

No. 13598

Supreme Court of Illinois

Renfrew^w~~ms~~ et al

vs.

Gregg

71641  7

567
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 132.

1857

Repaired

Repaired
75

Gregg

ll

13578

APPELEES BRIEF.

In the Supreme Court, at Ottawa.

APRIL TERM, A. D. 1860.

John Renfrew, and
Alexander Crozier,
vs.
Richard Gregg,
Lorin G. Pratt,
Norman H. Purple,
Wm. L. Ewing,
Albert G. Edwards,
Nathan Cole,
Phillip W. Hermans,
Frederick Bathold, and
Edward F. Nowland.

Petition for Mechanics Lien.
Appeal from Peoria.

1st. Petition avers the time of making the contract—the time for performing the same—the date when it was performed—the time for payment, under the contract, and that the petition was filed within six months after the last payment became due, under the contract.

2ND. As to appellant's first point made, that the petition is uncertain, unintelligible and contradictory, because it avers the contract was for the manufacture of boilers, flues and fire-fronts, and afterwards includes, as being done under the contract, a large amount of work, materials and repairs furnished and done for both old and new boilers, which could not possibly have been anticipated when the contract was made. But one suggestion is nec-

3
 essary to expose the fallacy and evident design of appellant to foist in unwarrantable positions in his abstract, viz: That in no place does the petition aver that the contract was for repairs to new boilers, or any new machinery furnished by petitioners, but it everywhere states explicitly, that the contract was for making and furnishing new boilers, flues, fire-fronts, &c., and for repairing old boilers, machinery, &c., which repairs could very easily be, and were anticipated, at the time of the making of the contract, because the old boilers were, at that time, lying useless in Gregg's distillery.

3D. As to the second point in appellant's brief. The petition shows clearly, that besides making and furnishing new boilers, &c., the contract embraced repairs on old boilers and machinery: for all of which, petitioners charged the sum of \$4,949 51—and not \$4,959 51, as in appellant's abstract:—and Gregg's set off, claimed in his answer, of \$3,199 46, being disproved by witnesses on trial, the jury found, after allowing all credits and set offs, for petitioners the sum of \$3,302 79. Appellants set off, as claimed in his answer, being based on the assumption that the boilers furnished by petitioners were of inferior quality and workmanship, and that therefore, petitioners were chargeable with the expenses incurred by appellant in putting said boilers in good order, whereas, the jury found that the articles furnished and work done were of good quality and workmanship, and that the expenses incurred by Gregg was the result of the negligence of his own employees in his distillery.

///
 4TH. As to the third point in appellant's brief. The only issue on trial was the quality of the materials of the new boilers and their workmanship—the answer admitting the contract substantially as charged in petition, and failing to put in issue any of the articles furnished, or work done, other than the new boilers.

The instructions were confined, as they should be, to the matters in issue. The instructions should be taken and construed together and with reference to each other.

5TH. As to the fourth and fifth points made in appellant's brief: The new boilers only, were put in issue.

Petitioner's first instruction does not assume that the jury must find for petitioner's, whether the other materials are paid for or not.

The instructions must be construed together, and with reference to each other.

6TH. As to appellant's sixth and seventh points. The only issue on trial, was whether the new boilers were of good material and workmanship, or not. The answer admits the averments in petitioner's bill as to the quantity and goodness of all the articles, other than the new boilers.

LINDSAY & FOWLER,
Attorneys for Appellees.

182
Renzow Ho.
vs.

Gregg et al.

Brief For
Appellee

Filed Apr 23. 1860

A. Leland
Clerk

13598

APPELEES BRIEF.

In the Supreme Court, at Ottawa.

APRIL TERM, A. D. 1860.

John Renfrew, and
Alexander Crozier,

vs.

Richard Gregg,
Lorin G. Pratt,
Norman H. Purple,
Wm. L. Ewing,
Albert G. Edwards,
Nathan Cole,
Phillip W. Hermans,
Frederick Bathold, and
Edward F. Nowland.

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LINDSAY & FOWLER,
Attorneys for Appellees.

132.
Reynolds Ho.
W.

Gregg Et al.

Brief For
Appellees

Filed Apr 23, 1860

Leland
Clerk

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

JOHN RENFREWS, and
ALEXANDER CROZIER,

v.

RICHARD GREGG,
LORIN G. PRATT,
NORMAN H. PURPLE,
WILLIAM L. EWING,
ALBERT G. EDWARDS,
NATHAN COLE,
PHILIP W. HERMANS,
FREDERICK BATHOLD,
EDWARD F. NOWLAND.

Petition for Mechanic's
Lien.—Appeal from Pe-
oria.

Page of
Record.

1-9 THE petition shows that about the 2d of March, A. D. 1857, petitioners made a contract with Gregg to manufacture boilers, flues, fire-fronts, &c., for a distillery. That the greater part of the articles were to be delivered as soon as they could be manufactured, and the residue between the 1st of April and the 25th of July, 1857, and petitioner agreed to send up hands to assist in putting up the machinery. The articles were shipped according to the contract, and were received and accepted by Gregg. That in August, A. D. 1857, under the contract, petitioners furnished materials and did work, repairing old boilers, as per statement marked "AA."

That under the contract in August, 1857, petitioner furnished materials and repaired old boilers for Gregg, which were used and put up in the distillery. On this account, and on account of other repairs, petitioner filed the following as part of his account under contract of 2d March, A. D. 1857 :

AUGUST 13.		
	Repairing old boilers, 30½ days, \$3 50.....	\$106 75
	Drayage.....	50
P. 14	Repairing new boilers, 95¼ days, less time putting patch on imperfect sheet, \$3 50.....	322 87
	Your proportion of time going to and from Peoria, 6¼ days, \$3 50.....	21 88
	Your proportion of boiler makers going to, and from, and at Peoria.....	111 39
		\$587 39

4-5 Petition further sets out a list of articles furnished, as is alleged, at an agreed price, amounting to \$3,975.89. These appear to be the only items to which the original contract, as stated, could apply.

The petition then sets out the entire account and claim, including the agreed items, and adding others, making the whole claim amount to \$4,959.51.

17-19 Gregg filed his answer, setting up and showing that he had paid and had a just set-off of \$3,199.46.

24 The jury found a verdict for petitioner for \$3,302.79. Defendant entered a motion for a new trial, which was overruled, and a decree was rendered for petitioner for the sale of the premises.

25-29 Gregg filed a bill of exceptions, in which it is stated that petitioner offered evidence tending to prove his account, that the materials were good and the work well done, and that the injury 29-39 to the boilers was occasioned by improper management on the part of Gregg. That Gregg gave evidence tending to prove the amount of his account attached to his answer.

At the request of the petitioner the court instructed the jury: 34-5 "If the jury believe from the evidence that the plaintiffs furnished the materials and the labor done, as set out in the petition filed herein, and that the boilers furnished were of good material and workmanship when delivered, and that said articles of machinery were put up in the distillery of the defendant, and that the prices charged for said articles and said labor done are reasonable and the usual prices, they will find for the plaintiff.

"2d. If the jury believe from the evidence that said boilers

were injured in the possession of defendant (Gregg) by himself or any person in his employ, they will find for the plaintiffs.

"3d. The warranty of the plaintiff is only an implied warranty, and only required the plaintiffs to deliver to Richard Gregg, at
35 Peoria, the said three four-flued boilers of good sound materials and of good workmanship, and in good order.

"4th. If the jury believe from the evidence that said boilers were not of good material and workmanship, the measure of damages will be the amount it cost to put said boilers in a good, sound condition.

"5th. If the jury believe from the evidence that said boilers had been burnt or otherwise injured by fire, by any of the hands in the employ of defendant, they will find for the plaintiff the value of said boilers when they were delivered to Richard Gregg.

"6th. That if the jury believe from the evidence that said
45 boilers were made of good materials and good workmanship, when delivered to Richard Gregg, and that said boilers were injured by the carelessness and negligence of the agents or hands of defendant, they will find for the plaintiff all the costs and charges by plaintiff expended in the repairs made on the boilers at defendant's request."

The defendant excepted to these instructions and appealed to this Court.

ERRORS ASSIGNED.

1. Overruling motion for a new trial.
2. Giving instructions asked by petitioner.
3. Rendering the decree upon the petition and finding of the jury.
4. Not dismissing the petition.

POINTS.

1. The petition is uncertain, and unintelligible, and contradictory. It fixes the time of making the contract on the 2nd of March, 1857, for the manufacture of boilers, flues, and fire-fronts for a distillery; and afterwards includes, as being done under the contract, a large amount of work, materials and repairs, furnished

and done for old and new boilers, which could not possibly have been anticipated when the contract was made.

2. The damages were excessive; allowing the petitioner's whole account—\$4,959.51. The defendant's set-off, as proved by his answer and other evidence, is \$3,199.46, and the difference would only be \$1,760.05. But the petition shows, if it shows any thing clearly, that nothing but the boilers, flues and fire-fronts were embraced in the contract, and no contract whatever is set out as to the residue of the claim.

3. The petitioner's instructions were all wrong. All, but the last, assume that if the material of the boilers was good and the work well done, the petitioner is entitled to a verdict whether defendant is entitled to be allowed payments and set-off or not.

4. The first instruction assumes that if the boilers are good, the plaintiff must recover—whether the other materials are worth any thing or not, &c., or paid for or not.

5. The second instruction is, if the boilers were injured in Gregg's possession, the plaintiff must recover.

6. The third is, that the warranty being ONLY an implied one, it only required the petitioner to deliver good boilers—all the other materials might be worthless.

7. All the other instructions are alike erroneous and directly calculated to mislead the jury.

N. H. PURPLE,
Attorney and Solicitor for Appellant.

132.
Empire Crossin
as
Gregg & others

abstract &
Points

Filed Apr. 18, 1860

L. Leland
Clarke

SUPREME COURT, APRIL TERM, 1860.

