

No. 14724

Supreme Court of Illinois

Mixter, Imp.

vs.

Toomer

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 93

J. W. Middleton & Co., Stationers, 196 Lake St.

1864

Tommer

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,
Plaintiff in Error,

v.

CHARLES C. TOOMER,
Defendant in Error.

Error to Rock Island.

ABSTRACT OF RECORD.

R. p. 1 PETITION filed November 26th, 1857.

2 Petition for a mechanic's lien upon the west half of lot one, in block nineteen, in the old town of Rock Island, alleges that on the first day of January, 1857, one John Cossum, the owner of said premises, made a contract with defendant in error, whereby he agreed to furnish the necessary materials for, and perform labor and work in the lathing and plastering of a brick house to be erected on said premises, at the reasonable request of said Cossum, and during the year 1857.

I For which material and labor, the said Cossum agreed to pay defendant in error the reasonable worth and value *on request*; that the defendant in error furnished materials and performed work and labor in lathing and plastering said house according to the account attached to said petition; that the reasonable worth and value thereof was \$83.17, which he

3 (Cossum) agreed to pay defendant in error *on request*; that said Cossum had not paid any part thereof; that Cossum and his wife, on or about

the 28th day of August, 1857, conveying said premises to plaintiff in error by deed thereof; that the title conveyed by said deed, is subject to claim for a lien of defendant in error.

PRAYER of petition for a mechanic's lien on said premises, to pay said sum of \$83.17.

COPY of said account in which defendant in error claims \$83.17 for lathing and plastering said house.

SUMMONS and return of service by sheriff of Rock Island county.

DEMURRER of plaintiff in error to the petition of defendant in error.

ORDER of the court overruling the demurrer aforesaid.

ANSWER of the defendant in error to the petition.

The answer admits that Cossum was the owner of the premises as alleged in the petition.

Alleges that defendant in error has, since the first day of January, 1857, furnished labor and material for other buildings for the erection of which said Cossum was a contractor, besides the building described in the petition, that he has from time to time received money from Cossum, and that the balance, if any is now due, is due for work done and material furnished on all the buildings, and not on the particular building described in said petition.

Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

AFFIDAVIT of truth of answer.

EXCEPTIONS to answer of plaintiff in error, because it is irrelevant, irresponsive, immaterial and insufficient.

REPLICATION of defendant in error.

EXCEPTION one and two to answer sustained.

LEAVE given to amend answers.

AMENDED answer of plaintiff in error.

The amended answer denies that the defendant furnished labor and materials as alleged in said petition; denies that Cossum was the owner of said premises as alleged in the petition; the rest of said amended answer substantially like the original.

CERTIFICATE OF CLERK TO RECORD.

The clerk has inserted the following, to wit:
{ The final decree in this case is the same,
{ as in the case of Harper & Steele vs John
{ Cossum & George Minter, and there is but
{ one record of such final decree."

15-16 Certificate of the clerk to the record

George Miller
vs.
Charles C. Toomer
Abstract of Record

3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

The first of the above named parties was a free man of color, who was born in the State of Virginia, and who was at the time of his death a resident of the State of Georgia. He was a man of good character and of good abilities, and was well known to the community in which he lived. He was a member of the Methodist Episcopal Church, and was a faithful and active member of the same. He was a man of good character and of good abilities, and was well known to the community in which he lived. He was a member of the Methodist Episcopal Church, and was a faithful and active member of the same.

The second of the above named parties was a free man of color, who was born in the State of Virginia, and who was at the time of his death a resident of the State of Georgia. He was a man of good character and of good abilities, and was well known to the community in which he lived. He was a member of the Methodist Episcopal Church, and was a faithful and active member of the same. He was a man of good character and of good abilities, and was well known to the community in which he lived. He was a member of the Methodist Episcopal Church, and was a faithful and active member of the same.

