No. 13043

Supreme Court of Illinois

Hunt

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vs.

Cook

...LLINOIS,

...REME COURT,

Third Grand Division.

No. 252.

1860

Hunt
vs
Reed
et al

2 2

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1860.

E. HUNT
ads.
I. COOK.

Appeal from Superior Court of Chicago.

POINTS FOR APPELLEE.

WALTER B. SCATES,

Of Counsel for Appellee.

Filed May 16, 1860
L. Leland
Clerk

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION:

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Appeal from Superior Court of Chicago.

POINTS FOR APPELLEE.

I propose to follow the order marked out by appellant, and answer his points.

I.

The first position assumed is, to make use of the orders drawn by the architect, Olstead, upon Cook and in favor of Hunt, as an *estoppel* in law upon Hunt to deny the *character* and employment of Christopher.

What are the facts appealed to, to work this estoppel upon Hunt?

It appears that Olstead, as architect, used a printed form of a check, or order, or certificate, describing the contractor as "*plumber.*" See Abstract, page 3.

"This is to certify, that there is due to C. Christopher, plumber, the sum of four hundred dollars, for labor and materials furnished your buildings on Young America, as per contract, payable at sight at Chicago." This was dated 23d Dec., 1854. Olstead got Christopher to endorse it, and thus made and endorsed, it was passed to Drake, after a precisely similar order to Hunt had been refused. The order to Hunt, describing him as "plumber," was dated Dec. 13, 1854. See Abstract, page 24.

Now, these orders or certificates prove little more than that Hunt had done so much work.

But to give them effect as estoppels, Olstead swore that the work was let to Christopher by written contract; that Drake and Hunt knew this and took the job from Christopher; and then, when they took an order in his favor to Cook, and Cook paid it, they ought to be estopped to deny that Christopher was contractor for the plumbing.

Now, this same architect had made his first certificate to Hunt as the plumber, and had explained Cook's refusal to pay it as "*notional*," without assigning as a reason that he had employed another to do that work, or that Hunt had not been employed.

Drake swears that no such reasons were assigned by either Cook or Olstead, for Cook's refusal to pay the certificate of 13th Dec., 1854. He also swears that the contract had been let to Hunt, and that neither he nor Hunt knew of any contract with Christopher; and that Hunt had not sub-contracted with Christopher. Now, in all these essential facts, Drake expressly contradicts Olstead; to this we add a successful impeachment of Olstead's testimony. How, then, is it possible to lay the foundation of *estopping facts* by a witness who is flatly contradicted and successfully impeached by eleven witnesses?

The principles of law laid down in appellant's brief, upon the doctrine of estoppels in *pais*, is sound and unquestionable. My answer to them is, that the facts do not exist to call for their application.

Neither Drake nor Hunt ever asked Cook to act, nor induced him to do anything upon any assumed state of facts. And, therefore, there is no ground for the working of an estoppel in *pais*.

II.

Having shown in the evidence that Olstead was the *acting* architect and agent, his declaration and statement relative to matters falling within the scope and duties of such agency, were properly admitted in evidence.

The evidence shows that he received the bids for the work, and that he let a part of the work.

The declarations or statements we proved in this record, fall clearly within his duties and powers, as shown by the proof.

III.

The refusal of secondary evidence of a contract between Christopher and Cook is the third of appellant's points.

The appellant has cited no case on this branch of the law, for the very reason that no case he can find would admit his proving a contract by parol upon such proof of search as he made in this case.

The rule is correctly laid down to be, that where a paper has a particular place of deposit, or where it is shown to have been in a particular place, or in particular hands; then that place must be searched by the witness proving the loss, or the person produced into whose hands it has been traced.

The extent of search must depend upon circumstances, and must be in the utmost good faith.

Palmer vs. *Logan*, 3 Scam. R. 57.
12 John. R. 192.
Doyle vs. *Wiley*, 15 Ill. R. 579.
Minor vs. *Tillotson*, 7 Pet. R. 99.
Parkins vs. *Cobbett*, 11 Eng. C. L. R. 394.
Chapin vs. *Taft*, 18 Pick. R. 379.
Woods vs. *Gassett*, 11 N. Hamp. 242.
Taunton Bank vs. *Richardson*, 5 Pick. R. 436.
Rankin vs. *Crow*, 19 Ill. R. 626.

In this last case the rule laid down requires that Mr. Benj. King should have been produced, into whose custody the supposed contract had been traced.

Olmstead's search is not sufficient, because the safe containing the paper is traced into King's hands. Finding the safe is not sufficient, for the papers, as well as the safe, came into King's hands. King, therefore, has them yet, and he should have been summoned to bring them into Court, or at least to have been inquired of for them.

IV.

The object in inquiring as to what Olmstead told his partner, Van Osdell, was to lay the foundation for an impeachment of the witness.

The character and conduct of this witness was dishonest and infamous towards his partners, his employers, and the contractors, builders, and their workmen. We intended to show that he swindled his partner out of his part of the profits of their joint labors by a false and dishonest collusion with Cook. We intended to show that the pretended contract with, and payment to, Christopher was a foul conspiracy between Cook, Christopher, and Olmstead. And all this pretence about a contract and settlement with him was intended to cheat Hunt out of his labor. And this was all of a piece with his

V. Objection, or Point.

What relevancy had payments and settlements made with Christopher to do with Hunt?

Hunt had nothing to do with Christopher, nor his contract.

Christopher had contracted to do, and did do, the copper work, and it may be that Cook made full settlement with him for it. But this contract and settlement had no pertinency or relevancy to Hunt and Hunt's bill.

There could be no error in excluding this evidence.

VI.

The witness, Olmstead, had sworn very positively that Hunt took the plumbing work from Christopher. We had a right to contradict him, not only by Drake, who swore that he made the contract with Olmstead for Cook, and never did take any contract from Christopher, nor had anything to do with him, and did not know that Christopher had, or pretended to have, such a contract.

Now, under such a direct contradiction, it was surely competent to prove by Wilder that Olmstead had admitted that Drake was doing the plumbing. We not only had the right, but did successfully impeach Olmstead.

VII.

This objection is in close connection with the last.

Barker was called to sustain Olmstead. But he failed to show that he was acquainted with his general reputation for truth and veracity. No one can be allowed to state whether he would believe a witness upon oath, unless he is acquainted with his general reputation for truth.

VIII.

The instructions asked by Hunt were such as are usual in cases of implied assumpsits.

The shallow pretence set up by Cook, without a particle of proof to sustain it, that Christopher had contracted for the work, did not make a qualification of the instructions necessary.

The law does not require proof of a *scienter*. Cook was shown to be around giving directions, and having proved Cook to be on the ground and well acquainted with the fact that the work was being done by Hunt, no *scienter* need to be laid in drawing an instruction as to his common law liability.

The 2d, 3d, and 4th instructions embrace the doctrine of the architect's powers, under an implied confirmation of his contract with Hunt.

Although Cook may have employed Christopher, of which there was no evidence, yet when he finds another man doing the work under his architect, when he is presented with certificates given to that other, when he is present from time to time examining the work as it progresses, and when he is presented with the final and whole account, and, during all this time he utters not one word of objection to the person, or time, or manner, it needs no *scienter* to be laid, to charge him upon an implied promise to pay for such work after he accepts and enjoys it.

The law will imply a confirmation of the architect's authority to make the contract, and a promise to pay for it.

Under these facts, the doctrine of estoppel in *pais* will apply to Cook and shut his mouth from saying he had a contract with another.

And this is the more reasonable, for, when a man employs one to do a piece of work, and afterwards finds another doing it, it is the most natural thing in the world to inquire by or under what arrangement he is doing it.