JOHN RENFREW, et. al., }
 ^{vs.} } MECHANICS' LIEN.
RICHARD GREGG, et. al. }

APPEAL FROM PEORIA.

ARGUMENT FOR APPELLEE.

The petition sets out a contract made by plaintiffs with defendants to furnish defendant Gregg with steam boilers with the proper fixtures for his distillery, and it was also contracted that plaintiffs should make certain repairs on the old boilers then in the distillery, when the contract was made.

The averment of the contract of repairs done on old boilers, the court will find on page 8 of the record, filed in this cause, and the averment refers to the same item, *repairs on old boilers*, on page 14 of said record, in exhibit AA.

The appellant construes this averment in the petition to an averment of repairs on old and new boilers.

And as no such contract could have been anticipated or contemplated when the new boilers were purchased, that therefore the contract as declared on was inconsistent and contradictory.

The only ground for such a conclusion is this: that in exhibit AA, there are items charged for repairs to new boilers.

But as the averment in the body of the bill speaks only of old boilers, and concludes by referring to exhibit AA, the conclusion must be certain that the reference to exhibit AA is only made to substantiate the averment as made. That is, that the contract was to repair old and not new boilers.

The whole amount claimed by plaintiff was \$4,949.51. See record page 8.

The amount claimed by defendant Gregg as an offset was \$3,052.74. See record, page 16.

The amount of verdict was \$3,302.79.

The record in this cause does not give any evidence as to how the jury made their verdict; that is, how much they allowed of the plaintiff's account or how much of the defendant's.

The presumption is that the verdict of the jury was proper and just, until some evidence is presented to this court that they erred in their conclusion and that the verdict should be set aside.

And as the jury did not allow all the offset of defendant Gregg, as sworn to in his answer, in the absence of the evidence, this court will presume that the jury had evidence sufficient, under the instructions, to disprove or deny Gregg's answer in part, at least, for it is evident that a portion of his offset was allowed.

The answer to the last part of the second point made by appellant, is that the averments all refer to exhibits, to explain the articles furnished under the contract.

The instructions in this cause were drawn with reference to the issues made and the evidence introduced by plaintiff and defendant, and consequently legal and proper.

The court will observe that the answer admits the contract, substantially as set out in the petition. See record, page 17; and on page 18 avers that the boilers were unsound and leaky, and of no value, and occasioned him great damage, &c. There are no other articles specified as being damaged and worthless, except under the general head of &c.

The plaintiffs introduced proof that the articles were all sound when delivered. The defendant did not undertake to prove any of the articles defective save the boilers. The plaintiffs proved beyond any kind of doubt that Gregg's hands had burnt the boilers, and the instructions were drawn with a sole and direct reference to the issues and the evidence in the case.

And there was certainly no necessity for an instruction covering the balance of the articles furnished and the work done, when the answer contained no express denial as to the quality, and no proof whatever introduced to show them of bad quality.

It is the duty of the Circuit Court in giving and refusing instructions to look not only to the record but the evidence; and if the instructions are pertinent and

appropriate to the record or the issues made thereby and the evidence in the case, they should be given.

Hill vs. Ward, 2d Gilman, 285.

If the instructions were given with reference to the issues made by the record, and the evidence introduced on trial, the jury could not by any means have been misled by the instructions in this case.

For example, if there was no direct issue made, or no evidence introduced with reference to any of the articles furnished or work done except the steam boilers, the jury could not by any means have been led into error, because the instructions covered alone the good or bad quality of the boilers and the workmanship of the same, when there was no contest whatever before the jury about the good or bad quality of any other article furnished, or work done by plaintiff except as to the materials and workmanship of the steam boilers furnished.

The last instruction was sufficient to warrant the jury to find for defendant all of his offset which was not disproved by evidence. A large amount of Gregg's account was for money laid out and work done in repairing the boilers furnished by plaintiffs, after they had been burnt by Gregg, and the jury would certainly not make plaintiffs pay for injury and damage done to said boilers by Gregg himself or his employees or agents.

It is fair to presume from the record that the jury must at least have found a part of Gregg's offset claimed by his answer, for the plaintiff's claim was \$4,949.51. The verdict was \$3,302.00 making a difference of \$1,646.72. Showing clearly that they were not led into error by the instructions, but did allow so much of his offset in his answer as was not disproved by other testimony introduced by the plaintiffs.

In conclusion, we think that substantial justice was done in this case. The proof was clear and conclusive that the articles had been furnished and the work well done, and the contract complied with on the part of plaintiff; in fact this was not denied by defendants with the exception of the boilers spoken of, and this court we think, will presume, in the absence of evidence of the fact, that the jury acted properly and just and that the true issue in this case being alone the good or bad quality of said steam boilers, that the jury found that issue properly for the plaintiff. And we make the point where that where substantial justice has been done, the judgment or decree of the Circuit Court will not be reversed.

Newkirk vs Cone 18th Illinois, page 449.

And that this court will always presume in favor of the verdict of the jury until the contrary appears upon the records in this court.

LINDSAY & FOWLER, *for Appellees.*

132
Ransom

W
Gregg

Appellus Brief, v. 1, p. 1

Filed April 27, 1860
L. Seland
Clerk

and done for old and new boilers, which could not possibly have been anticipated when the contract was made.

2. The damages were excessive; allowing the petitioner's whole account—\$4,959.51. The defendant's set-off, as proved by his answer and other evidence, is \$3,199.46, and the difference would only be \$1,760.05. But the petition shows, if it shows any thing clearly, that nothing but the boilers, flues and fire-fronts were embraced in the contract, and no contract whatever is set out as to the residue of the claim.

3. The petitioner's instructions were all wrong. All, but the last, assume that if the material of the boilers was good and the work well done, the petitioner is entitled to a verdict whether defendant is entitled to be allowed payments and set-off or not.

4. The first instruction assumes that if the boilers are good, the plaintiff must recover—whether the other materials are worth any thing or not, &c., or paid for or not.

5. The second instruction is, if the boilers were injured in Gregg's possession, the plaintiff must recover.

6. The third is, that the warranty being ONLY an implied one, it only required the petitioner to deliver good boilers—all the other materials might be worthless.

7. All the other instructions are alike erroneous and directly calculated to mislead the jury.

N. H. PURPLE,
Attorney and Solicitor for Appellant.

Reuben Crossin
no (no 132)

Shigg & others

Abstract

2
Ind - The Damages are Excessive,

Repairs to Old Boilers in Augt 1857
and Repairs to New Boilers - Said
to have been done under the Contract
To the Amount of \$563.30 as shown
in Petitioner's bill and allowed by
the Jury in their verdict -

How is possible that this
work could have been done under the
Contract of March 2nd 1857? It was
not then anticipated that either the old
or new boilers would need repairs

The Repairing by the Petitioner over
steaming was another and separate be-
sides, and done under an entirely dif-
ferent Contract.

The whole then that Petitioner could
claim under the Contract would be
the items on page 4 & 5. amounting
to \$3975.59

All the residue of his claim even if
a just charge against Ingg not being
embraced within any Contract, set up
in the Petition cannot in this case be
allowed as a lien, against the premises
described in the Petition, thus leaving
\$973.92 not embraced in the Contract

3
Set forth in the Petition

p. 8, Record
The Petition avers p. 8 Record, that Sugg had not paid for the work and materials and that the whole sum of 4949.51 is "due and unpaid under said contract."

The Defendants answer being responsive to this allegation is Evidence of the Defendants payments and set off.

P. 15. 16
Record -
These payments as per bill filed amounted to the sum of \$3052.74 This without the allowance of any damages to Defendant would leave a balance only of \$1896.85 due from Sugg to Petitioner.

This answer of Sugg's is under oath is responsive to the allegations in the bill is competent Evidence of payment as to the amount stated.

Garrett v Stephenson Cr. 3 Gil. 267-8
Beside if I understand, rightly our position, the admission in the bill of exceptions, that the Defendant gave Evidence tending to prove his payments is an admission of the fact that they are satisfactorily proved.

Record
p. 20

4
1850
1851
Third

The Instructions are all wrong
and calculated to mislead a Jury

The 1st is almost unintelligible. I have
been something at a loss to know what
it does mean - Resorting, for construction
however to the light of surrounding cir-
cumstances, and guessing at a part
I have concluded to construe it thus.

" Of the Jury believe the Plaintiffs per-
formed the labor & furnished the material
as set out in the Petition - And that
the Boilers were of good material and
workmanship and were put up in the

3

Distillery of the Defendant — No, Stop —
 I really can not tell whether it means
 the Boilers and articles of Machinery
 or the Boilers alone, or the Articles of
 Machinery alone — which is intended
 to have been represented as put up in
 the distillery — “ And that the prices
 charged for the said Articles, (which
 Articles?) and labor are reasonable
 they will find for the Plaintiff.”

Give the Petitioner the entire benefit
 of all they can claim as being the meaning
 of the instruction most favorable to them
 and it is — “ That if the boilers were
 good & they and all the Machinery
 mentioned in the bill were put into the
 distillery, and the prices charged for
 work & labor and Machinery were fair
 reasonable and the usual prices the Plain-
 tiff is Entitled to Recover.”

In the Spirit of this instruction
 it matters not if all the residue
 of the Machinery was worthless — that
 Defendant may have sustained damage
 to twice its value thereby — That the
 whole claim might have been paid,
 for such was the defence made in
 the case — Let the instruction stand

that if the Boilers were all right
the Plaintiff must recover

Having no hope of being able to
add any thing to the natural incongru-
ity and deformity of this instruction,
I leave it to the Court, Expecting and
believing, that all Circuit Courts will
be peremptorily instructed, Not to Re-
peat the Offence.

The 2nd Instruction is quite plain.