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Filed April 19, 1864.
L. Seland
Clerk.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,
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the 28th day of August, 1857, conveying said premises to plaintiff in error by deed thereof; that the title conveyed by said deed, is subject to claim for a lien of defendant in error.

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ORDER of the court overruling the demurrer aforesaid.

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The answer admits that Cossum was the owner of the premises as alleged in the petition.

Alleges that defendant in error has, since the first day of January, 1857, furnished labor and material for other buildings for the erection of which said Cossum was a contractor, besides the building described in the petition, that he has from time to time received money from Cossum, and that the balance, if any is now due, is due for work done and material furnished on all the buildings, and not on the particular building described in said petition.

Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

AFFIDAVIT of truth of answer.

EXCEPTIONS to answer of plaintiff in error, because it is irrelevant, irresponsive, immaterial and insufficient.

REPLICATION of defendant in error.

EXCEPTION one and two to answer sustained.

LEAVE given to amend answers.

AMENDED answer of plaintiff in error.

The amended answer denies that the defendant furnished labor and materials as alleged in said petition; denies that Cossum was the owner of said premises as alleged in the petition; the rest of said amended answer substantially like the original.

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15- The clerk here inserts the following
to wit.
"The final decree in this case is the
same as in the case of Harpert & State
vs John Cossum & George Minter, and
there is but one record of such decree.
15-16 Certificate of clerk to the record

93
George Mixer
vs.
Charles C. Toomer
Abstract of Record

Filed April 19, 1864
J. L. Leland & Co.

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THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

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15- The clerk here inserts the following to wit:
The final decree in this case is the "same as in the case of Harper & Steele vs John Cossum & George Minton" and there is but one record of such "final decree."

16-16 certificate of clerk to record.

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 George Mixer
 vs.
 Charles C. Toomer
Abstract of Record

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The following is a list of the names of the persons who have been admitted to the membership of the Georgia Society of the Sons of the American Revolution, since the last meeting of the Executive Committee, held on the 1st day of January, 1861.

The names of the persons who have been admitted to the membership of the Georgia Society of the Sons of the American Revolution, since the last meeting of the Executive Committee, held on the 1st day of January, 1861, are as follows:

1. *[Name]*
 2. *[Name]*
 3. *[Name]*
 4. *[Name]*
 5. *[Name]*
 6. *[Name]*
 7. *[Name]*
 8. *[Name]*
 9. *[Name]*
 10. *[Name]*
 11. *[Name]*
 12. *[Name]*

Filed April 19, 1861
 J. L. Leland Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

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EXCEPTION one and two to answer sustained.

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CERTIFICATE OF CLERK TO RECORD.

The clerk here inserts the following to wit:
"The final decree in this case is the same"
"as in the case of Harper & Steele vs "
"John Cossum & George Minter," "
"and there is but one record of such "
"decree."

15-16 Certificate of clerk to the record

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George Miller
 vs.
Charles C. Toomer
Abstract of Record

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The undersigned, George Miller, do hereby certify that the within and foregoing is a true and correct copy of the record of the proceedings in the case of *George Miller vs. Charles C. Toomer*, as the same appears in the records of the Court of Sessions of the County of *Richmond*, State of *Virginia*, in the year of our Lord one thousand eight hundred and sixty-four, and of our Independence the hundred and thirtieth.

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The undersigned, Charles C. Toomer, do hereby certify that the within and foregoing is a true and correct copy of the record of the proceedings in the case of *George Miller vs. Charles C. Toomer*, as the same appears in the records of the Court of Sessions of the County of *Richmond*, State of *Virginia*, in the year of our Lord one thousand eight hundred and sixty-four, and of our Independence the hundred and thirtieth.

Filed April 19, 1864
L. Leland Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,
Plaintiff in Error,

v.

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The answer admits that Cossum was the owner of the premises as alleged in the petition.

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AFFIDAVIT of truth of answer.

EXCEPTIONS to answer of plaintiff in error, because it is irrelevant, irresponsive, immaterial and insufficient.