The 4th instruction assumes no such *scienter* as is objected to it. It proceeds upon the facts sworn to in the record, that Hunt did the work, that Cook knew he did it, and paid him in part for it, and that if the jury believe these facts, and that Hunt did the work under Olmstead's employment, then payment is some evidence of Cook's satisfaction and confirmation. Could it be less than a fair presumption from such facts?

The appellant further objects that these last two instructions were not marked given or refused, as the Statute directs.

Cooke Stat. p. 261, Sect. 1.

This Statute is directory to the Court. The record here shows all that this direction of the Statute was intended to accomplish; that is, what was done with the instructions. Now, where the Court neglects to mark the instructions, the most that could follow would be to treat the instruction as given or refused, as against the party asking them, and most favorably to the other party. And if they are erroneous, then to reverse the judgment for the error.

But suppose, as in this case, the instructions are not marked, and yet in them the law is correctly laid down, would any Court reverse a judgment upon correct instruc-

instructions, simply because they were not marked given? This would be sticking in the bark—a holding to the shadow, and letting the substance go.

The Court will construe the act as intending to afford some protection to a party from acts that might injure him, and not as a technical weapon of assault.

IX.

The refusal to give, and the qualification of, appellant's instructions forms his 9th Point.

The first instruction in appellant's series, assumes that there was evidence before the jury of a contract between Cook and Christopher. This is untrue. The Court excluded all parol evidence, the preliminary proof showing that whatever contract existed was written. All the proof set out in the record as to such a contract was proof offered to the *Court*, and was not before the jury at all.

Again, it is not the law that the existence of a secret contract between Cook and Christopher, unknown to Hunt, or Cook's private, secret refusal to recognize any other as his creditor on account of such work, would deprive Hunt of his right to be paid for work under such circumstances. Such is the substance of the first instruction with its modification.

The second is of a piece with the first. As drawn, Hunt would be made to work for Christopher unconsciously, if a secret agreement unknown to him existed. His knowledge and his consent, express or implied, is deemed to be a matter of no consequence.

The third instruction is but a mere variation of the same principle, and the amendment required, by knowledge or notice, Hunt shall become a party by his acts or acquiescence. The principle involved in all these amendments is so natural, so reasonable and just, and so consonant to law, that the Court must sanction and approve it.

The last two instructions asked sought to make a contract out of the architect's certificates of estimates, and also to put such a construction upon them as would make Hunt a sub-contractor under Christopher. The word to which he would attribute so much meaning is the word "*plumber.*" Now, taking all these certificates together, and both these parties had plumbing work to do. The idea held forth in the instructions, that, because the two last cetificates were given to Christopher, therefore he had a contract for *the* plumbing work done by Hunt, is a *non sequitur.* Yet such is the faulty argument and bad law of this instruction.

Can any body say, from these certificates, that both of them had not contracts for some plumbing work? Or may it not be as well to say, that Olmstead carelessly used these printed blanks in making certificates for Christopher's copper work?

The appellant blows hot and cold both. One moment he contends the architect had no authority to make a contract with Hunt. Now he contends that every certificate of estimates is evidence of a contract. I will allow this latter position. I only differ with him as to the construction and conclusion he would draw from it. While it may be accepted as evidence of a contract, express or *implied*, yet it does not show what class of work, how much of it, nor that no one else had a contract for similar work. It is this latter point of view that appellant asks the Court to construe and instruct upon these certificates. It is not true as a matter of fact, nor a principle of law, that there could be but one contract and one contractor for plumbing work on Young America. It is not true as a matter of fact, nor as a principle of law, that Mr. Hunt, being a contractor for plumbing work on the 13th December, legally ceased to be such contractor, because Mr. Christopher might have contracted for plumbing work on the 23d December and 11th Jannary following.

There is, therefore, no light or point of view in which these instructions can be sustained.

X.

Lastly—The Court ought not to have granted a new trial, because the appellee made full and satisfactory proof that he performed the work for appellant charged in his Bill and Declaration; and he successfully impeached, by eleven respectable men, the *only* witness whose testimony tended, in the remotest degree, to question it.

We therefore ask an affirmance of the judgment below.

WALTER B. SCATES,
Of Counsel for Appellee.

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SUPREME COURT OF ILLINOIS.

Third Grand Division,
APRIL TERM, A. D. 1860.

ISAAC COOK,
vs.
EDWIN HUNT.

Appeal from Superior Court of Chicago.

I.

The order drawn by the witness, Olmstead, in favor of Christopher on Cook, accepted and paid by him to the plaintiff in this suit, after Cook's refusal to accept one in favor of the plaintiff, is an estoppel upon the plaintiff; and he cannot now be heard to say that the contract for doing the work was made with him.

A party is concluded by an estoppel, where it appears that he has made an admission which is clearly inconsistent with the evidence which he proposes to give, or the title or claim which he proposes to set up.

2. That the other party has acted on the admission; and

3. That he will be injured by allowing the truth of the admission to be disproved.

Carpenter vs. Stilwell, 12 Barb. 128.

4 Barb. 495; 9 do 618; 3 Strobbart, 357; 16 Barb. 613.

II.

That the statements of Olmstead were allowed to go to the jury. This witness had charge of the work as superintendent. Whatever he said as to the manner of doing the work, was, of course, proper; but, he had nothing whatever to do with the person to be paid therefor, and any statement he might make on that subject, in the absence and without the knowledge of Cook, was not evidence.

III.

The refusal of permission to prove the contents of the contract between Cook and Christopher.

This paper was shown never to have been in the keeping of Cook—was left with Olmstead; he had been, for two years before trial, absent from Chicago. He left it when he went away; on his return he searches for it, and cannot find it, and shows clearly that the paper must have been lost.

IV.

In allowing the witness, Olmstead, to state what he had told his partner, Van Osdell, about Cook's paying him for services.

V.

The refusal of proof of payment to Christopher.

VI.

The statement by N. P. Wilder, of a conversation between him and Olmstead—Olmstead's attention not having been called to it.

VII.

The refusal to allow Barker to state whether or not he would believe Olmstead under oath.

VIII.

The instructions given for the plaintiff. The second submits two facts to the jnry, upon which there was not the slightest evidence before them. 1st. That Hunt did the work without any agreement or employment by Christopher. 2. Hunt had no knowledge of Cook's contract with Christopher—and was clearly calculated to mislead the jury. It is wrong, also, in that it does not require Hunt to show that Cook knew that his architect, Olmstead, had employed Hunt to do the work which he, Cook, had employed Christopher to do. The instruction only requires the jury to find that Cook knew that Hunt was doing the work, and does not require them also to find that he knew his architect had employed him.

The fourth, also, instructs the jury upon a state of facts of which there was not the slightest evidence : that is, that Cook knew that Olmstead had ordered Hunt to do the work without any regard to the contract he, Cook, had made with Christopher.

The third and fourth were given without being marked such, which was clearly contrary to law.

IX.

In refusing and qualifying the instructions on the part of the defendant.

The qualification of the first instruction : "And that the plaintiff had notice of such refusal"—because it required the defendant not only to refuse, but to go and notify the plaintiff of the fact of such refusal. The refusal itself was notice; the proof showing it was to the agent of Hunt, and to require notice to the plaintiff, could only mislead the jury.

The qualification of the second : "If the plaintiff so understood it at the time." It is a matter of indifference how *the plaintiff* understood it. The question of the liability of the defendant to the plaintiff, when the affirmation is upon the plaintiff, cannot depend upon the plaintiff's understanding, but upon the defendant's.

The Third. The qualification to the third is still more objectionable as to notice. It answers that, although Cook refused to recognize Hunt as contractor—of which fact he had knowledge and received money as a sub-contractor. Yet, Hunt must have had notice, beyond that from Cook, of a contract with Christopher ; and that Hunt did the work for Christopher and not for Cook.