Its true meaning could not
well have been misapprehended by
the Jury - "If the Boilers were in-
jured while in the possession of
Gregg, the Jury should find for the
Plaintiff"

I may be wrong; but
somehow I can not exactly see
clearly, how Gregg's injuring his
own Boilers in his own distillery
would give the Plaintiff a cause
of action against Gregg in this par-
ticular case. I think there is no
claim of that sort set up in the
Petition: If Plaintiff can recover at
all, they can only do so upon this cause
of action as stated and set up in

this Petition - Not upon a collateral
issue as to the quality, or use of the
materials furnished, or of the man-
ner of their treatment by Lugg after
he had received them. These things
may affect the measure of Damages
but can never be set up and insisted
upon as a Substantive cause of action.

The Jury followed this and the other
instructions and it easy to see how
they found their verdict of \$3302.79

They fill out down the Petition
full account - including all
the work done under the contract
and all not done under it \$4949.57

They allowed Defendant Cash	}	1500.00
Draft on Ewing		
44 Gate bars Returned		
1 Keg Rivets Returned		20.00
		<u>1646.72</u>
Verdict		\$3302.79

All the Residue of his accounts, though
shown to & his answers made Evidence by
law is wholly excluded

8
And independent of this it is manifest
that this verdict includes \$922.85
Not in any manner embraced or in-
cluded in any Contract whatever men-
tioned or set forth in the Petition.

The 3rd Instruction is that the waran-
ty of Petitioner being only an implied
one, is only about half. Equal to a
Regular built Express Warranty.

That being such, it only required
the delivery of the Boiler of sound ma-
terials, good workmanship & in good
Order. The Residue of the Materials Machinery
and Workmanship, Not being affected
by an implied warranty might be
Entirely useless, and in no way touch the
Merits of the Controversy

Not one Jury in a hundred upon the
reading of this instruction which would
not be misled by it; and from its
language would believe that an im-
plied warranty was less efficient
than an express one.

9

The 4th Instruction, relates to the Measure of Damages and wherein it is said that if the boilers were not of good material and workmanship the Measure of damages would be the amount it costs to put them in a good sound condition

I have Studied & Meditated much over this question of Damages and the Measure thereof in various cases - and I think I may without boasting say that I believe I know nearly as much what the law is now; as I did when I first commenced the investigation

Though I may not be able always to tell what the law is, yet I am pretty confident I can sometimes tell what it is not; and whenever I get particularly befogged I go back to the case of Green vs Mann 11th Ill 614 for a lucid explanation of the entire subject matter. I refer the Court to this case for a clear and Concise opinion upon these questions and as conclusive of the Erroneous Character of this instruction

What it cost Merely to put said boilers in a good sound condition might not cover one fourth or one

10 ¹⁰ Contra of the damage immediately resulting to the Defendant. His Distillery might have remained idle, his haul out of Employment and on Expense, His own time lost, and many other matters and things might properly be taken into the account as Damages immediately resulting from such defective Machining.

The 5th Instruction is if possible still more objectionable -

It is in substance that if the boiler was injured in Gregg's possession the Jury must find for Plaintiff the value of the boiler when they were delivered to Gregg

If the instruction had been that the Jury might allow the Plaintiff in the adjustment of the accounts and claims of the parties; so much so - It might not be so very objectionable - But when upon the particular hypothesis given, the instruction allows, not only that the Plaintiff is entitled to recover, but also that the Jury must find for the Plaintiff the value of a particular article, it is a double error and wholly incurable -

11
The Instruction is no better.

Like all the rest it required the Jury to find for the Plaintiff, assuming all the time that the Jury can find no other way. But here in this last instruction (thanks fortune there are no more) - In addition to all abridgments before given to the Jury as law, the Jury is further advised that in this proceeding and under this Petition, and under the contract set out in the Law, the Plaintiff can recover for Repairs on boilers never mentioned or dreamed of at the time that the Contract was made; Thus attempting to bring in under this Petition and Contract herein mentioned Repair work and labor &c which could not by possibility have been anticipated at the time of the making of said Contract. And no other Contract whatever is set up under which Petitioner claimed their law.

For all these Reasons the Appellant contends, that this Judgment ought to be reversed

J. C. Apple
for Appellant

110132
Richard Trigg

Reverend Address

Abstract, Points
& Arguments

M. P. Trigg

Filed April 30. 1860

L. Leland
Clerk

APPELEES BRIEF.

In the Supreme Court, at Ottawa.

APRIL TERM, A. D. 1860.

John Renfrew, and
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vs.

Richard Gregg,
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Appeal from Peoria.

1st. Petition avers the time of making the contract—the time for performing the same—the date when it was performed—the time for payment, under the contract, and that the petition was filed within six months after the last payment became due, under the contract.

2nd. As to appellant's first point made, that the petition is uncertain, unintelligible and contradictory, because it avers the contract was for the manufacture of boilers, flues and fire-fronts, and afterwards includes, as being done under the contract, a large amount of work, materials and repairs furnished and done for both old and new boilers, which could not possibly have been anticipated when the contract was made, But one suggestion is nec.

essary to expose the fallacy and evident design of appellant to foist in unwarrantable positions in his abstract, viz: That in no place does the petition aver that the contract was for repairs to new boilers, or any new machinery furnished by petitioners, but it everywhere states explicitly, that the contract was for making and furnishing new boilers, flues, fire-fronts, &c., and for repairing old boilers, machinery, &c., which repairs could very easily be, and were anticipated, at the time of the making of the contract, because the old boilers were, at that time, lying useless in Gregg's distillery.

Page 3 *

3D. As to the second point in appellant's brief. The petition shows clearly, that besides making and furnishing new boilers, &c., the contract embraced repairs on old boilers and machinery: for all of which, petitioners charged the sum of \$4,949 51—and not \$4,959 51, as in appellant's abstract:—and Gregg's set off, claimed in his answer, of \$3,199 46, being disproved by witnesses on trial, the jury found, after allowing all credits and set offs, for petitioners the sum of \$3,302 79. Appellants set off, as claimed in his answer, being based on the assumption that the boilers furnished by petitioners were of inferior quality and workmanship, and that therefore, petitioners were chargeable with the expenses incurred by appellant in putting said boilers in good order, whereas, the jury found that the articles furnished and work done were of good quality and workmanship, and that the expenses incurred by Gregg was the result of the negligence of his own employees in his distillery.

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4TH. As to the third point in appellant's brief. The only issue on trial was the quality of the materials of the new boilers and their workmanship—the answer admitting the contract substantially as charged in petition, and failing to put in issue any of the articles furnished, or work done, other than the new boilers.

The instructions were confined, as they should be, to the matters in issue. The instructions should be taken and construed together and with reference to each other.

5TH. As to the fourth and fifth points made in appellant's brief. The new boilers only, were put in issue.

Petitioner's first instruction does not assume that the jury must find for petitioner's, whether the other materials are paid for or not.

The instructions must be construed together, and with reference to each other.

6TH. As to appellant's sixth and seventh points. The only issue on trial, was whether the new boilers were of good material and workmanship, or not. The answer admits the averments in petitioner's bill as to the quantity and goodness of all the articles, other than the new boilers.

LINDSAY & FOWLER,
Attorneys for Appellees.

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Benjamin H. Co.
vs.

Gorey et al.

Appellate Brief

Filed Apr 25. 1860

Leland
Clark

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

JOHN RENFREWS, and
ALEXANDER CROZIER,

v.

RICHARD GREGG,
LORIN G. PRATT,
NORMAN H. PURPLE,
WILLIAM L. EWING,
ALBERT G. EDWARDS,
NATHAN COLE,
PHILIP W. HERMANS,
FREDERICK BATHOLD,
EDWARD F. NOWLAND.

Petition for Mechanic's
Lien.—Appeal from Pe-
oria.

Page of
Record.

1-9

THE petition shows that about the 2d of March, A. D. 1857, petitioners made a contract with Gregg to manufacture boilers, flues, fire-fronts, &c., for a distillery. That the greater part of the articles were to be delivered as soon as they could be manufactured, and the residue between the 1st of April and the 25th of July, 1857, and petitioner agreed to send up hands to assist in putting up the machinery. The articles were shipped according to the contract, and were received and accepted by Gregg. That in August, A. D. 1857, under the contract, petitioners furnished materials and did work, repairing old boilers, as per statement marked "AA."

That under the contract in August, 1857, petitioner furnished materials and repaired old boilers for Gregg, which were used and put up in the distillery. On this account, and on account of other repairs, petitioner filed the following as part of his account under contract of 2d March, A. D. 1857 :

AUGUST 13.		
	Repairing old boilers, 30½ days, \$3 50.....	\$106 75
	Drayage.....	50
p. 14	Repairing new boilers, 95¼ days, less time putting patch on imperfect sheet, \$3 50.....	322 87
	Your proportion of time going to and from Peoria, 6¼ days, \$3 50.....	21 88
	Your proportion of boiler makers going to, and from, and at Peoria	111 39
		\$557 39

4-5 Petition further sets out a list of articles furnished, as is alleged, at an agreed price, amounting to \$3,975.89. These appear to be the only items to which the original contract, as stated, could apply.

The petition then sets out the entire account and claim, including the agreed items, and adding others, making the whole claim amount to \$4,959.51.

17-19 Gregg filed his answer, setting up and showing that he had paid and had a just set-off of \$3,199.46.

24 The jury found a verdict for petitioner for \$3,302.79. Defendant entered a motion for a new trial, which was overruled, and a decree was rendered for petitioner for the sale of the premises.

25-29 Gregg filed a bill of exceptions, in which it is stated that petitioner offered evidence tending to prove his account, that the materials were good and the work well done, and that the injury 29-39 to the boilers was occasioned by improper management on the part of Gregg. That Gregg gave evidence tending to prove the amount of his account attached to his answer.