REPLICATION of defendant in error.

EXCEPTION one and two to answer sustained.

LEAVE given to amend answers.

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CERTIFICATE OF CLERK TO RECORD.

15 The clerk here inserts the following to wit:
"The final decree in this case is the same"
"as in the case of Harper & Steele vs John"
"Cossum & George Mixer, and there"
"is but one record of such decree."

15-16 Certificate of the clerk to the record

93
George Mixer
vs.
Charles C. Toomer
Abstract of Record

Filed April 19, 1864
J. Selinger ckr

SP 1
P L & S before the Honorable J. Wilson
Emory Judge of the Sixth District of the State
of Illinois, at a term of the Circuit Court
began and held at the Court House with-
in and for the County of Rock Island and
State aforesaid on the first Monday, the
seventh day of December in the year of our
Lord one thousand eight hundred and fifty
seven.

Present Honorable J. Wilson Emory Judge
Ezra M. Beardsley Sheriff
Lumey McNeil Clerk

Be it Remembered that on the twenty sixth
day of November A D 1857 there was filed in the
office of the Clerk of the Circuit Court in the
City of Rock Island and county and State
aforesaid a Petition for Lien in behalf of
Charles C. Fooser and against John Cossum
and George Winton and which is in the words
and figures following to wit

State of Illinois }
Rock Island County }
Rock Island County }
Circuit Court
December Term A D 1857

To the Honorable J. Wilson Emory presiding
judge of said court
The petition of Charles C. Fooser of the
City of Rock Island and county of Rock
Island and the state aforesaid respectfully
sheweth unto your honor. That on or about
the first day of January A D 1857. one, John
Cossum who was then the owner of a certain
lot or parcel of land situated in the county

of Rock Island and state of Illinois known
 & described as the west half of the west half
 of Lot number one (1) in Block number 19,
 nineteen in that part of the city of Rock
 Island known as the old or original town,
 was then and thereabout erecting and building
 thereon a two story dwelling house of brick
 That the said John Cossum to wit at the time
 & place aforesaid made entered into a con-
 tract with your petitioner to furnish the nec-
 essary materials for and perform labor and
 work in & about the said dwelling house in
 the lathing and plastering thereof as herein
 after set forth & to be done and performed by
 your petitioner at the reasonable request
 of the said Cossum and during the year
 1857, and for which the said Cossum
 agreed to pay to your petitioner the reason-
 able worth and value on request. That in
 accordance with said contract your
 petitioner furnished materials for and
 performed work & labor in lathing and plastering
 the walls and ceilings of the different rooms &
 halls or passages contained in the said building
 for the said Cossum as required by the said
 contract according to the bill thereof hereto
 annexed marked "C" and the reasonable
 worth and value whereof is as set down and
 charged in the said bill. That in consider-
 ation whereof the said Cossum afterwards and
 upon completion of so much ^{of said} work as well
 appear from said bill by your petitioner to wit
 on the 21st day of august 1857 at the County
 (2)

of Rock Island aforesaid promised your petitioner to pay him the reasonable worth of said work & materials amounting to the sum of eighty three dollars and seventeen cents whenever the said Cossum should be thereto afterwards requested and your petitioner alleges that although often requested the said Cossum has not paid to your petitioner the aforesaid amount or any part of the same, but that the whole is yet unpaid and due to your petitioner.

Your petitioner further alleges that the said Cossum and his wife on or about the 28th day of August 1857 made and executed a deed of conveyance to one George Mixer of and for the lot or parcel of land aforesaid as your petitioner is informed and believes and that the said George Mixer as your petitioner is informed and believes now claims to own the said described premises but your petitioner alleges and charges the fact to be that if any such deed of conveyance was made by the said Cossum and wife to the said Mixer the same was made and executed subsequent to the contract of your petitioner with said Cossum as aforesaid and after ~~the~~ the performance of work and labor by your petitioner upon said dwelling house under and by virtue of said contract and that the said deed if any such there is subject to the prior claim of your petitioner to a lien upon the said premises for the value of the work and labor aforesaid and the amount aforesaid and to the amount aforesaid.