The refusal of the fourth.

The refusal of the fifth.

The legal effect of the certificates of the architect, and whether or not a notice of a fact was for the Court to say. I claim that the certificates upon their face are notice to any one reading them

that the contract for the work for which they were given is made by Cook with the person to whom they are issued. The counsel himself, in his question on page 24 of abstract, admits that it was such notice. We differed in our argument to the jury, as to the effect of these orders, and I had a right to the instruction of the court.

X.

The motion for a new trial should have been allowed.

W. T. BURGESS,

For Plaintiff.

25-2-187

Cook .vs. Hunt

Appellts. Points

Filed May 10. 1860

L. Allen
Clerk

In Supreme Court

Cook
vs
Hunt
} Appeal

Pfs Reply

1 The facts that are appealed to as working the estoppel in pais in favor of Cook are first the language of the Certificates themselves & then the circumstances under which they were given & paid by Cook.

Here is the form of a Certificate in ordinary use among Architects in which the Kind of work & materials used is designated, by the word "plumber" written in the Certificate. These Certificates are brief & as usual every word in such papers is full of meaning. C. Christopher is described as plumber that is not placed there to identify him or his Character but to designate the Character of the work & materials which was being done on the Young American. There is no proof that any plumbers work was done on the Young America but that which is in controversy in

this suit.

Hunt introduces one describing him as plumber that is that he had done work as plumber on the building.

As I asked the Court to tell the jury and as I say now & as the Counsel implied in his question on page 47- this Certificate on its face indicates the Character of the work & material & the person who had the Contract- That needs no witness - it is apparent upon its face-

Then the circumstances under which they were given-

1st One is drawn in favor of Hunt that is refused, a second in the place of this in favor of Christopher is drawn accepted & paid to Hunt- upon the Order of Christopher and a third is drawn & paid & that is all the money that Hunt ever gets on this plumbing work. The other work that he does for Cook is all paid-

How does this happen does it not show that Cook refused to recognize Hunt as Contractor- The only change in the Certificate is putting one mans name for the other, when that is done

Cook accepts & pays. why did he pay one & not the other, Hunt having accepted the order in favor of Christopher & taken the money under him when Cook refused to pay him directly is bound by the act- Had he refused to take the money in that way as working under Christopher Cook would have discharged him from the building as working without any authority- after that time in the absence of any notice from Hunt that he claimed to be working for himself- Cook had a right to suppose that he was working under Christopher-

The minds of both contracting parties must agree to make a contract- The law implies one in the absence of any expression, but where any expression exists & is shown the the law follows that expression- In this case there is no proof that Cook knew who was in fact doing the work at the time 1st Certificate was drawn- see page 6 of abst. 19 of record.

He is called upon by Hunt as the Contractor, he refuses to pay him, He

is then called upon by this same Hunt
to pay him as a Subcontractor under
Christopher or what is the same thing
for the very same work that had
been claimed as Done by Hunt,
he Hunt presents a Certificate as
having been done by Christopher
& Cook pays it. Here is an repre-
sein of who had the Contract for doing
this work made by Hunt upon which
Cook pays his money & allows him
to complete the work. not only so
but a second one is drawn on which
Cook again pays some more money
and when Hunt has finished the
job under these representations
he then repudiates them & claims
that he was the Contractor all the time
And seeks to recover unjustly &
solely upon the ground that the pre-
sentation of a Certificate that
money was due Christopher as Con-
tractor needing his endorsement
was a mere check to the payment
of money & because he finds a
Witness who has check to swear
that he never heard that Christopher
had anything to do with it while

holding in his hands a paper requiring Christophers endorsement, as the contractor to whom the money was due, to get the money for Cook.

The appearance of the witness & of the Counsel are alike in this case, one is swearing to his ignorance of a fact that he stands there with on the stand by the papers in his hand, & the other is talking about Cooks conspiring with Olmstead, to cheat Hunt.

I claim that without Olmsteads testimony at all the facts established by Drake create an estoppel. 1st No express Contract is proved between Cook & Hunt or between Cook & Drake as Hunts agent to do the work page 7 of Abst.

2nd While the work is in progress & about $1200 of it done Cook is presented with an order in favor of Hunt for pay and he refuses it.

(Conveniently the witness dont know why he refused it, but it is sufficient for our purposes that he did refuse it & we will account for it by what the parties did afterwards.)

3d Another order is then drawn for the same work upon the procurement of Hunt, or of Drake, Hunts agent without any interference on Cook's part is endorsed by Christopher without Cooks procurement & is then presented to Cook & paid by him.
4. This Artificate only differs from the first in that it recognizes Christopher as the Contractor while the other recognized Hunt.
5. A third Artificate is drawn of the same character as the second & is paid without hesitation.
6. No other money is paid to Hunt for this work.
7. All the other work done by Hunt is paid for.
8. And nothing passed between Cook & Drake touching the work further than he saw him on the building at work — see top page 7 of abst & it does not appear that Cook knew Drake was working for Hunt — same place

When the Counsel says "Neither Drake nor Hunt ever asked Cook to act nor induced him to do any thing

upon any assumed State of facts"
he states the direct reverse of what
is proved by Drake himself.

2 But the Question is what state-
ments are within the scope and duties
of his agency. If he was author-
ized to let the work then his state-
ments at the time are evidence to
whom he let, but none made after-
wards are. If he had authority
to let the work it does not follow
that his statements afterwards as
to whom he let it are any evidence
of the fact. If his authority as
Agent extended to the Superinten-
dance of the work then his dir-
ections & Statements at the time
while engaged in the duty of Super-
intending are evidence of the dir-
ections in fact given but he
cannot afterwards make any
admissions which will be evidence
when offered by a third person as
to how in fact he did direct be-
cause he had originally authority
to direct.

If his authority extended to Certify-

ing the value of work done his state=
ments afterwards proved by a third
person as to what the amount he
certified the value to be are not evi=
dence so in this case although he
had authority to let the work yet
as all his statements to Duke so
far as they went to charge Cook as
privy of the person to whom he in
fact let the work, being made
long after the act was done by him
as such agent they were clearly
inadmissable. The reason given
by him for drawing a certificate
in favor of Christopher as the contra=
ctor after work was let are no evi=
dence whatever as against Cook that
those were the reasons - If he signed
a false reason for it that is of no
consequence when he had once let
the contract his power over the
subject matter was gone. There
would be just as much propriety
in insisting upon the first certificate
as evidence in the cause to charge
to Cook with what Olmstead said
although Cook repudiated it as upon
what Olmstead said when he made

out the second one which conflicted with the face of that Certificate.

3 The evidence in this cause showed that Olmstead had just come up from St Louis - where he had been absent from Chicago about two years - that he left the City leaving this paper on his Safe with other papers in charge of Jenkins, Jenkins put the Safe in the hands of King, King sells the Safe opens it & takes out the papers - King cannot be found nor what has become of the papers - every case is governed by its own circumstances sufficient must be shown to satisfy the Court that the paper is not withheld from any sinister motive, and in this case the particular contents of the Contract were of the least possible consequence -

The only point was the very genuine one whether the Contract covered this plumbing work - further than that it was not necessary for either side to inquire - That there was a Contract

proved between Cook & Christopher
the Court below conceded.

4 But in what respect could the character of the dealings of Olmstead to-wards Van Osdell bear upon the questions in Controversy in this suit-
We could not come prepared to show that he did not Client Van Osdell - matters in issue in this suit were entirely distinct from theirs and the only tendency was to injure the Witness in a point where he could not be expected to be ready to meet it.