At the request of the petitioner the court instructed the jury :
 34-5 "If the jury believe from the evidence that the plaintiffs furnished the materials and the labor done, as set out in the petition filed herein, and that the boilers furnished were of good material and workmanship when delivered, and that said articles of machinery were put up in the distillery of the defendant, and that the prices charged for said articles and said labor done are reasonable and the usual prices, they will find for the plaintiff.

"2d. If the jury believe from the evidence that said boilers

were injured in the possession of defendant (Gregg) by himself or any person in his employ, they will find for the plaintiffs.

"3d. The warranty of the plaintiff is only an implied warranty, and only required the plaintiffs to deliver to Richard Gregg, at 35 Peoria, the said three four-flued boilers of good sound materials and of good workmanship, and in good order.

"4th. If the jury believe from the evidence that said boilers were not of good material and workmanship, the measure of damages will be the amount it cost to put said boilers in a good, sound condition.

"5th. If the jury believe from the evidence that said boilers had been burnt or otherwise injured by fire, by any of the hands in the employ of defendant, they will find for the plaintiff the value of said boilers when they were delivered to Richard Gregg.

"6th. That if the jury believe from the evidence that said 45 boilers were made of good materials and good workmanship, when delivered to Richard Gregg, and that said boilers were injured by the carelessness and negligence of the agents or hands of defendant, they will find for the plaintiff all the costs and charges by plaintiff expended in the repairs made on the boilers at defendant's request."

The defendant excepted to these instructions and appealed to this Court.

ERRORS ASSIGNED.

1. Overruling motion for a new trial.
2. Giving instructions asked by petitioner.
3. Rendering the decree upon the petition and finding of the jury.
4. Not dismissing the petition.

POINTS.

1. The petition is uncertain, and unintelligible, and contradictory. It fixes the time of making the contract on the 2nd of March, 1857, for the manufacture of boilers, flues, and fire-fronts for a distillery; and afterwards includes, as being done under the contract, a large amount of work, materials and repairs, furnished

and done for old and new boilers, which could not possibly have been anticipated when the contract was made.

2. The damages were excessive; allowing the petitioner's whole account—\$4,959.51. The defendant's set-off, as proved by his answer and other evidence, is \$3,199.46, and the difference would only be \$1,760.05. But the petition shows, if it shows any thing clearly, that nothing but the boilers, flues and fire-fronts were embraced in the contract, and no contract whatever is set out as to the residue of the claim.

3. The petitioner's instructions were all wrong. All, but the last, assume that if the material of the boilers was good and the work well done, the petitioner is entitled to a verdict whether defendant is entitled to be allowed payments and set-off or not.

4. The first instruction assumes that if the boilers are good, the plaintiff must recover—whether the other materials are worth any thing or not, &c., or paid for or not.

5. The second instruction is, if the boilers were injured in Gregg's possession, the plaintiff must recover.

6. The third is, that the warranty being ONLY an implied one, it only required the petitioner to deliver good boilers—all the other materials might be worthless.

7. All the other instructions are alike erroneous and directly calculated to mislead the jury.

N. H. PURPLE,
Attorney and Solicitor for Appellant.

¹³²
Receipts

to
Sugg's

Abstract
& Points

Filed Apr. 18. 1860

G. Leland
Clerk

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

JOHN RENFREWS, and
ALEXANDER CROZIER,

v.

RICHARD GREGG,
LORIN G. PRATT,
NORMAN H. PURPLE,
WILLIAM L. EWING,
ALBERT G. EDWARDS,
NATHAN COLE,
PHILIP W. HERMANS,
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Petition for Mechanic's
Lien.—Appeal from Pe-
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"6th. That if the jury believe from the evidence that said 45 boilers were made of good materials and good workmanship, when delivered to Richard Gregg, and that said boilers were injured by the carelessness and negligence of the agents or hands of defendant, they will find for the plaintiff all the costs and charges by plaintiff expended in the repairs made on the boilers at defendant's request."

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and done for old and new boilers, which could not possibly have been anticipated when the contract was made.

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N. H. PURPLE,
Attorney and Solicitor for Appellant.

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Rufus S. Allen
vs
Gregg S. Allen

Abstracts
& Points

Filed Apr. 18. 1860

L. Leland
Clerk
L

Recit: Remembered that heretofore to wit on the seventeenth day of February in the year of our Lord one thousand eight hundred and fifty eight; there was filed in the office of the clerk of the Circuit Court within and for the County of Peoria in the State of Illinois a petition which with the precipe for summons, security for costs & exhibit thereto attached is in the words and figures following to wit:

Petition

"To the Honorable the judges of the 16th Judicial Circuit in the State of Illinois in and for the County of Peoria.

The petition of John Kenfrew and Alexander Crozier of the City of Saint Louis in the State of Missouri, surviving partners of the firm of Kenfrew, Crozier & Pomeroy shews, that heretofore to wit on or about the second

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day of March A.D. 1857 one Richard Gregg of the City and County of Peoria in the State of Illinois made and entered into a contract and agreement with your petitioners and the said Pomeroy since deceased them being the firm of Renfrew Crozier & Pomeroy whereby they the said Renfrew Crozier & Pomeroy contracted and agreed with the said Gregg to manufacture make and deliver to him said Gregg at Peoria aforesaid to be erected placed and put in and about a certain distillery owned by said Gregg hereinafter described the boilers, flues fire fronts and articles with prices annexed represented and shown on the statement and account of the same hereto attached as exhibit "A" and made part hereof which said exhibit and account also shows the nature, quantity amount and value of the work & labor done for said Gregg and which was to be done under said contract by said Renfrew Crozier & Pomeroy in and about the ~~premises~~ making of said Boilers, Flues, machinery and other articles.

They show that by said contract the greater part of articles to be delivered, were to be delivered to said Gregg at Peoria aforesaid in the first part of April 1857 or so soon after the making of said contract as the said Renfrew Crozier & Pomeroy could in the ordinary course of their business manufacture and deliver the same at Peoria it was also agreed by said contract that said Renfrew Crozier & Pomeroy should send up from Saint Louis boiler men to assist & put in & set up in the distillery building of said Gregg, the said boilers, flues, machinery, fixtures

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and other articles aforesaid for the purpose of being used in said distillery.

And that under said contract the balance of said articles machinery &c were to be made and delivered to said Gregg at Peoria between the first part of April 1857 & the 25th day of July 1857, along as the work progressed.

Petitioners show that according to the terms and conditions of said contract they did ship from Saint Louis and deliver to said Gregg at Peoria, said Boilers and the most of the machinery, articles, flues and fixtures in the first part of April 1857 all of which were received and accepted by the said Richard Gregg.

Petitioners show that all the balance of said articles pieces fixtures and machinery were made and manufactured by petitioners under said contract and duly delivered to said Gregg at Peoria along as the work progressed between the time last mentioned to wit: the first part of the month of April 1857 and the 25th day of July 1857 all of which articles and other pieces were duly received and accepted by said Richard Gregg.

Petitioners show that they did in the month of August 1857 under said contract furnish materials and do work repairing old boilers for said Gregg to be put up and used & which were put up and used in said distillery to a large amount as represented and shown in the account and statement marked exhibit "A."

Petitioners show that by the terms and tenor of said contract your petitioners were to manufacture and

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 deliver to said Gregg said Boilers and other articles necessary to finish and put in operation the distillery of said Gregg by which contract your petitioners were to make and deliver the said boilers flues and other principal articles in the early part of April 1857 to enable said Gregg to commence putting the same up in his distillery and such other work & labor and materials and articles as were necessary to complete the work and set in operation said distillery were to be made by petitioners furnished and delivered along from time to time as the said Gregg should want them to be used in the progress of his work all of which articles furnished work and labor done under said contract was done and furnished under said contract and all of which is fully stated in items in said bill marked Exhibit "A" for certainty and hereby referred to and made part hereof.

Petitioners show that all of the following articles mentioned in said account were agreed under said contract to be furnished said Gregg at the following prices to wit:

3. 48 in Boilers 26 ft. $\frac{7}{8}$ in flues all $\frac{1}{4}$ in Irons	\$2939.49
114 grate bars	126.72
1 steam drum	98.10
1 wood supply pipe	127.35
1 wood receiver	127.35
Pine fronts for 3. 48 boilers	194.25
3 Boiler stands	12.15
3 Back Plates	28.80

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1 back bar bearer	11.15
1 safety valve complete	23.00
2 mud valves complete	34.00
1 stop valve "	12.00
1 set breeching	110.00
7 G. Gauge cocks	9.63
2 bars for top of after end of boiler	6.00
1 breast bar for breeching	11.00
3 bolts for do	.90
10 set screws for top of boiler	2.00
3. 16 in wood-iron stems 5/16 in iron	39.00
3 12 " " " " " "	33.00
3. 10 " " " " " "	30.00

Making in the aggregate for said last mentioned articles the sum of three thousand nine hundred and seventy five dollars and eighty nine cents.

The show that for all the rest of the items articles and charges mentioned in said exhibit "A.A" the said Gregg agreed to pay petitioners therefor whatever the same were reasonably worth and petitioners aver that the same were and are reasonably worth the sum and sums respectively charged and carried out and set opposite each charge on said exhibit "A.A".

Petitioners show that the whole amount of the work and labor done, machinery, fixtures and articles furnished and delivered to the said Gregg and put up in said distillery under said contract including the said sum for articles agreed upon as aforesaid was,

6 and is four thousand nine hundred and forty nine dollars and fifty one cents which said last mentioned sum of money the said Gregg agreed and became and is liable to pay to your Petitioners for said labor and articles under the terms and provisions of said contract.