In view of these facts, your petitioner prays that the said John Cassum & George Wichter be made parties, defendants to this ~~defend~~ petition and be required severally to answer the same, and that upon a hearing hereof your Honor will be pleased to order a scale of the aforesaid premises and appurtenances and that the proceeds thereof be applied to the payment and discharge of the aforesaid demand of your petitioner And that your petitioner may have such other ^{and further} relief orders ~~and~~ as the statute in such case allows and as your petitioner may be entitled to, and as in duty bound your petitioner will ever pray

Charles C. Foomer petitioner by
R M Marshall his Sol

State of Illinois
Rock Island County } ss

Charles C. Foomer being duly sworn on oath states that he has heard read the foregoing petition and knows the contents thereof that the matters therein stated as on his knowledge are true and the other matters therein stated he believes to be true Sworn to & subscribed before me
this 26th day of November 1857 } Chas. C. Foomer
Quincy McNeil clk

(C)

1857

Mr John Cassum
To Charles C Foomer Dr
To lathing 225 yards on dwelling house @ 11 per yard \$24.75
" Plastering 254 yards @ 23^c per yard 58.42
Rock Island 1857 (4)
\$83.17
254
58.63

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And afterwards to wit on the same day the said 26th day of November 1857 there issued forth of the office of the Circuit Court of said county and State aforesaid a writ of summons which is in the words and figures following to wit

State of Illinois
Rock Island County } ss

The People of the State of Illinois
To the Sheriff of Rock Island County Greeting
We command you to summon John Cossum and George Wixter if to be found in your County. personally to be and appear before the Circuit Court of said County on the first day of next term thereof to be holden at the Court House in Rock Island, on the first Monday of December next, to answer to a bill of complaint, filed in our said Circuit Court, on the Chancery side thereof, against them in the nature of a Mechanics Lien by Charles C. Gorman. And have you then and there this writ, and make return thereon in what manner you execute the same.

Witness: Quincy McNeil Clerk of the said Court and the seal thereof affixed this 26th day of November in the year of our Lord, one thousand eight hundred and fifty seven
Quincy McNeil Clerk

And on the back of said writ was an endorsement in the words and figures following to wit:
I have served the within summons by delivering a copy to the within named John

Cossum and George Mytton this 27th day of Nov 1857
 E. M. Beardsley Sheriff
 By C. A. McLaughlin dep

And be it further remembered that afterwards to wit on the 24th day of December 1857 there was filed in the office of said Circuit Clerk in the county and State aforesaid a demurrer which is in the words following

The demurrer of George Mytton one of the defendants to the Petition of Charles C. Fomer

The said defendant by protestation not confessing or acknowledging all or any of the matters and things in by said petition set forth and complained of to be true, in manner and form as the same are therein set forth and alleged, saith he is advised by his counsel, that there is no matter or thing in the said petition, contained good and sufficient in law, to call this defendant in question in this court for the same, but that there is good cause of demurrer thereto, and therefore this defendant saith that the complaints in said petition in said case the allegations therein contained were true, which this defendant doth in no suit admit, contain not any matter or thing of equity wherein this Court can ground any decree or give the said plaintiff any relief or assistance as against this defendant; Wherefore and divers other errors and imperfections in the said petition appearing, this defendant doth demur in law thereto, and humbly asks of this Court

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whether he shall be compelled to put in any further or other answer to the said petition, and prays to be dismissed hence with his costs in behalf sustained.