6 Whether Olmstead was impeached by the eleven men who had so far had difficulties with him, that they would not believe him as for the jury but suppose they did so swear it dont therefore follow that the Counsel can ask a Witness a question as to statements made by Olmstead without calling his Olmsteads attention to it with time place & circumstances. The Counsel concedes he did not do this but because

Drake some that he, Drake, did not do what Olmstead said he did therefore it was surely competent to ask Wilder what Olmstead said without any preliminaries—

7 Barker said "I know a great many of his friends, and have never heard anything against it from them or others, - Known persons he has done business with & never heard them say anything against his reputation for truth & veracity at all"— if the Witness may not then be asked whether he would believe him under oath or not— I am forced to the conclusion that it is only when a man's Character is produced in the Community that you may ask this question of the very man or men who have aided in producing him to have them reply they would not believe him, but as to a man whose Character outside of persons he has had difficulties with is not questioned (for I take silence on this point is the highest commendation) you

cannot ask persons who have dealt with him & know him & must be likely to form an estimate from that, of the probability of his telling the truth whether they must believe him or not.

8. I quote and interpolate the reply as I go along- "although Cook may have employed Christopher of which there is no" (some) "evidence" (see foot of page 18. of abst) "yet when he finds another man doing the work under his Architect, when he is presented with Certificates given to that other" (and refuses to pay them, and that other man gets Certificates in favor of the first man & Cook pays them to him) "when he is present from time to time, examining the work as it progresses" (but is not there until one half the work is done & then the agent Drake is particular not to say anything about it & nothing passes between him & Cook although Cook had before this refused to pay him for the work

And when he is presented with the final & whole account (requests it to be divided into three accounts pays two of them & refuses to pay the part in Controversy) "and during all this time utters not one word of objection to the person time or manner" (only he wont pay Hunt the first time Hunt calls upon him & then Hunt withdraws his claim & presents himself twice as Sub-Contractor under Christopher & Cook pays him & by this time out of $2400 — at most $1600 had been done (see bill of items & compare dates of Certificates with dates therein) it needs no Scienter to be laid to charge &c. Well may be it is not a Scienter that is needed but it does seem to me that a little common sense should convince anyone that such things dont happen and that other men had a right to recover.

The Statute is mandatory as to marking the instructions — The object of the Statute is to avoid

questions afterwards as to whether an instruction is given or refused -

9 If I work for a man on his land without his knowledge I cannot recover unless he accepts and uses it -

If I go to work without any agreement with him I can in the way he may afterwards have that I accept the work - If he does not the burthen and lays one all upon me

And if at the time he supposes or has reason to believe that I am working as a subcontractor under another party I alone am to blame if he insists upon paying that party & not me -

So that in this case it is of no consequence who Hunt supposed he was working for, or whether he had notice that Christopher had a contract or not for it - The whole labour of the case is upon him not only to prove that he did the work but that Cook accepted it knowing that he did it in circumstances appearing from which Cook must

have had a right to suppose the man to whom he let the work had done it.

I do not attribute to the word Plumber alone the force the Counsel says I do but its substitution for "Plumbers work" in the one of Dec 13. is pregnant with meaning. What is this Certificate when returned with an endorsement of the party in whose favor it is drawn but a voucher of the payment of so much money to apply upon the Contract between the parties touching the work therein described.

The Counsel says "Taking all these Certificates together, and both these parties had plumbing work to do" very well I am pleased with the concession that the Certificates respectively show that each party in whose favor they are drawn has a Contract but when two are acted upon by the parties to this suit & the other is repudiated & one of those acted upon is in fact a substitute in the place of the repudiated

one who uses a non sequitur makes a faulty argument & uses worse law- "Can anybody say from these Certificates that both of them had not Contracts for some plumbing work" the Counsel innocently asks, why no if Cortelyou accepts them all that would seem to be a sine qua non to their binding him - but when he refuses to accept the one showing a Contract in favor of Hunt & then in the place of that one is drawn in favor of Christopher & he accepts that & Hunt takes the money on it. it would seem that we might safely say that Christopher had the Contract & not Hunt.

Neither Knox nor Cone knew Cortelyou. Olmstead was, Cortelyou not careless in his use of these Certificates & the idea of careless use of a printed blank when the word plumber is written in all of them is sheer nonsense.

The proof in this case is clear that these Certificates were drawn on account of this identical work, and the money received on them applied to the Credit of the work & that the Certificate of

Dec 24 was a substitute for that of Dec 13 – The Counsel says that I "Contend that every Certificate of Estimators is evidence of a Contract" & that he "will allow this latter position"

If so my last instruction is clearly good law and its refusal is error without further argument & I claim a reversal of the judgment upon the Counsels own admission –

It was for the jury to say what conclusion the facts proved when they were told by the Court what was the legal effect of these Certificates –

Supposing they had been instructed by the Court that these Certificates were evidence that the person in whose favor they were made was the person with whom Cook or whom they were drawn had contracted to do the work – Now the evidence shows that the first one was repudiated by Cook – that the second one was by consent of all parties substituted in its place & that the third was in further payment of the same work & no special Contract being proved the only conclu-

sion to which they could come could be a verdict for Cook.

So far as the eleven men who impeached the witness Olmstead, we produced thirteen who clearly sustained him. And then he is corroborated by the circumstances.

Why in the name of common sense are these Certificates drawn to Christopher if he had nothing to do with the work & his name never heard of in connection with it before the trial of the cause, why should Cook refuse to pay Hunt & pay Christopher, why does Hunt take these Certificates payable to Christopher & then Drake get Christopher to endorse them. So far as surrounding circumstances can support or impeach a man I am willing that a comparison should be made between Olmstead & Drake.

Drake is clearly contradicted by the surrounding circumstances as Olmstead is sustained.

W. Y. Brush
for Cook

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Cook
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Hunt

Pffs Reply

Filed May 22. 1860
L. Leland Clk.

Not compared

Q. When did he leave? A. I think it was the forepart of May or June 1855.

24 Q. Did he go away openly or run away? A. Well, he cheated a good many people here.

Mr. Burgess. I object.

Witness. It was somewheres about the 1st of May.

Q. How long did you know Christopher before you went to work for him in the Fall of 1854? A. No, I didn't know him before.

Q. What time in the Fall did you begin to work for him? A. I think September or October, somewheres around there.

Q. During the time you were at work for him, had he any plumbing contracts that you know of? A. Not that I know of.

Q. Did he carry on the plumbing business? A. No, sir. Objected to.

Q. Did he look after any work in the Young America? A. I didn't know of the work on the Young America.

Q. Plumbing work? A. No, sir.

Q. Did he have any work there as coppersmith? Objected to. Objection overruled.

Q. You say you worked on the Young America during the time you were employed by him? A. Yes.

Q. What kind of work? A. I made some copper pipes.

Q. It was copperwork? A. Yes.

25 Q. Did he do much copperwork in that building? A. There were two coppersmiths and a boy; there were three of us at work, two journeymen and a boy, once in a while he worked himself.

Q. For whom? A. For any body that wants him.

Q. Who were you working for in the Young America building? A. I don't know, I never asked him about it.

Q. You did no other kind of work except copper and sheet iron work? A. No, sir.

Q. You never knew him to do any plumbing work? A. No, sir.

Q. Had he any means or material of doing plumbing work? A. No sir, not that I know of.

Q. Are coppersmiths acquainted with or do they know how to do plumbing work? A. No, sir.

Q. Is it a part of their business? A. No, sir.

Q. Are they distinct trades? A. Yes, sir.

Q. Do you know who was at work at the plumbing business in the Young America, and whether it was being done while you were there? A. I saw plumb-

26 ers who were at work there at the same time that I put up the pipe there. I don't

know who they were; I was not acquainted with them at the time. I think it was a man named McDougal, I couldn't say positive.