Petitioners show that by the terms of said contract the said Gregg agreed to pay therefor said last named sum, one half of which was to be paid when the said boilers, flues and principal part of said articles were delivered and the balance to be paid in six months from said time of delivery and that by said contract the last payment was due on the 5th day of October 1857 to wit: One half of said consideration money aforesaid.

Petitioners show that the said Richard Gregg at the time of said contract being made was, has ever since been and is now the owner in fee of the following described real estate being the same upon which the said distillery of the said Gregg is situate to wit: all that part of the North East quarter and the south east quarter of section number seventeen (17) in township No. eight (8) north range No. eight (8) east of the fourth principal meridian in Peoria County Illinois described as follows to wit: Beginning at a stone on the south east side of the Peoria & Equawka Rail Road N. $49^{\circ} 50'$ east from where the line running east from the center of said section No. 17 intersects the south east line of the Peoria and Equawka Rail Road, thence on the line of said Rail Road 7 chains and 78 links to a stone set for corner, thence south $40^{\circ} 10'$ east

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17 chains & 12 links to a stone set upon the bank of the Illinois river; thence south $32^{\circ} 30'$ west 7 chains & 97 links to a stone on the bank of the Illinois river, thence north $40^{\circ} 10'$ west 16 chains to the place of beginning, containing twelve and one half acres be the same more or less, and being the same land conveyed by Edward F. Nowland and wife to said Gregg on the 13 day of May 1856.

That all of said articles materials machinery &c and work and labor done as aforesaid were made furnished and done under said contract as aforesaid for the said Richard Gregg in and about and for the use of said distillery.

That the said petitioners in all things fully complied with their part of said contract on their part to be done and performed that said Gregg accepted and received said articles work and labor.

And petitioners state and aver that all of said articles mentioned in said bill of particulars and all articles furnished by said petitioners under contract to and with the said Richard Gregg defendant and furnished to him were placed in and used and became a part of the said distillery owned by the said defendant situated and erected on the premises described as aforesaid.

Petitioners show that on the 29th day of September 1857 the said Richard Gregg executed to Norman H. Purple and Loren G. Pratt a certain deed of conveyance conveying said premises in trust to pay certain creditors therein named composing the firm of

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William L. Ewing & Co, which last named firm is composed of the following named persons to wit: William L. Ewing, Albert G. Edwards, Nathan Cole, Philip W. Heermans & Frederick Berthold.

Petitioners ask that said last named persons may be made parties defendant herein.

They show that Edward F. Nowland has some interest in said premises as mortgagor from said Richard Gregg and they ask that said Nowland may be made a party defendant hereto.

Petitioners show that they have a lien upon said distillery and premises above described by virtue of the Statute in such case made and provided.

Petitioners show that the said Richard Gregg has not paid said sum of money so due for said work and labor materials articles machinery &c but that the said sum to wit: the sum of four thousand nine hundred forty nine dollars and fifty one cents is now due and unpaid under said contract.

Petitioners therefore pray that the said Richard Gregg, Edward F. Nowland, Norman H. Purple, Bron G. Pratt, William H. Ewing may be summoned herein and that they and each of them may be required jointly or severally to answer the matters and things aforesaid as the law requires and that upon a final hearing of this cause this Honorable Court may make a decree in favor of petitioners for the amount found due, and that the lien of your petitioners in the premises may be enforced and that said premises

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may by such order and decree be required to be sold
to satisfy such claims and indebtedness of your petitioners
according to the Statute in such case made and provided
and that petitioners may have such other and further relief
in the premises as shall be right and just and they will
ever pray &c

Renfrew & Crozier for
Renfrew Crozier & Pomeroy
per Lindsay & Lander their attys.

State of Illinois } Peoria Circuit Court
Peoria County } March term 1858

John Renfrew & Alexander Crozier
surviving Partners of the late firm
of Renfrew Crozier & Pomeroy

vs

Mechanics Lien

Richard Gregg Edward F. Nowland
Norman H. Purple Loren G. Pratt
William L. Ewing Albert G. Edwards
Nathan Cole Philip W. Heermans
Frederick Barthold

Clerk of said Court please issue
summons in the above entitled cause to said defendants
pursuant to Statute &c returnable to said term
Lindsay & Lander for petitioners

John Renfrew & Alexander Crozier
Surviving partners of the late firm
of Renfrew, Crozier & Pomeroy

Richard Gregg Edward F. Howland
Norman H. Pople Loren G. Pratt
William L. Ewing Albert G. Edwards
Nathan Cole Philip W. Heermans
Frederick Barthold

We do hereby enter ourselves security
for costs in this cause and acknowledge ourselves bound to
pay or cause to be paid all costs which may accrue in this
action either to the opposite party or to any of the officers
of this court in pursuance of the laws of this State.

Dated this 17th day of February 1858

Henry Lander
John T. Lindsay

Exhibit "A"

Richard Gregg Esqr. To John Renfrew Alexander Crozier and
Augustus P. Pomeroy doing business under the name style & firm
of Renfrew Crozier & Pomeroy Dr.

1857
Jan'y 16

6 doors & lining

545 5 27 25

6 fire boxes

307 " 15 35

Mar 17

2 thrattle pipes

246 5 12 30

2 laps for do

62 3 10

18

2 arches & 4 columns for arches

57 16 9 12

44 grate bars

3168 4 126 72

11	2 hand wheels for arches		37	5	1 85
23	2 throttle valve stems		17	16	2 72
	2 throttle valves		14 1/2	50	7 25
31	1 pipe		27 1/2	5	13 83
	1 blind flange for do		15	"	75
April 2	1 steam Drum				98 10
	1 wood supply pipe				127 35
	1 mud receiver				127 35
	3 seats for do		177	5	8 85
	Hauling boilers 16.50 drayage on shipment #2				20 70
	Insurance on shipment				20 75
14	Drayage " "				30
	Insurance				1 55
18	1 force pump		316	5	15 80
	fittng up do 1 1/2 days 3.50				5 25
	drilling 18 holes in do		10		1 80
	" & tapping 2		20		40
	Plug for bottom of do				16
	Work for do				2 00
	2 Lead gaskets		4	14	56
	Boring out chamber for stuffing box				1 75
	14 3/4 bolts for pump		22		3 08
	turning valves & seats				3 00
	chucking stuffing box & turning do				1 50
	" Ring for do				35
	turning plunger 1 day				4 50
	pling up wrist 1/4 day 3.50				88
	2 flanges for pump		16	5	80

12

2 valves & seals for force pumps	24	50	12.00
1 brass ring " " " plunger 2 1/2 days			1 13
1 stuffing box balls		14	1 26
1 plunger for pump	438	5	6 85

21

3 48 in boilers 26 ft. 4/14 in flues all 1/4 in iron			2939 49
five fronts for 3 48 in boilers			294 25

April 21

3 boiler stands			12 15
3 back plates			28 80
1 " bar bearer			11 15
1 safety valve complete			23 00
2 mud valves			34 00
1 stop valve			12 00
1 set breeching			110 00
7 large cocks			9 63
2 bars for tap after end of boiler			6 00
1 breast bar for breeching			11 00
3 balls for do			90
10 set screws for top of boiler			2 00
3 16 in wood iron stems 5/16 in iron	13 f.		39 00
3 12 in wood iron stems 5/16 in iron	11 f.		33 00
3 10 " " " " " "	10 f.		30 00

22

boring throttle pipes			2 00
drayage on shipment			20
insurance			25

23

Boring out throttle pipes 1 3/4 days 4.50			7 87
" & turning 2 caps & 2 stuffing boxes 1			4 50
chucking 2 hand wheels 2/10 day 4.50			90
" 2 arches 6/10			2 70

13

Turning & chaming 2 stems & fitting to valve & wheels & turning arches 1 1/2 days 4.50			6	75
turning 2 valves & caps & 2 guides				7 50
stuffing box bolts		25		1 00
turning do 5/2 hours		45		1 57
flaming lower flanges on throttle pipes				
flanged on motor pipe 3/4 days			5f.	3 75
fitting up altogether 4 3/4 days 4.50				21 38
drilling throttle pipes				1 00
10 copper rivets				80
10 3/4 bolts				2 50
2 lead gaskets 5/2		14		49
drayage on shipment				40
insurance				80
29 1 keg 1 3/8 Boiler rivets	200	10		20 00
8 3/4 bolts		22		1 76
making pattern for of pipe for throttle to stand on & born box 1 1/4 days 3.50				6 13
stuff " do 37 ft		4		1 48
6 fire boxes for old front	434	5		21 70
drayage				30
difference between 3 in. safety valve for end of steam drum seat				14 55
April difference between 2 1/2 stop valve estimable for 3 in do seat				4 50
June 30 Freight on grate bars from Peoria pr. Mr. Challenge				4 75
July 3 2 sheets Boiler iron	156	8		12 48
bending do				50

15	2 sheets boiler iron	155	8	12	40
	Banding do				50
22	Cash for Telegraphic Dispatch			1	30
23	2 sheets boiler iron	216	8	17	28
	Boiler Rivets	100	12	12	00
	Drayage				40
Aug. 13	Repairing old boilers 30 1/2 days 3.50			106	75
	Boiler Rivets	25	12	3	00
	drayage				50
	Repairing new boilers 95 1/4 days less time				
	putting patch on imperfect sheet - } 9 1/4 day 3.50	322	87		
	your proportion of time going to and from Peoria 6 1/4 days 3.50			20	88
	your proportion of expenses of boiler makers going to and from and at Peoria			111	39.
					\$ 4949.51.

And afterwards there was issued out of the clerks office of said Court under the seal thereof a Summons in the above cause which has been lost and cannot be found amongst the papers on file in the said clerks office

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And afterwards to wit on the 16th day of November 1858 the defendant Richard Gregg filed in the Clerks office of said Court his demurrer ^{to plaintiffs application} in the above cause which is in the words and figures following to wit:

John Kenfrew & others
vs
Richard Gregg & others } In the Circuit Court of
Peoria County
Petition for Lien

And now comes the said Richard Gregg and says that the said petitioners Petition and the matters and things therein contained are not sufficient in law for the said petitioner to have and maintain his said petition against the said defendant and that he is not bound to answer the same & this he is ready to verify, wherefore he prays &c
N. H. Purple atty for said deft.

