Court Erred in overruling his Plea to the Petition of the Appellees = Burgess plea was Replied to by Appellees in which Replication the plea of Burgess is denied and alleged to be untrue. upon the issues thus joined a trial was had, and the plea was overruled. the evidence upon which the plea was overruled not being preserved by appellant, the verdict

Stands for the Evidence = See 13 Ill. R. 530 = also 18th Ill. R. 245 =

5

The Appellant under his 10th assignment insists that the Court below Erred in refusing a motion for a continuance = There was no ground for the motion by affidavit or otherwise, the application was therefore addressed to the discretion of the Court and cannot be assigned for Error. The whole proceeding in this Case shows an Evident Effort to delay the Cause =

6

We think the allowance of interest was Correct = Our Statute Expressly gives interest on all instruments of writing. The Contract by which the money was to be paid to the Appellees in this Case was in writing = Moreover Our Statute allows interest in Case of "an unreasonable and vexatious delay of payment" What is a vexatious delay is a question of fact and might have been one of the grounds of the verdict. If however this Court thinks there should be any abatement of interest

it can be done by reforming the judgment in this Court without sending the Cause back. The verdict rendered shows that the amount of interest which was found to be $\$23\frac{3}{4}\%$. See Record page 60 = See 20th Ill. R. 174 - 13th Ill. R. p. 592 - Second Comstocks R. p. 408 =

7

Under the 14th assignment of Errors the appellant Burges insists that the foreclosure of the Mortgage under which he purchased was a bar to the Claim of appellees; to this we answer that the rights of the appellees in this Cause could not be affected by the proceedings of foreclosure, except they were made parties to such proceeding, which they were not. See Burges Petition Record 55th page - See 17th Illinois R. p. 423 =

8

Under the 15th assignment the appellant insists that it does not appear there was proof upon which to base the apportionment. To this we answer that if the appellant wished to present the insufficiency of the Evidence as a basis of a decree he

Should have the Evidence Certified to this Court. See 13th Ill. p. 530 & 18th Ill. p. 245 = But the Record does show in this Cause that on the 2nd day of October 1856 at the time Theodore F. Cook executed the mortgage on the premises that his interest in the land exclusive of the house then being Erected by the appellees was worth the Sum of \$1362, and the decree gives Burgess this whole amount before any thing Else is ^{paid}, and added to this is interest from the 2nd of October 1856 to the day of Sale. See Record pages 64, 65 and 68 —

9 Under the 16th assignment of Error the appellant Burgess insists that the Court below Erred in ~~pay-
ing~~ ^{giving} other liens to be paid before that of Burgess. The Record Shows that there were other parties who obtained judgment liens under the Lien Law at the same time against the same persons and premises as the lien was obtained in this Cause, and the Court we think very properly directed the payment of all these coequal

Mechanics Lien judgment creditors
after first paying Burgeß the sum
of \$1362, and Second the Costs of
the proceeding and Sale. In the
Cause of Stegeman Et al vs. A. McQuinn
17th Ill. p. 301 this Court say "The
land may be sold in this proceeding,
the value evolved into money, and
the money applied according to
the rights of all parties in inter-
est and before the court"

10 The appellees excepted to the decree
of the Court below in so far as it
directed the payment to William
J. Burgeß of the sum of \$1362
before anything is paid to the
appellees in this Cause, but have
assigned no errors, preferring to
have something now, than to be
longer harried and kept out of their
labor and materials which they
have put into this house -

It appears by the final decree in this
Cause that on the second day of October
1856 the appellees had done work and
furnished materials to a large
amount, yet the Court gave them
no lien whatever upon the interest

of Theodore F. Cook in the land, but gave it all to Bruggess, who bought under the foreclosure of the Mortgage given by Theodore F. Cook at this time. The Court below could have done no more for Bruggess if he had bought under the foreclosure of a Mortgage given prior even to the making of the Contract under which the Appellees in this Cause erected the brick house mentioned in Appellees petition. =

We therefore cannot resist the Conclusion that there is no Error in the Record, at ~~most~~ none which affects the Appellant Bruggess injuriously. and we think him the very last person who should complain of the ~~an~~ decree of the Court below

Geo. A. Briggs
one of the Counsel of the
Appellees

Supreme Court of the
State of Illinois

William J. Burgeß.
 Theodor F. Cox & Co.
 Appellants
 vs.

Alexander H. Heald &
 Levi H. Waterhouse
 Appellees.

Written argument
 of Geo. A. Ingalls
 one of the Counsel
 for the Appellees

Filed May 3, 1859
 L. Leland
 Clerk