Q. Did you get acquainted with any other? A. No, sir.

Q. Did you see Mr. Drake that was on the stand at work? A. I think I saw him around there.

Cross Examined by Mr. Burgess.

Q. Do you know Mr. Christopher's handwriting? A. I have seen some of it.

Q. Do you know that (handing witness a document)? A. It looks something like his, but I don't know whether it is his or not; it was that kind of a hand.

MR. BURGESS. We propose to offer this as evidence. It is a receipt in full.

MR. MCALLISTER. I object; wait until it comes your time.

ROBERT McDOUGAL, being duly sworn,

Was examined in chief, by JUDGE SCATES.

Q. What's your occupation? A. A plumber.

Q. How long have you been such? A. Since 1840.

27 Q. Where did you work and for whom in the Fall and Winter of 1854–5? A. I worked part of the time for Wilson & Hughes and then went to Mr. Drake.

Q. It was for Mr. Hunt? A. Yes.

Q. In whose employment were you while there? A. I was engaged by Mr. Drake.

Q. Who paid you? A. Mr. Hunt.

Q. What jobs did you work on? Did you work on the Young America? A. Yes.

Q. In whose employment? A. Mr. Drake's.

Q. Mr. Drake superintended the work? A. Yes; he superintended me.

Q. Did you see the plumbing work of the whole house done? A. Yes, sir; from the commencement to the finishing.

Q. When did it commence? A. I could not say, it was hot weather when we commenced.

Q. You commenced on it before you got in the building, you prepared for the job? A. We didn't work much in the shop. It was done by other hands.

Q. When was it finished? A. I believe it was sometime in March or June. We did some in June.

28 Q. Did you ever see Mr. Christopher superintending any plumbing work in that building? A. No, sir.

Q. Did he ever pretend to have any contract or control in that plumbing? Objected to.

Q. Do you know when Mr. Christopher left this City? A. I don't know what time he went away. I heard of him being gone, but I can't say what time he went away; I can't fix the precise time.

Q. State if Mr. Cook was ever in that building during the time you were putting up that plumbing work? A. Yes, sir; I saw him several times there.

Q. Did he look after the work any? A. No, sir; I don't believe I ever spoke to him, or he to me.

Q. Did you ever see him examining the plumbing work? A. He used to walk around and look on but never said anything.

Q. Did you see Mr. Hunt there? A. Yes; looking after the plumbing work.

Q. Did you see him and Mr. Cook there together? A. Yes, sir; I think I did. I think I saw Mr. Drake, and he and Mr. Hunt come up together once, and Mr. Drake once, looking for Mr. Cook.

GEORGE HAUSLEIN, being duly sworn,

Was examined in chief by JUDGE SCATES, and testified as follows:

29 Q. What is your occupation? A. My business you mean—locksmith and bell-hanger.

Q. Where were you at work, and for whom, in the Fall and Winter of 1854 and '55? A. For Mr. Hunt.

Q. Had you charge of that department of Mr. Hunt's business? A. Yes, sir.

Q. He had that business carried on? A. Yes, sir.

Q. State if you received and executed orders for that kind of work? A. The order for bell hanging was given to me.

Q. Did you get an order for the bell hanging of the Young America from Mr. Cook? A. No, sir; I got the order from Mr. Olmstead.

Q. You got an order for the bell hanging of that house? A. Yes, sir; Mr. Olmstead gave it to me as architect. He looked after it as architect.

Q. Did you do the work? A. Yes.

Q. Was the bill paid? A. Yes, sir; Mr. Hunt told me it was paid.

Q. This is the bill marked $638 (handing a paper to the witness). Did Mr. Cook give you any instructions as to obeying Mr. Olmstead's orders about work?

Objected to. Objection overruled.

Excepted to by defendant's counsel.

COURT. Was there a written contract? A. No, sir.

JUDGE SCATES. Was there not a written contract between Mr. Cook and some contractor or builder that specified his powers and duties? A. I believe all our contracts specify their duty. Mr. Cook had a contract with Mr. ———; I was trying to think of his name. Walters was one.

SCATES. Ira Foot? A. No, sir; he had nothing to do with it. It's a builder right in here by the post office—Mr. Sollitt—he was the carpenter. Walter was the mason. There were written contracts with both of these. It stated it was to be done under the superintendence of an architect; I think it specified, as is usual, in such contracts. I drew the specifications, and the contract was a printed copy. That contract was executed by Mr. Cook—by both of them.

Q. In reference to the contract about this suit? A. That was contract with Mr. Christopher. McFarlane & Hudson did the gas fitting. No, I think I am mistaken; I think it was Brown & Wilder did the gas fitting, a part of it, and McFarlane did the gas fitting in the other building. The contract with these two last gentlemen were in writing.

41 JUDGE SCATES. This evidence is not for the jury.

COURT. No, sir.

Q. What authority had you from Mr. Cook in reference to that building? A. I was employed by Mr. Cook to be his superintendant of the building; to draw the plans and superintend it, and see that the work was done according to the contract, and certify to the work when money was due. Objected to. Objection overruled.

Defendant's counsel excepted.

Q. Was there any contract between Mr. Cook and Mr. Hunt, for doing any work upon that building of any kind? Objected to as a conclusion of the witness and as leading. Objection overruled.

Defendant's counsel excepted.

A. There was no contract that I knew of; there was an agreement to do some things. I think that I wanted some bell hanging done and I called in Mr. Drake, I think, to do it. I know it was done under a contract. I am very positive.

Q. Had you any authority from Mr. Cook to make contracts for that building? A. Not without his consent. I never made any contracts without.

Q. Were you ever authorized by Mr. Cook to make a contract with Mr. Hunt
42 for the plumbing work? were you ever authorized by Mr. Cook to make any contract with Mr. Hunt to do any work on that building, aside from the plumbing work? A. I think not, sir.

Q. How did Drake and Hunt come to do the work? A. I understood from some arrangement between Mr. Christopher and Mr. Drake he was to do the work.

Q. BY JUDGE SCATES. Who did you get that from? A. I had it from Mr. Christopher. Objected to.

WITNESS. I think I had the same from Mr. Drake. Objected to.

WITNESS. Mr. Drake done Mr. Christopher's plumbing work; the work was let to Mr. Christopher.

Q. Did you employ Mr. Drake either on his own behalf or as agent for Hunt to do any plumbing work on that building for Mr. Cook? A. Not that I know of. I was not authorized to do so.

Q. Whilst Mr. Drake was there on the building did he say that he was doing work on a contract between Cook and Christopher? A. Mr. Drake said so. I remember once positively—it was in my office once. He came there for a certificate and thought it was a very poor business for such an establishment. It was at one time when he called for a certificate; I can't tell whether it was the first or second
43 certificate—it was after he had gone upon the work. Objected to. Objection overruled.

Plaintiff's counsel excepted.

WITNESS. He said he thought it was a poor business for such an establishment as Mr. Hunt's to sub contract to so poor a man as Mr. Christopher. He did not want to be bothered in that kind of way. I don't remember what time it was. Mr. Drake said he thought it was a pretty poor business for such an establishment as Hunt's to be working as a sub contractor for such a poor man as Mr. Christopher.

Cross Examined by Judge Scates.

Q. Was that all that was said at that time on this subject? A. Well, I could not tell whether it was or not. There might have been more conversation, I presume there was; that is all I recollect positively. I can tell why I recollect that point.

Q. Did you give a certificate to Mr. Hunt for the plumbing work? A. I might have done so, I don't recollect.

Q. Have'nt you said you did not? A. No, sir; I don't think I have.

Q. Haven't you heard Mr. Cook say if Hunt had such a certificate, he forged it? A. No, sir; I might have given him such a certificate, I have no recollection of doing it; I might have done it, if I did I could not tell at what time it would have been done.