Knox & Wilkinson
for Geo. Wixter

And afterwards to wit on the same day before the judge aforesaid at the December term 1857 of said Circuit Court and on the 16th day of said term being the 24th of December 1857 the following proceeding was had

Charles C. Gorman
vs
John Gossum & George Wixter } Mechanics Lien

This day came the parties by their attorneys and defendant Wixter entered his motion for a continuance herein which overruled by the Court, thereupon said defendant filed his demurr to plaintiffs petition which being heard is overruled by the Court. And on plaintiffs motion it is ordered that the defendants answer by the first day of February next.

And be it further remembered that on the 29th day of January 1858 the answer of George Wixter was filed in the said office of the Circuit Clerk of said County and which is in the words and figures following.

State of Illinois
Rock Island County } ss
Rock Island Circuit Court
March Term AD 1858

To the Hon. J. Nelson May, Judge of the Sixth judicial circuit in the State of Illinois.

The answer of George Witter one of the defendants to the petition of Charles C. Foote complainant.

This defendant now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, or imperfections contained for answer thereto or so much thereof as this defendant is advised is material or necessary for him to make answer to, answering with

That on or about the first day of January 1857, the time at which it is alleged in the petition filed herein, the contract was made by John Cossum, one of the defendants to said petition, with the said Charles C. Foote for work, labor and materials set forth in said petition for the construction of the dwelling house therein mentioned the said John Cossum was the owner of the lot described in the petition.

This defendant further says that the petitioner herein has, since the first day of January 1857 furnished labor and materials for other ~~dwellings~~ buildings for the erection of which said Cossum was a contractor besides the building described in this petition, and that from time to time payments have been made by said Cossum to said Foote, and that the balance, if any, which may now be due the petitioner herein from said Cossum is due for materials furnished and work done on all

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the buildings for which he may have furnished labor and materials for said Cossum during the past season, and not solely for work done and materials furnished for the particular building described in this petition.

This defendant admits that the said Cossum & wife did make and execute a deed to this defendant on the 28th day of August last of the premises described in said petition, but denies that a claim or lien existed at the time of the execution of said deed.

This defendant denies that any other matter or thing in said petition contained not herein sufficiently answered, confessed and avoided, traversed or denied is true according according to the best knowledge, information and belief of this defendant.

And now having fully answered said petition this defendant asks to be dismissed hence with his reasonable costs in this suit.

George Minter by
Knox & Wilkinson attys

State of Illinois }
County of Rock Island } ss

George Minter being duly sworn, says that the matters set forth in the foregoing answer are true so far as they purport to be stated on his own knowledge, and so far as they are not so stated he has been informed and believe them true.

Sworn to and subscribed the 20th day of December AD 1857. } Geo Minter

Quincy McNeil, Clerk

Be it Remembered that on the seventeenth day of March 1858 there was filed in the office of said Circuit Clerk in the city of Rock Island and county and State aforesaid Exceptions to the answer of George Wither in the words and figures following to wit,

Charles C. Foote	} R & Cir Ct March 8 1858
vs	
John Cassum & George Wither	

And the said Plaintiff comes and excepts to the answer of said defendant Wither and says the same is irrelevant, unresponsive immaterial and otherwise insufficient to be replied unto, wherefore

R M Marshall

Pltffs sol

And afterwards on the 18th day of March 1858 a replication was filed in the office of Clerk of the Circuit Court in the City of Rock Island and county and State aforesaid in the words following to wit.

Charles C. Foote	} March Term of the Rock Island County Circuit Court - 1858
vs	
John Cassum & George Wither	

The replication of Charles C. Foote comes to the answer of George Wither Deft. and the said plaintiff saving and reserving unto himself all and all manner of advantage & exception to the manifold insufficiency of the answer of George Wither one of the

defendants in the above entitled cause, for replication thereto with that he will aver and prove his said petition to be true and certain and sufficient in the law to be answered unto, and the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this replicant, without this that any other matter or thing whatever in the said petition contained material or effective in the law to be replied confessed and avoided traversed or denied is true all which matters and things this replicant is and will ready to aver and prove as this honorable court shall direct and humbly prays as in and by his said bill he hath already prayed.