And afterwards to wit on the 18th day of November A D 1858 there was filed in the Clerks office of said Court the answer of defendants to petitioners petition in above cause which is in the words & figures following to wit:
Peoria Nov. 16th 1858

Kenfrew Crozier & Pomeroy
Dr. To Richard Gregg

1857		
Apr. 28	To Draft on Wm L. E. & Co. St Louis	\$1500 00
June 20	" Cash pd John O'Donnell	20 00
22	" " " Causting boiler	5 00
July 6	" " " John O'Donnell	27 00

July 11	"	Cash paid John O'Donnell	20 00
18	"	" " " " "	5 00
20	"	" " " " "	10 00
25	"	" " " " "	30 00
"	"	" " " labor on boiler	14 00
Aug 4	"	" " " John O'Donnell	60 00
"	"	" " " 7 1/4 days work by Loucks	10 85
8	"	" " " John O'Donnell	30 00
17	"	" Amt. of John O'Donnell bill of work	537 50
22	"	" Cash pd Express charges on ^{Iron} Rivets	5 00
Dec. 30	"	" " " " " Rivets	7 80
"	"	" 129 Rivets of Wm L. E. & Co	13 52
"	"	" 1 keg 1 3/8 rivets returned	20 00
"	"	" 44 grate bars 3168" @ 2 1/2¢ do	126 72
"	"	" Labor of our own hands	\$ 105.00
"	"	" " " teams	21.00
"	"	" 35 M brick @ 6¢	210.00
"	"	" Paid Brick masons	200.00
"	"	" Whitaker hauling brick	35.00
"	"	" Wm L. Ewing & Co. bill rivets	38.75
			3052.74

Wm L. E. & Co
 129 Rivets of Wm L. E. & Co

John Renfro, Alexander Crozier
 vs
 Richard Gregg, Edward F. Howland
 Norman H. Purfill, Corin G. Pratt
 William L. Ewing, Albert G. Edwards
 Nathan Cole, Philip W. Hennings
 Frederick Berthold

In the Circuit Court
 of Peoria County
 Petition for
 mechanics liens

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The answer of the defendants above named to the petition filed in this cause.

Said defendants answering say - they admit the making of the contract substantially as stated in the petition; they admit also that most of the articles mentioned in the Exhibit attached to the petition were furnished to the defendant Gregg as stated in said exhibit; but they deny that they were all of them worth the sums or prices therein stated and set forth, or that the said petitioners are entitled to a lien or decree of this Court as they are advised and believe for any sum whatever.

These defendants further answering state that the following named articles charged in said bill of petitioners were returned to the petitioners and were received by them they being unfit for use

44 Grate bars charged at	\$ 126.72
1 Keg 1 3/8 inch boiler Rivets	<u>20.00</u>
	\$ 146.72

That these defendants are further advised by counsel and believe that by the terms of said contract and the legal effect and import thereof the petitioners being manufacturers of the several articles and particularly of the boilers in said petitioners exhibit mentioned, became and were warrantors of the goodness, soundness, quality and efficiency of the same that they would answer all the purposes for which they were manufactured and designed and intended to be used; and that they should be made in a good and workmanlike manner.

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And these defendants further answering show that the said boilers and VC in the said bill mentioned and charged were not made and manufactured in a good and workmanlike manner that they were insufficient for the purposes for which they were intended were unsound and leaky and in fact not only worth nothing to the defendant Gregg, but caused and occasioned him great damage, trouble, vexation, expense & delay in his business of distilling; and he was compelled and obliged to lay out and expend large sums of money at least the sum of fifteen hundred dollars in getting the same patched up and repaired so that they would be fit for use, and the delay and damage to the said Gregg in his business alone occasioned by the insufficiency and unsoundness of said boilers will amount to at least the sum of three thousand dollars.

§ Defendants further answering state that the said defendant Gregg has a just claim as they are advised and believe as a set-off against any claim the said petitioners may prove upon the trial of this cause for materials returned to the petitioners, for money paid to them and for and on account of money expended by said Gregg in repairing and fitting up said boilers so as to make them fit for use amounting to the sum of \$ 3052.72 as per account marked "A B" hereto attached & made part of this answer will appear.

Defendants further answering state & deny that to the best of their knowledge information and belief

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the said petitioners are entitled to or of right can claim any thing of the said defendant Gregg for or on account of any work done or by them procured to be done in repairing said boilers for the reason that the same and much more was necessary to be done to render them fit for use as before stated, and therefore they say that as to all such items in said petitioners bill mentioned that the said defendant does not owe the same nor any part thereof.

And these defendants further answering say that so far as they are advised and believe the said Edward B. Nowland has no interest whatever in the premises in said petition described and he the said Nowland for himself disclaims any interest in the same.

These defendants further answering admit the defendants composing the firm of William S. Ewing & Co have a deed of trust which is a lien upon said premises for the sum of seventy five thousand dollars, with interest from the date of the same & which said deed of trust bears date the 9th day of November A.D. 1857 and insist that the same is in equity a prior lien to any claim the petitioners may prove upon the hearing of this cause, and having fully answered they pray to be dismissed with their costs.

N. H. Purple Atty for said Defts.

State of Illinois }
Peoria County } ss Richard Gregg being sworn
says the foregoing answer & the statements
therein made are true to the best of his

Knowledge information and belief R. Gregg.

Sworn to before me this 18th Nov. 1858

N. H. Purfle, Notary Public Peoria City Ill.

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said month. Present Honorable Elisha N. Powell, Judge of the sixteenth judicial Circuit in said State Francis W. Smith Sheriff and Enoch P. Sloan Clerk to wit:

Wednesday March 17th A D 1858

John Renfrew
Alexander Boyers & c

^{vs}
Richard Gregg & als

Mechanics lien

This day came the defendants by Purfle & Pratt their attorney and enter their appearance in this cause and this cause is continued

Proceedings at a term of the Circuit Court began and held at the Court house in the City and County of Peoria, State of Illinois, on the third Monday in the month of November in the year of our Lord one thousand eight hundred and fifty eight it being the fifteenth day of said month. Present E. N. Powell, Judge of the sixteenth

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judicial Circuit in said State Francis W. Smith
Sheriff and Enoch P. Sloan clerk to wit:

Monday November 15th A.D. 1858
John Renfrew & als

vs
Richard Gregg for mechanics lien

On motion of complainants attorney
the defendant in this cause is ruled by the Court to
answer said complainants bill of complaint by to morrow
morning.

Friday November 19th A.D. 1858
John Renfrew & als

vs
Richard Gregg & al for Lien

This day came the plaintiffs by
Lindsay their attorney and asks and obtains leave to
amend their petition (filed herein), and this cause is
continued.

Proceedings at a term of the Circuit Court began and
held at the Court house in the City of Peoria in and for
the County of Peoria in the State of Illinois on the first
Monday of March in the year of our Lord one thousand
eight hundred and fifty nine, it being the seventh day
of said month. Present the Honorable Elisha N. Powell
Judge of the 16th judicial Circuit in the State of Illinois
John Boyner Sheriff and Enoch P. Sloan clerk to wit:

Thursday March 10th A.D. 1859
 John Renfrew
 Alexander Crozier
 surviving partners of the
 late firm of
 Renfrew Crozier & Pomeroy

vs
 Richard Gregg & als
 Lien

This day came the complainants by Lindsay Fowler and Ingersoll and the defendants by Purple & Meaning and it is ordered that a jury be empannelled to try the issues in this cause whereupon came a jury of twelve good and lawful men to wit: William L. Potter, Ed. White, Homer L. Tucker, A. H. Swagger, S. W. Freeman, R. A. Yoe, Samuel Bandy, Mat. Taggart, Michael Fash, Albert G. Powell, Sanford Moon and John Boyd, who being duly chosen tried and sworn to well and truly try the issues joined in this cause and a true verdict give according to the evidence and not having heard all the evidence in the case were adjourned to meet the Court at half past eight o'clock to morrow morning.

Friday March 11th A.D. 1859

John Renfrew Alexander Crozier
 surviving partners of the late firm of
 Renfrew Crozier & Pomeroy

vs
 Richard. Gregg & als
 for lien

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This day came the parties to this
suit and also came the jury empanelled on yesterday
(Thursday) to well and truly try the issues joined in this
cause and a true verdict give according to the evidence
and the said jury not having heard all the evidence in this
cause were adjourned to meet the Court again at half past
eight o'clock to morrow morning.

Saturday March 12th A.D. 1859

John Renfrew, Alexander Crier
Surviving partners of the late firm of
Renfrew, Crier & Pomeroy

vs
Richard Gregg & als for Lien

This day came the parties to this
suit by their respective attorneys and also came the jury em-
panelled on Thursday last to well and truly try the issues
joined in this cause and a true verdict give according to the
evidence and the said jury not having heard all the evidence
in the case were adjourned to meet the Court at half past
eight o'clock to morrow morning.

Sunday March 13th A.D. 1859

John Renfrew, Alexander Crier
Surviving partners of the late firm of
Renfrew, Crier & Pomeroy

vs
Richard Gregg & als

This day again came the parties

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to this suit and their respective attorneys and also came the
jury empanelled on Thursday last, to well and truly try
the issues joined in this cause and a true verdict give
according to the evidence upon their oaths aforesaid do
say: "We the jury find the issues for the plaintiffs and assess
their damages at the sum of Three thousand three hundred
and two dollars and seventy nine cents and also that
William L Ewing & Co. have a trust deed on the premises
for seventy five thousand dollars as a lien.