44 MR. BURGESS objected to examination as to the certificate unless it was produced. Objection overruled.

MR. BURGESS said he wanted to prove the existence of the contract before the Christopher contract.

THE COURT said he had proved that it existed, not that it contained such and such items, but simply that there was a contract in regard to the plumbing work or some part of it.

Q. Did you state to Mr. P. Wilder that Mr. Hunt had a contract with this plumbing work? A. I don't remember of ever saying so, sir; I don't remember of making any such remark at any time.

Q. Were you in partnership with anybody at the time you superintended that building as an architect? A. I was; Mr. John Van Osdell was my partner.

Q. Did Mr. Cook ever pay you for the work on this building for your services? A. Yes, sir; it would be very difficult for me to tell when, the transaction was so long ago.

Q. Did you give Mr. Cook a receipt for the services rendered by your firm on that building? A. I might, but I don't remember it. If I gave a receipt I presume I got the pay at the time—I don't remember ever giving Mr. Cook a receipt in full—I recollect Mr. Cook paying me. It would be difficult for me to tell when and where—mostly at the Post Office, sometimes at the Young America. I got it
45 at several times. I can't tell when I gave a receipt, it is not likely when I got the first. I don't recollect any time or place when I got a portion of it. I recollect that I did get it. Mr. Cook was in the habit of giving me money whenever I asked him for it.

Q. Did you tell your partner that he did not pay you for the services in that building? Objected to—allowed to show bias in the witness. *Exceptions taken.*

WITNESS. I don't remember telling him so.

Q. BY MR. MCALLISTER. How long have you lived in Chicago? A. Four years, sir.

Q. Where did you live before? A. Brooklyn, N. Y.

Q. BY JUDGE SCATES. When did you leave here? A. It will be two years in August.

Q. Was it night or day time? A. I think it was in the day time—I don't know as I can remember—I don't know whether it was in the night or evening.

Q. Did you leave in haste? A. I went about as fast as they usually take them in the cars. I didn't take anything except a few shirts in a carpet sack.

Q. What did you do with your goods and chattels? A. I left them in the office.

46 Q. Were they attached? A. I don't know.

Q. Have you been repeatedly sworn in cases that came up during the time you were architect here? A. I have.

Q. Were you ever impeached as a witness, or attempted to be? A. I believe not, sir; I have no recollection of any attempt ever being made; if it was done I didn't know it—I was in happy ignorance.

Q. Did your employment on the Young America embrace every species of mechanical work? A. I believe it did, sir, to complete it as a building. I believe

I managed them all. I superintended every thing about the building—to see every different mechanic perform his part in the building, that is the duty of the architect, I think, including the painting.

Q. Were you ever in partnership with Mr. Nicholson? A. Yes, sir; immediately after Mr. Van Osdel and I separated. It would be difficult for me to state now when we dissolved.

Q. Did you make any contracts for any of the work on that building? A. I wrote all the contracts that were written then. I did not contract with persons without special directions from Mr. Cook to do so. I did not contract with anybody without it is the bell hanging. I might have made a bargain to do the bell
47 hanging; I don't remember the circumstances of how they did get the work. I am not positive that I made a contract for the bell hanging. I don't remember whether I made a contract for the tin work or not. There was tin work done. I think I did not make a special contract for the plastering—I think it was with Mr. Walters I acted in it. I received the propositions and by direction from Mr. Cook. If we wanted any work done about the building, I generally saw who would do it best, and reported to Mr. Cook, and they called on and closed with him. I entered into contracts in that way.

Q. Did you negotiate a contract with Mr. Christopher for the brass and coppersmith work? A. That was included, I presume, in the plumbing work. I don't remember any special contract with him, I presume Mr. Sollitt did—he made it with the painter. There were propositions handed in from various carpenters who would do the work. Mr. Sollitt was the lowest bidder, and it was awarded to him by Mr. Cook, and I proposed to make the contract with him.

COURT. Was the plumbing in the east or west part of the building?

MR. COOK. The east part.

WITNESS. There were two portions of the building; there have been three portions I believe. It has been built at three different times. The main part on the corner and the east half of it, and some twenty feet on the south end. The first corner building was built when I came here, I think in 1853—it was built before
48 I came here. The east wing was built next, I think, between 1853 and 1854. The south wing was a small portion built when Mr. Irish went into it. I think it was 1856, it might have been 1857.

Q. (Presenting order No. 1, dated Dec. 13, 1854). Is that your handwriting? A. Yes.

Q. That subscription is yours? A. Yes.

Direct Examination by Mr. Burgess.

Q. All the contracts you have spoken of were submitted to Mr. Cook, and passed upon by him? A. Yes.

Q. Did you ever submit to him any contract between Mr. Hunt and him, for doing work on the Young America? A. I don't remember.

MR. BURGESS offered and read in evidence the two certificates, previously alluded to in the evidence.

MR. BURGESS offered in evidence a receipt as follows:

"Chicago, Illinois, May 15th, 1855.

Received of Isaac Cook, Esq., Twelve Hundred and Seventy Three Dollars, in full payment of all demands for materials furnished and work done in fitting up plumbing in the building known as the Young America, situated on the corner of Randolph and Dearborn Streets, in the City of Chicago, as part of the agreement made with the Ass't (Mr. Olmstead).

CHARLES CHRISTOPHER."

49 MR. MCALLISTER objected. The Court sustained the objection.

Defendant's counsel excepted.

MR. BURGESS proposed to call a witness who was present at the time this receipt was given and the matter settled; to prove it, and to prove by this witness, (Mr. Hooper,) the fact of actual payment by Mr. Cook.

MR. MCALLISTER objected. Court sustained the objection.

Defendant's counsel excepted.

ROBERT McFARLANE called and sworn.

Examined in chief by MR. BURGESS.

Q. Where do you live? A. In Chicago; I have been here about five years.

Q. Do you know Charles Christopher? A. Yes; his first name I am not acquainted with. His business is coppersmith.

Q. Do you know the building called the Young America? A. Yes; I know when the east part of it was in construction.

Q. Did you see Christopher about that building? A. Yes; he seemed to be superintending the putting in the ranges and plumbing work and copper work.

Q. What acts did he do? A. He was there commanding the men, telling them what to do and how to do it.

Cross Examined by Mr. McAllister.

50 Q. How many men did he have there? A. I could not say; there was quite a number of men there. I have seen myself over four or five men that he gave directions to. I have seen him give directions to men there several times. I put

the steam piping in that building for Hulme & White. I was not personally acquainted with the employees (Christopher's).

Q. Were you in Court yesterday afternoon? A. No, sir.

Q. What! A. I was in Court, yes.

Q. Did you recognize anybody here you saw him command? A. No, sir.

Q. What did he order them to do? A. He was telling them what to do, how to place things, how they should be done, how to place the range.

Q. You were at work in connection? A. No, sir; the range is for water, heated by the furnace. My business was with the steam; I built it myself.

Q. By Mr. Burgess. Has that hot water business any connection with the plumbing? A. It is in connection with the plumbing.

Q. By Mr. McAllister. Is it not coppersmith business? A. It partly be-
51 longs to that business. They were iron boilers, but the connections were made by copper, and I suppose that Mr. Christopher was the party who did that part. He gave the instructions to the parties who were putting these heaters and boilers in. I heard that Mr. Christopher had the contract for the plumbing. Objected to.

Witness. That is all I heard; I have nothing further to say as far as the contract was concerned. I heard it from the steward in the house; I don't know anything about Mr. Drake's saying so. I heard Mr. Drake say he was doing the plumbing work. Drake was doing the plumbing work. The job I was on I contracted for individually with Hulme & White. I was working for them myself.