Charles C Foote by
R M Marshall his solicitor

And afterwards to wit on the 28th day of September 1858 before the judge aforesaid at the September term 1858 of said Circuit Court and on the 14th day of said term the following proceeding was had.

Christopher Atkinson & Elisha P Reynolds
Partners & C Atkinson & Reynolds

vs
John Cassum & George Wister

John Harper & Alexander Steel
Partners & C Harper & Steel

vs
John Cassum & George Wister

Mechanics Lien

Robert Graham
 vs
 John Cossum &
 George Minter

At this day came the
 above named complain-
 ants by Wilkinson & Pleasants
 and R. M. Marshall their
 solicitors and the defendant

Stephen Linworth
 vs

George Minter by Knox &
 Wilkinson and Beardsley

John Cossum &
 George Minter

and Smith his solicitors
 and the defendant John

Charles C. Forner

Cossum having been

vs
 John Cossum &
 George Minter

duly served with a process
 of summons herein and
 being three times solemnly
 called came not but made
 default. It is therefore

ordered and decreed by the Court that the
 petitions of the said several respective com-
 plainants to taken as confessed as against
 him - And the exceptions filed by the said
 several complainants to the several answers
 of the said defendant George Minter coming
 on now to heard by the Court and being
 argued by the counsel and by the Court
 duly considered the said exceptions number
 one and two are sustained and on motion
 of said defendant Minter leave is given him
 to file amended answers in the said several
 causes and the said causes are now continued

And afterwards to wit on the 14th day of
 December 1858 there was filed in the office of the
 Clerk of the County Court in the county
 and State aforesaid the amended answer

of George Myster which is in the words and figures following to wit.

State of Illinois }
Rock Island County }

Rock Island Circuit Court
December Term AD 1858

To the Hon. J. Wilson May Judge
of the Sixth Judicial Circuit in the State of
Illinois

The amended answer of George Myster one of
the defendants to the petition of Charles E. Toomer
complainant.

This defendant now and at all times hereafter,
sparing to himself all and all manner of benefit, or
advantage of exception, or otherwise, that can
or may be taken to the many errors, uncertainties
and imperfections in the said petition contained
for answer thereto, or so much thereof as this de-
fendant is advised it is material or necessary
for him to make answer to, answering with

That the work and materials set forth
in the said petition and the bill thereto attached
marked "C" as furnished by the petitioner in
and about the dwelling house therein men-
tioned, if furnished at all, were not furnished
by the petitioner to John Coosum, one of the
defendants to this bill, by contract, made
on or about the 1st day of January AD 1857,
as the owner at that time of a part of a lot
described in the said petition, to wit. the west
half of the west half of Lot No. one (1) in Block
No. nineteen (19) in that part of the City
of Rock Island known as the old or

original town. Nor were they furnished, if furnished at all, by the said petitioner in and about the dwelling house therein mentioned, by contract with the said Cossum, made at any other time, when the said Cossum was the owner of said lot or part of a lot, and that the said Cossum was not on the said 1st day of January AD 1857, nor at any other time when he made a contract with the said petitioner for the labor and materials set forth in the said petition and the bill thereto attached, marked "C" the owner of said lot or part of a lot.

This defendant further says, that the petitioner herein has, since the 1st day of January AD 1857 furnished labor and materials for other buildings for the erection of which the said Cossum was a contractor, besides the building in this petition, and that from time to time payments have been by the said Cossum to the said petitioner, and that the balance if any which may now be due to the petitioner herein from the said Cossum, is due for materials furnished and work done on all the buildings for which he may furnished labor and materials during the year 1857 and not solely for the work done and the materials furnished for the particular building described in the said petition.

This defendant admits that the said Cossum and wife did make and execute to this defendant on the 28th day of August AD 1857,

a deed of the premises described in the said petition, but denies that a claim or lien, as set forth in said petition, existed at the time of the execution of said deed.