Monday March 28th A.D. 1859
John Kenfrew vs
Richard Gregg & al for lien

This day came defendants by their
attorney and moved the Court for a new trial. Ordered that
this cause be continued

Proceedings at a Special term of the Circuit Court began
and held at the Court house in the City and County of Peoria
in the State of Illinois on the second Monday in the month
of June in the year of our Lord one thousand eight hundred
and fifty nine it being the thirteenth day of said month.
Present the Honorable Elisha N. Powell, Judge of the 16th
judicial Circuit in the State of Illinois, John Bryner
Sheriff and Enoch P. Sloan Clerk to wit:

Thursday June 30th A.D. 1859

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John Kenfrew vs
Richard Gregg vs
for Lien

This day this cause came on to be heard on the motion of defendants for a new trial and the Court being satisfied in the premises overruled said motion whereupon the defendants Gregg & Ewing & les. prayed an appeal to the Supreme Court of this State, which is allowed by their entering into bond to the said plaintiffs in the sum of five hundred dollars conditioned as the law directs, which bond shall be filed in this Court in thirty days with security such as shall be approved by the Clerk.

Saturday July 2nd A.D. 1859

John Kenfrew Alexander Crozier
Augustus D. Somers

Mechanics lien

Richard Gregg, Edw. F. Nowland
Norman H. Purdie, Lavin G. Pratt
William L. Ewing, Albert G. Edwards
Nathan Cole, Philip W. Harman
Frederick Barthold

This cause coming on to be heard at the March A.D. 1859 of said Circuit Court upon the complainants' petition, proofs, evidence and exhibits, and the answer of defendants, together with the proofs, evidence and exhibits of the defendants. And a

Jury having been called came to wit: William C. Potter
 Ed. White, Homer L. Tucker, A. H. Swaggs, J. W. Freeman
 R. A. Yoe, Samuel Bandy, Matthew Jaggart, Michael Wash
 Albert G. Powell, Sanford Moon and John Boyd, twelve good
 and lawful men who having been duly chosen impanelled
 and sworn and after hearing the petition, answer, proofs
 evidenced and exhibits of the parties and having received
 the instructions given by the Court and retired to consider
 their verdict, again returned into open Court and rendered
 their verdict and upon their oaths say "We the jury find
 for the plaintiffs and assess their damages at three thousand
 three hundred and two ⁷⁹/₁₀₀ dollars (\$3302 ⁷⁹/₁₀₀) and that
 William S. Ewing & Co. hold a deed of trust executed by
 Richard Gregg for the sum of seventy five thousand dollars
 (\$75000) on the premises. And thereupon the defendants having
 entered a motion for a new trial in said cause which motion
 was continued until the next term of said Circuit Court
 And whereas afterwards to wit, at the June Special Term
 A.D. 1859 of said Court said motion was heard and over-
 ruled by the Court. It is therefore ordered, adjudged and
 decreed by the Court at the June Special Term A.D. 1859
 that the complainants are entitled to the relief prayed for
 and that the lien of the petitioners on said premises here-
 after described be good and effectual, and that the Com-
 plainants have a prior lien on said hereinafter described
 premises over and above the lien set up in this cause
 by any of the defendants viz: William S. Ewing & Co
 by a deed of trust executed to them on the 9th day

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of November A.D. 1857 on the following premises to wit: A part of the north east quarter and the south east quarter of section No. seventeen (17) township No. eight (8) north range No. eight (8) east of the fourth principal meridian in said County State of Illinois described as follows to wit: Beginning at a stone on the south east side of the Peoria and Equawoka Rail Road N. $49^{\circ} 50'$ east from where the line running east from the center of said section seventeen (17) intersects the south east line of the Peoria and Equawoka Rail Road; thence on the line of said road seven (7) chains and seventy eight (78) links to a stone set for a corner, thence south $40^{\circ} 10'$ east seventeen (17) chains and twelve (12) links to a stone set upon the bank of the Illinois river, thence south $32^{\circ} 30'$ west seven (7) chains and ninety seven (97) links to a stone set on the bank of the Illinois river, thence north $40^{\circ} 10'$ west sixteen (16) chains to the place of beginning, containing twelve and a half ($12\frac{1}{2}$) acres be the same more or less, and being the same land conveyed by Edward P. Howland and wife to said Richard Gregg on the 13th day of May A.D. 1856 and also all the distillery buildings and machinery on the same, with all the appurtenances belonging thereto. And it also appearing unto the court from the verdict of the jury impanelled in this cause that the lien & debt due from Richard Gregg unto the complainants is the sum of three thousand three hundred and two $\frac{79}{100}$ dollars (\$3302 $\frac{79}{100}$) and that Richard Gregg one of the defendants is the owner of said described premises. It is therefore ordered adjudged and

decreed by the Court that said Richard Gregg one of the defendants pay unto complainants the said sum of money so found due, together with the interest on same from the rendition of this verdict within six months from the date of this decree, also pay all costs and charges herein expended and that in default of such payment the said premises shall be sold by Henry B. Hopkins master in Chancery of this Court or by his successor in office, who is hereby duly authorized and empowered to make said sale. And it is further ordered and decreed that in case the Master in Chancery shall sell said premises to satisfy and pay said indebtedness he shall first advertise said sale by posting up written or printed notices of said sale in at least four of the most public places of the County of Peoria for at least four weeks before said sale and also by publishing a notice of said sale in some newspaper printed in said Peoria County for the space of four weeks before said sale, which sale shall be made at the door of the Court house in Peoria, Illinois at public vendue to the highest bidder for cash. Said notice shall contain a description of the premises, also the time place and terms of sale. And out of the proceeds of said sale the Master in Chancery shall first pay off and discharge the indebtedness of complainants together with the interest on the same from the date of the rendition of this verdict and all the costs of this suit and all money by them herein expended. The master in Chancery shall pay the balance of said purchase money, if any there be into this Court

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to be paid and distributed under the order and direction of this court. And the said Master in Chancery or his successor in office upon said sale being made as aforesaid shall execute and deliver unto the purchaser or purchasers of said premises a deed of conveyance conveying absolutely unto him or them the said described premises. And it is further ordered and decreed that the plaintiff have and recover of the said Richard Gregg all their costs and charges herein expended and that they have execution for the same. The said master in Chancery shall make report of his proceedings herein at some subsequent term of this court.

And on the 30th June A.D. 1859 there was filed in the Clerks office of said court a bill of exceptions in the above cause which is in the words and figures following to wit:

John Renfrew &
Alexander Crozier
vs
Richard Gregg & others

In the Circuit Court of Peria County
Petition for lien

Be it remembered that on the trial of this cause the plaintiff offered evidence tending to prove the account attached to and made part of his petition and also tending to prove that the materials mentioned in the account & Petition were of good and substantial material & the work well done and of the value as charged in the account, and also tending to prove that the injury to the boilers occurred by reason

of improper management on the part of defendant Gregg and that they were put into the mill on the lot described in the petition. The defendant gave evidence tending to prove the amount of his account as attached to his answer filed in the cause. He also gave in evidence the deed of trust referred to in said answer of the date of the 9th Nov. 1857 to wit:

"November 11th
1857

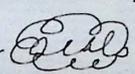
"This Indenture made this the ninth day of November A.D. 1857 between Richard Gregg and Jane W. Gregg his wife of the City of Peoria in the State of Illinois party of the first part and Lorin G. Pratt of said City and State party of the second part and William L. Ewing & Co of the City of Saint Louis in the State of Missouri party of the third part witnesseth, that the said party of the first part for and in consideration of the ~~sum~~ covenants trust and surety herein after contained, and also of the sum of one dollar to them in hand paid by the party of the second part the receipt of which is hereby acknowledged have granted bargained and sold and by these presents do hereby grant bargain sell and convey to the party of the second part to his heirs and assigns forever, the following described real estate to wit: fourteen acres (be the same more or less) being part of the NE & SE quarters of section No. seventeen in township No. eight north of range No. eight east, being the same property purchased by said Richard Gregg of Edward P. Nowland and upon which the said Gregg has erected a distillery, mill, malt house and other buildings. Also all that other piece or parcel of land heretofore purchased by said Richard Gregg of one

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Henry Von Thul the same being eighty five and one half feet front on Water street in said City by eighty eight and one half feet deep, being the same property on which said Gregg has this season erected a block of brick stores. Also Lots Nos. six and seven (687) and fifty two feet off Lot No. eight (8) adjoining Lot No. seven in Block numbered thirty one (31) in the City of Peoria. All of said property lying in the County of Peoria and State of Illinois. To have and to hold the said described premises with the appurtenances to him the said party of the second part to his heirs and assigns forever. But upon the trust and for the purposes following to wit: Whereas the party of the first part is now indebted unto the party of the third part in about the sum of seventy five thousand dollars, and whereas the parties of the first and third part have this day made and concluded a certain contract in writing in which said contract among other things it is provided that the party of the third part shall from time to time advance to the party of the party of the first part moneys to carry on and supply the mill and distillery of the party of the first part in Peoria. It being also a part of said contract that the present indebtedness from the party of the first part to the party of the third part shall be within a certain time therein specified, reduced to the sum of fifty thousand dollars and thereafter not to exceed said sum. And the party of the first part desiring to secure all indebtedness now due or hereafter to become due to the party of the third part under said contract. Now therefore this indenture witnesseth that ~~the~~ if default shall be made by the party