Q. You say it partakes partly of plumbing work and coppersmith's? A. Not mine; I had nothing to do with that—the branch of trade I belonged to was the heating department. It is a different business by itself. Plumbing work is entirely different from coppersmithing; the two are sometimes together. The work I did was steam fitting entirely. No copper or plumbing work about it.

Direct Examination Resumed by Mr. Burgess.

Q. What portions of the work did you see him superintending? A. As I said before, putting in the boilers.

Q. By Mr. McAllister. That's what you mean, when you say superintend-
52 ing both? A. No, sir; I have seen him talking with the plumbers and giving directions.

Court. What plumbers? A. I could not say. The cisterns were to supply the house. They are made with iron rods—this is done by a plumber. I should say the principal part of the work in the house was plumbing, in this particular job. That was entirely plumber work connected with the cistern.

Q. What directions were given them? A. He seemed to find fault with one

man because where the connecting rods went through they did not seem to be cut out deep enough, but to be made a little stronger. I did not see any coppersmith work in connection with this cistern. I did not see any, he might have put in an overflow pipe, but I did'nt see it.

Q. Is not that coppersmith work? A. I never saw a copper overflow put in; however, that may be—there must have been an overfl[illegible]hen they were under way. This overflow pipe is go[illegible] dom. There is not one plumber out of 50[illegible]

Q. Are you acquainted with his general character for truth and veracity? A. A great many of those who have done business with him seem to speak rather disparagingly of him.

Q. You have heard his character spoken of? A. Yes.

Q. Is it good or bad? A. A great many have spoken bad of him.

Q. From that character would you believe him under oath? A. That is rather a delicate question. I should doubt him sometimes undoubtedly. I should lay it down as a principle that a man who would doubt once would doubt twice.

Cross Examined by Mr. Burgess for defence.

Q. Who did you ever hear say anything against him? A. If I were to speak in general terms I could say almost everybody who did business with him.

Q. Give us a name? A. William Price particularly. I think Amos Grannis, also Mr. Ross, of Ross & Foster. There are three or four persons, who he has done work for, who have spoken disparagingly of him.

Q. Have not Mr. Price and Mr. Van Osdel had difficulties with him? A. I
57 don't know of their having any difficulties with Mr. Olmstead; I inferred that from the fact that Mr. Price was so much opposed to his manner of business, or his way of doing business, that he declined going into his office to make estimates or take any work out of his hands. I did not go into his office a year and a half before he left here (not heard distinctly). But I have not the slightest personal animosity against him. If he lets me alone, I will give him a good letting alone.

Q. You would not go into his office? A. No, sir; I think if he were to come here again I don't think I would take any work out of his office.

Q. Do you know anything except from persons who had difficulties with him? A. I don't know whether these persons had diffiulties, I don't know—I don't remember—I am not certain.

PETER A. NICHOLSON, called by the Plaintiff, sworn,

And examined by JUDGE SCATES in chief.

Q. Are you acquainted with William B. Olmstead? A. Yes, sir.

Q. How long have you known him? A. Within four years past in Chicago.

Q. Are you acquainted with his general character for truth and veracity in this community? A. The general opinion of those who have done business with him seems to be that he is not a man of truth and veracity—his reputation is not good.

58 Q. I ask as to your own belief, I mean judging by his reputation? A. I am inclined to the same opinion myself.

Q. Were you a partner with him for a year? A. Yes.

Cross examined by Mr. Burgess.

Q. Did you dissolve with him with pleasant or unpleasant feelings? A. Unpleasant.

Q. There has never been a settlement? A. It has been left open.

Q. How long after he came before you first heard of him? A. Very shortly after I first heard of him, I was acquainted with him. That was several years ago.

Q. Who did you hear speak of him? A. James Grant, Stampouski—I have heard a number of others. I can't think of their names at present. James Grant said he would not believe him on oath. I have heard of him having disputes with him in business transactions. Grant was a mason and had contracts under Olmstead. Mr. Olmstead was superintending as architect.

Q. Was there a difficulty arose between the owner and the mason about the work? A. No, sir; not that I know of. Grant was a mason on Ross and Foster's building. I think there was a law suit about that building and Mr. Olmstead was a witness. He was the architect.

59 Q. This mason was under him and the difficulty was whether the mason had done the work well? A. I don't know; it was a dispute about a contract promised to Grant which he had figured on, and he thought he was justified in having it.

Q. What reason did he assign why Mr. Olmstead was not to be believed under oath? A. He did not assign any reason; I don't know of any difficulty he has had with Stampouski. I don't know much about Stampouski; I know him, but not intimately at all. He said he would not believe him under oath. He remarked that to-day. Those two are the only ones I recollect at present to have heard say any thing about him.

BUCKNER S. MORRIS called by the Plaintiff,

Sworn and Examined by JUDGE SCATES in Chief.

Q. Judge, are you acquainted with Mr. Olmstead? A. I know Mr. Olmstead when I see him.

Q. How long have you known him? A. It has been several years. I think since he came to Chicago.

Q. Are you acquainted with his general reputation for truth and veracity in this community? A. I don't know that I could say that I was. I have heard a

number of people speak of Mr. Olmstead's character, but I do not know that it would be sufficient to form a general reputation. I should say I had heard a
60 few dozen, perhaps more, and may be a few less. I have not taken particular notice of their number. My means of knowing his reputation are, I have heard him on several occasions in Court where I have been, and on one occasion particularly, he testified before myself and two other arbitrators or referees and with divers and sundry other witnesses. It was a case of my knowledge. Mr. Cook was a party and some workmen about this same house, in which this gentleman testified with other witnesses. I have heard persons who have been engaged with him in business transactions speak of Mr. Olmstead, for I have been cautioned by four or five individuals who understood that I was going to build a house, to be very careful how I made any arrangement with him — that I had better have it in black and white and so on, and in that way I became acquainted with his character to some extent.

Q. By the Court. Have you heard of him frequently spoken of in the community like any other person whose name is mentioned? A. Yes, sir. I have heard him spoken of as an architect and as a business man, with mechanics and others who had dealings with him. I don't know that I know what the community of Chicago think of him, but so far as these men I have spoken of think of him, and in connection with that trial and the facts there testified before us in opposition to his statements and the reasons given for it, and I have heard a good many persons who pretended to know his transactions with Mr. Richmond, my opinion is
61 formed from the whole of this; from the statement, from my personal knowledge of matters that came before me in opposition to other testimony, and then from what other parties have said who have had conflicts with this man growing out of his transactions, from the testimony given in before the arbitrators. Taking the whole together, I have a very decided opinion upon the subject. So far as I have derived information from those persons who have known him and had business transactions with him, I could speak, but I do not know that these things are generally known or talked of.

Q. By the Court. What do these people who know him say of him? What is his general reputation? A. So far as I can form an opinion from those who have transacted business with him and those who have testified, taking all these circumstances together that I have just detailed as a basis for an opinion, and I have a decided opinion that I should consider his testimony as unreliable, particularly if it in the slightest conflict with anything like respectable testimony.

Cross examined by Mr. Burgess.

Q Have you had any difficulty with Mr. Olmstead yourself? A. Yes; he has sued me. I think the suit is dismissed.

Q. Is that one of the items that go into the basis upon which you form an opinion of the man? A. No, sir; I do not consider that as an item, because that was setting up a claim that I consider unfounded, but not touching his general character for truth.

62 Q. Did you not employ him to make out a plan for a building? A. I say positively I never did. He never was in my office in my life and I never passed a dozen words with him until he had made a drawing. He asked permission of me to make a drawing and if I adopted his drawing I was to pay for it, and he sued me for a drawing made without my consent. I have no feeling about it. I know I had made no contract with the man and I didn't care the snap of my finger. I was only astonished that his son-in-law presented a bill to me, but I learned it was not an unfrequent occurrence.