This defendant herein expressly denies that any other matter or thing in said petition contained, not herein sufficiently answered, confessed, avoided, traversed or denied, is true according to the best knowledge, information and belief of this defendant.

And now having fully answered said petition, this defendant asks to be dismissed hence with his reasonable costs in this suit—

Knox & Wilkinson

for Sdgt Mipter

State of Illinois }
Rock Island County } ss

George Mipter, being duly sworn, says, that the matters set forth in the foregoing answers are true so far as they purport to be stated on his own knowledge, and so far as they are not so stated, he has been informed and believes that they are true—
Geo. Mipter

I sworn to & subscribed

this 14th day of December

AD 1857—Quincy McNeil clk

The final Decree in this case is the same as in the case of Harper & Steele v. John Cossum & George Hixson & there is but one Record of such final decree. E. H. Brown aw.

State of Illinois } ss
Rock Island County }

J. Edward H. Bowman

clerk of the Circuit

Court within and for said County, State

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aforesaid hereby certify that the foregoing
is a true full and complete transcript of the
Record of proceedings had in said Cause in
said Circuit Court, as also a full complete
and true copy of the several original papers
on file therein, as entire as the same now
remain of Record, or on file in my Office.

In testimony whereof I have hereunto
set my hand, and affixed the Seal
of said Circuit Court at Rock Island
this 20th day of March A.D. 1863.

Edward H. Bowman
Clerk.

#4:75 pro paid
C.H.B

State of Illinois } 3d. Third Grand Division
Supreme Court } To April term 1864

George Minter } Plff. in error.
impeached & ~~not~~
vs
Charles H. Foote } Def. in error

Assignment of Errors

And now cometh the said
George Minter by Kuerstien
his attorneys and says that
there is manifest error in the
record and proceedings aforesaid
and in the rendition of the
decree aforesaid in manner
and form aforesaid, in this,
to-wit:

1 The court erred in overruling
the demurrer of the Plaintiff
in error to the petition of the
Defendant in error.

2 The court should have
sustained said demurrer
and dismissed said petition

3

The court should have dismissed said petition because the same is insufficient to give the court jurisdiction

4

The court erred in rendering the ~~second~~ decree for the Defendant in error in manner and form aforesaid
 The court & the
 Atty for Plff in error

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 George May to
 Impleaded with
 John Cozzani

Charles C. Toomer

Transcript of Record

& Assent of Errors

Filed February 5th 1864

L. Leland

Clerk

STATE OF ILLINOIS,
SUPREME COURT.

ss. The People of the State of Illinois,

To the Sheriff of Rock Island County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between Charles C. Toomer

plaintiff—, and John Cossum & George Mixer

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

as we are informed by his complainant the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Charles C. Toomer

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

notice, together with this writ.

Proteny C. Walker

Witness, The Hon. John H. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Leland

Clerk of the Supreme Court.

W. B. Rice Deputy





93
State of Illinois }
Rock Island County }

I cannot in my County find the within
named Charles C Turner. this 14th day of April A.D. 1864.

C. A. McLaughlin Sheriff of
Rock Island Co Ill

SCIRE FACIAS.

FILED. April 19. 1864. A. D. 1864

L. Lawrence Clerk.

George Mixter
vs.
Charles C. Turner

State of Illinois } ss. To the April term
Supreme Court } A.D. 1864 of said
Court to be held at Ottawa.

George Minter } Plff. in error
impeached &c }

vs
Charles E. Fournier } Def. in error.
}

The clerk of said Court
will please issue a scire facias
and writ of error in said
cause directed to the Sheriff
of Rock Island County.
Chicago Feb. 4th 1864

Thos. Reed
Attys for Plff. in error.

Jas L. Seland Esq
Clerk

93
George Wister
vs

Charles L. Fournier

Receipt

Filed February 5th 1864

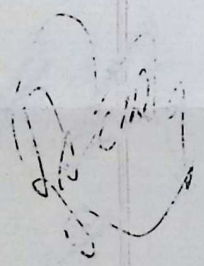
L. Leland
clerk

State of Illinois } 3d. Third Grand Division
Supreme Court } To the April term A.D. 1864
at Ottawa.