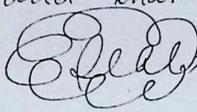
of the first part in the payment of any sum or sums of money due and owing to the said party of the third part under and by virtue of said contract in writing heretofore referred to then and in that event at the request of the party of the third part the party of the second part is hereby authorized and empowered and it shall be his duty to take immediate and full possession of all the aforesaid premises with the appurtenances and upon giving thirty days previous notice in some newspaper published in said City of Peoria to sell the same or so much thereof as shall be necessary at public sale for cash, and out of the proceeds of such sale shall pay first the necessary costs and expenses of this trust, second shall pay to the party of the third part all moneys with the interest thereon which shall be due to the party of the third part from the party of the first part under and by virtue of said contract in writing and third shall pay all the rest and residue of the moneys arising from such sale to the party of the first part or his assigns. Upon each sale of said premises or any part thereof the party of the second part shall make and deliver to the purchaser or purchasers of said property a good and sufficient deed of conveyance of the same in fee simple the party of the first part waiving all right of redemption to the same which they may have by virtue of any law of the State of Illinois. It is understood that the property hereby conveyed is conveyed subject to the claim of Edward F. Rowland the same being a mortgage upon the distillery property for about the sum of fifteen thousand dollars and the claim of Henry V. Paul upon

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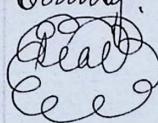
the lot on Water street for purchase money of about five thousand dollars (the precise amount of said debts not being herein determined) It is further agreed that in the event of the death absence or inability of the party of the second part that the Sheriff of the County of Peoria shall be substituted herein in his place and stead and shall make the sale of said premises in all respects performing the duties of said party of the second part. The contract in writing referred to herein between the party of the first part and party of the third part continues unless terminated by mutual consent or failure of performance until the first day of September 1858 and terminates at that time unless extended by mutual consent. In testimony whereof the said party of the first part have hereunto set their hands and seals at Peoria the day and year first above written.

R. Gregg 
 Jane W. Gregg 

State of Illinois
 Peoria County } This day personally appeared before me the undersigned a Notary Public within and for said County Richard Gregg and Jane W. Gregg his wife both to me personally known to be the real persons whose names appear subscribed to the foregoing deed as having executed the same and acknowledged that they had executed the same freely and voluntarily for the uses and purposes therein expressed And the said Jane W. Gregg, wife of the said Richard Gregg having been by me made acquainted with the contents of said deed, and by me examined separately and

apart from her said husband acknowledged that she had executed the said deed and relinquished her dower to the lands and tenements thereby conveyed voluntarily and freely and without fear or compulsion of her said husband and that she does not wish to retract. Given under my  hand and seal of office at Peoria this 10th day of November A.D. 1857

Henry G. Young, Notary Public.

State of Illinois }
 Peoria County }
 I, Ernoch P. Sloan, Clerk of the Circuit Court and ex officio Recorder of the County of Peoria in the State of Illinois do hereby certify that the foregoing is a full and correct copy from the Records of a deed and of the certificate of acknowledgment thereof as the same remains of record on pages 316 & 317 in Book "H.D." in the recorder's office of said County. Witness my hand & the seal of said Court at my office  in Peoria this fifth day of February in the year 1858
 Ernoch P. Sloan, Clerk & Recorder."

The Court instructed the Jury as follows at request of the parties:

Instructions for plaintiffs

- 1st If the Jury believe from the evidence that the plaintiffs furnished the materials and the labor done as set out in the petition filed herein, and that the boilers furnished were of good material & workmanship when delivered and that said articles of machinery were put up in the distillery of defendant and that the prices charged for

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said articles and said labor done, are reasonable and the usual prices they will find for plaintiffs.

2. If the jury believe from the evidence that said boilers were injured in the possession of defendant Gregg by himself or any person in his employ they will find for the plaintiffs.

3rd The warranty of the filffs' is only an implied warranty and only required the plaintiffs to deliver to Richard Gregg at Peoria, the said 3 four-flued boilers of good sound materials and of good workmanship and in good order.

4th. If the jury believe from the evidence that said boilers were not of good material and good workmanship, the measure of damages will be the amount it cost to put said boilers in a good sound condition.

5th. If the jury believe from the evidence that said boilers had been burnt, or in anywise injured by fire, by any of the hands in the employ of defendant they will find for the plaintiffs the value of said boilers when they were delivered to Richard Gregg.

6th. If the jury believe from the evidence that said boilers were made of good materials and good workmanship when delivered to Richard Gregg, and that said boilers were injured by the carelessness and negligence of the agents or hands of defendant; they will find for the plaintiff all the costs and charges by plaintiffs expended in the repairs made on the boilers, at defendant's request.

Ranfrew & Crozier

vs

Richard Gregg

} Instructions asked by
defendants.

1st. That under the contract in this case it was the duty of plaintiffs to furnish sound and substantial articles manufactured in a good and workmanlike manner made of good material, and ^{that} if there was a defect either in the material or workmanship of the boilers or other machinery furnished requiring repairs or expenditure of money, it was the duty of the plaintiff to make such repairs at his own expense and he cannot in this action recover for any such repairs or expenditures.

2. That if there was a defect either in the material or workmanship of the boilers or other machinery furnished by the plaintiffs, requiring repairs or expenditure of money, and the defendant made any necessary repairs or necessarily expended money in so doing, the jury will allow the defendant in their verdict the value of all such necessary repairs, and the amount of all such money by him necessarily expended.

3. If the defendant was delayed necessarily in his business on account of such defects as are mentioned in the 1st & 2nd instructions the jury will allow the defendant such damages as was occasioned by such delay, and such other damages as immediately resulted from delay of and interruption in his business.

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4th That the answer of the defendant so far as the same sets up and alleges any payments made to, or on account of the plaintiffs is evidence of the facts stated in said answer

5th That the plaintiffs being manufacturers of the boilers and other machinery in controversy are warrantors of the goodness and quality of the material and workmanship of the same and that they were suitable for, and would answer the purposes for which they were purchased by the defendant.

6th That the deed of trust read in evidence in this cause is evidence of indebtedness by Gregg to Ewing & Co of the amounts stated to be due by the said deed of trust, and that unless there has been some evidence given that the same has been paid or that it was fraudulently given they will find for said Ewing & Co against said Gregg the amount due upon said deed.

7th If the jurors believe from the evidence that the plaintiffs were warrantors of the good quality of the iron out of which the boilers were manufactured according to the rule laid down in the 5th instruction above, and if they further believe that the iron out of which the boilers were manufactured was not good but defective, then the jury will allow to the defendant out of the price of said boilers were worth less on account of said irons being so defective.

8. If the jurors believe from the evidence that either the workmanship on the boilers or the iron out of which they were

manufactured was defective, and also that if they were repaired they were still of less value than if they had been well manufactured and of good material, then they will allow the defendant out of the value of such boilers such sum as they were so worth less, if they believe there was a warranty under the rule stated in the above 5th instruction

The answer of the defendant Gregg is only evidence so far as it is responsive to the allegations in the bill, but not evidence in any matter which is not so responsive and is responsive as to any payments made by him to plaintiffs or for their benefit.

The defendants then and there at the time said instructions were given in favor of plaintiffs, excepted to the opinion of the Court.

After the verdict of the jury was returned the defendants entered a motion for a new trial for the following reasons:

Rufus & Brosier

vs

Richard Gregg & others

Petition for lien

Defendant Gregg moves for a new trial for the following reasons.

1. Because the Court refused to permit the defendants to give evidence offered by them, pertinent to the issue.
2. Because the Court gave the instructions asked by the petitioner

3. Because the verdict is against law & evidence.
N. H. Purple, said Defts atty

4. The damages are excessive
N. H. Purple, said Defts atty.

The Court overruled said motion and the defendants then
and there excepted to the opinion of the Court and requested
the Court to seal this bill of exceptions which is done
E. N. Powell *Seal*

And afterwards to wit on the 11th day of July A.D. 1859
the defendant filed in the clerks office of said Court his
appeal bond in the above cause which is in the words and
figures following to wit:

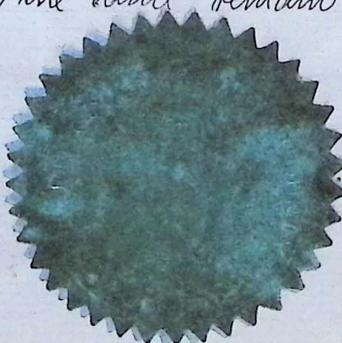
Appeal Bond

Know all men by these presents that we Richard Gregg
& William R. Phelps are held and firmly bound unto John
Renfrew and Alexander Crozier in the penal sum of five
hundred dollars for the payment of which well and truly to be
made we bind ourselves our heirs, executors and administrators
jointly and severally firmly by these presents. Witness our hands
& seals this 9th day of July 1859. The condition of the above
obligation is such that whereas the said John Renfrew and
Alexander Crozier did at the June Special term of the Circuit
Court in and for the County of Peoria obtain a decree
against said Richard Gregg for the sum of three thousand
three hundred and two dollars and seventy nine cents &
costs of suit from which said decree the said Richard
Gregg prayed an appeal to the Supreme Court of the State
of Illinois. Now if the said Richard Gregg shall well

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and truly prosecute his said appeal with effect and shall
pay or cause to be paid all costs judgments, interest and
damages in case said judgment shall be affirmed then the
above obligation to be null and void otherwise to be
and remain in full force and virtue in law

R. Gregg Seal
Wm. R. Phelps Seal

State of Illinois
Peoria County
I, Enoch P. Sloan, Clerk of the
Circuit Court within and for the County of Peoria in the
State of Illinois do hereby certify that the foregoing is a
full, complete and correct transcript of the papers filed
(except the summons which has been lost) & the proceedings had
in our said Court in a certain cause wherein John Renfrew
& al are petitioners & Richard Gregg & al are defendants
as the same remain on file and of record in my office.
Given under my hand and the
seal of said Court at my office
in Peoria this 31st March 1860
Enoch P. Sloan, clk



Richard¹³² Gregg

John²⁰ Raupress
& Alex. Brozier

Transcript

Filed April 3, 1860

L. Leland
Clerk