George Mixer } Plff. in error
inpleaded &c
vs } Error to Rock Island County.
Charles E. Foerner } Deft. in error

George Mixer being
duly sworn on his oath says
that he is the Plaintiff in error
in said suit; and that the
said Charles E. Foerner, the
said Defendant, has gone out
of this State so that process
cannot be served upon him
in said suit.

Subscribed to & sworn before me } Geo. Mixer
this 9th day of July A.D. 1864 }
Edward H. Bowman }
CLK }



93

George Mixer
NY

Charles E. Loomis

— — — —
Aff. of Mixer
— — — —

Filed Feb. 17. 1864.
L. Island
Clk.

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100
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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,
Plaintiff in Error,

v.

CHARLES C. TOOMER,
Defendant in Error.

Error to Rock Island.

ABSTRACT OF RECORD.

R. p. 1 PETITION filed November 26th, 1857.

2 Petition for a mechanic's lien upon the west half of lot one, in block nineteen, in the old town of Rock Island, alleges that on the first day of January, 1857, one John Cossum, the owner of said premises, made a contract with defendant in error, whereby he agreed to furnish the necessary materials for, and perform labor and work in the lathing and plastering of a brick house to be erected on said premises, at the reasonable request of said Cossum, and during the year 1857.

3 For which material and labor, the said Cossum agreed to pay defendant in error the reasonable worth and value *on request*; that the defendant in error furnished materials and performed work and labor in lathing and plastering said house according to the account attached to said petition; that the reasonable worth and value thereof was \$83.17, which he (Cossum) agreed to pay defendant in error *on request*; that said Cossum had not paid any part thereof; that Cossum and his wife, on or about

3 the 28th day of August, 1857, conveying said premises to plaintiff in
4 error by deed thereof; that the title conveyed by said deed, is subject to
5 claim for a lien of defendant in error.

6 PRAYER of petition for a mechanic's lien on said premises, to pay said
7 sum of \$83.17.

8 COPY of said account in which defendant in error claims \$83.17 for
lathing and plastering said house.

9 SUMMONS and return of service by sheriff of Rock Island county.

10 DEMURRER of plaintiff in error to the petition of defendant in error.

11 ORDER of the court overruling the demurrer aforesaid.

12 ANSWER of the defendant in error to the petition.

13 The answer admits that Cossum was the owner of the premises as
alleged in the petition.

Alleges that defendant in error has, since the first day of January,
1857, furnished labor and material for other buildings for the erection of
which said Cossum was a contractor, besides the building described in the
petition, that he has from time to time received money from Cossum, and
that the balance, if any is now due, is due for work done and material
furnished on all the buildings, and not on the particular building described
in said petition.

Admits the conveyance of said premises to plaintiff in error as alleged
in said petition.

AFFIDAVIT of truth of answer.

14 EXCEPTIONS to answer of plaintiff in error, because it is irrelevant,
irresponsive, immaterial and insufficient.

15-16 REPLICATION of defendant in error.

17 EXCEPTION one and two to answer sustained.

18 LEAVE given to amend answers.

19 AMENDED answer of plaintiff in error.

20 The amended answer denies that the defendant furnished labor and
materials as alleged in said petition; denies that Cossum was the owner
of said premises as alleged in the petition; the rest of said amended
answer substantially like the original.

CERTIFICATE OF CLERK TO RECORD

15- The clerk ^{certifies} ~~subscribes~~ the following true
to wit:
"The final decree in this case is the same as in the"
"case of Harper & Steele vs John Cossum and"
"George Minter, and there is but one record"
"of such final decree."

15-16 certificate of clerk to the record.

Filed April 19, 1864
J. S. Linnard CTR