Q. Give us the names of one of these persons you have heard? A. Mr. Foot, a mechanic, who worked for him, and several other mechanics; Mr. Van Osdel, his former partner.

Q. Were those the mechanics on the Richmond House? A. No, sir; that worked under his superintendance. There were several gentlemen who testified to facts before myself as arbitrator in conflict with his testimony. I derived information through that source, that satisfied me from his dealings towards a mechanic that he would pervert the truth to that man's injury, and tell him he would do so.

Q. Are you arguing the case? A. I am telling the facts that occurred on oath.

Q. Who sat with you? A. Mr. Cleveland—I forget the other.

63 Q. Was it not Mr. Saxton? Did he agree with you in the verdict? A. No, sir.

Q. Did he sign it? A. No, sir; he said he believed we were correct, but for reasons satisfactory to himself he didn't sign it—reasons which he did not pretend to give us.

THOMAS RICHMOND, called by the Plaintiff, sworn,

And examined in chief by JUDGE SCATES.

Q. Where do you live? A. In the city; I have lived here twelve years.

Q. Do you know Mr. William B. Olmstead? A. Yes; since 1854. I have known him in this city.

Q. Are you acquainted with his general reputation in this city for truth and veracity? A. I am acquainted so much as I have heard about it. I have heard more or less said, considerable.

Q. Is that good or bad? A. It is not good.

Q. From that reputation would you believe him on oath? A. If he was well corroborated with other witnesses I should if it was contrary. I should balance, of course, between the liabilities of the parties.

Q. State whether you would in all cases under oath? A. I do not.

Cross Examined by Mr. Burgess.

64 Q. Who have you heard say anything about him? A. Well, it has been so general it would be difficult to be specific. Mr. Olmstead and Mr. Van Osdel were architects and managed the building of a house I had, together with some others, a block called "park row." That was done in 1854 mainly. Then he managed the building of the Richmond House, commenced in 1855 and ended in 1856. I have heard Mr. Van Osdel and Mr. Jones and William Jones speak of him; an indefinite number of persons came to me and cautioned me, but I can't call up the names. The whole report was on one side entirely. There were others but I didn't charge my mind, they cautioned me in regard to his entegrity and truthfulness and reliability. They said just what one would say cautioning another. They all gave me warning that I would get into difficulty with him, he was an untruthful man.

Q. Have you had any difficulty with him? A. No, sir; he sued us for what he claims to be wages or salaries or for services, but that never makes any difficulty with me.

Q. That is "Golden Jones"? A. No, sir.

Q. Did you have any arbitration growing out of that claim? A Yes, sir; Mr. Jones was arbitrator. They found a judgment against us and a verdict I think of $1,000.

N. P. WILDER, called by Plaintiff, sworn,

65 And examined by JUDGE SCATES in chief.

Q. State what Mr. Olmstead told you in reference to Mr. Hunt's having the plumbing contract? Objected to.

THE COURT. At what time was this declaration made? A. Well, sir; all there was said to the matter——

MR. BURGESS. Never mind that.

WITNESS. We did the gas fitting. It would not benefit either of you. I simply asked him who was doing the plumbing. He was acting as architect for the original building of the Young America. I went to give him a bid, and in reply to

my interrogatory: "who does the plumbing?" he said Mr. Drake. Objected to. Objection overruled.

Denfendant's counsel excepted.

THE COURT. Was that while the plumbing work was being done? A. I don't know whether it was; Mr. Drake was standing there. It was what they called the original Young America. The east part has been built since. That conversation occurred before the east part was built. The building was up ready to receive the plumbing work and gas pipes. They hadn't bid for the gas works.

Q. You understood the bids for the gas works were being put in? A. Yes; I handed in a bid to get it.

Q. Was that the time the bids for the plumbing work were being put in? A.
66 I don't know. I don't know whether at the time of this conversation, this plumbinng work had been done. It was merely accidental that I asked the question. There were no more observations. We put one bid in through him as architect.

WILLIAM F. MERRICK, called by Plaintiff,

Sworn and Examined in chief by JUDGE SCATES.

Q. Where do you live? A. Three miles south of here on the lake shore. I have lived here twenty-two years.

Q. Are you acquainted with William B. Olmstead? A. Some little. I have known him between four and five years. I knew him in the city.

Q. Are you acquainted with his general reputation for truth and veracity in the city? A. Well, I don't know hardly whether I am particularly. I am somewhat acquainted with him. He did some business for me; I have had a little acquaintance with him one season — he did some little work for me. I have heard him spoken of a great many times.

Q. By MR. BURGESS. How long ago was that work? A. Four years ago last season.

Q. Are you acquainted with those who know him generally? A. I have some considerable acquaintance.

Q. Are you well acquainted in this city generally? A. I think I am, sir. I
67 think I had the means of knowing his general reputation among his acquaintances that season some considerably.

Q. State what his reputation was? A. Well, what little I heard was not very favorable. I think it was bad, sir.

Q. From that reputation, would you believe him under oath? A. I should be afraid to, if I thought he was anyways interested pecuniarily.

Cross Examined by Mr. Burgess.

Q. Who have you heard say anything about him? A. Mr. Van Osdel, his former partner.

Q. Anybody else? A. I can't say. In the first place, he did some business for me and made it cost me about three times what he said it would first cost me, and I talked with people about and found other people found as much fault with him as I did.

Q. What fault? A. That his character for truth was bad—his character for truth was very bad. He told me I could build such a house as I wanted for $5,000, and it cost me $15,000. That didn't come very near the truth.

Q. Did he put that down in a definite shape to you? A. He drew up a plan of it and said he could build the house. It was done by the day. He said it could be done cheaper that way. He hired the men; I was away. He superintended the business. I don't think that came very near the truth.

68 Q. Did you hear anything else but that? A. Yes; but I can't state the men. I know I spoke to a good many about it, should not be surprised if I talked to a hundred about it.

Q. Will you swear that you talked with a hundred? A. No, sir.

Q. With a dozen? A. Yes, sir.

Q. Can you give the names? A. No, sir.

Q. Can you give a single name except Van Osdel? A. No, sir; I don't know as I can.

ALONZO HAMLINE, called by Plaintiff, sworn,

And examined in chief by JUDGE SCATES.

Q. What is your business? A. I am not in any business at present. I have been engaged in loaning money here; I have quit that kind of business. I have been here thirteen years.

Q. Are you acquainted with Mr. Olmstead? A. Yes; some little. I got acquainted with him when he came here in 1854. I was boarding at the same place where he was boarding.

Q. Are you acquainted with his general reputation for truth and veracity? A. I cannot say that I am; it is with me as with the rest—I lived with Mr.

69 Merrick. There was some like talk about the building There was some talk as to his general reputation. I mean there was but a few I have talked with about that, I can state a few I have talked with about; I had talked with these men and

other men when he was putting up buildings. I have heard others speak that I didn't talk with. His general reputation would perhaps require more than I have talked with; I can give my statement as to the number. If it would make a general reputation I can answer your question. When he came here I don't suppose he had much acquaintance, I say perhaps half a dozen. I can name three or four or five. I can state so far as this the general reputation I have heard of him. I didn't have any difficulty with him, but having business with Mr. Merrick, that perhaps led me to talk more about it than otherwise.

Q. Is his reputation good or bad? Objected to. Objection overruled.

Defendant's counsel excepted.

WITNESS. It is a pretty hard question to answer, but I can't say that I can say anything in his favor.

Q. Is it good or bad? A. It is bad.

Q. From that reputation would you believe him under oath? A. That is a pretty tight question; if he was interested I should be afraid to risk it.

Cross examined by Mr. Burgess.

70 Q. If he was not interested what then? A. He could tell the truth as well as any other man, of course. I have no feeling on my part. Take him in all cases I should be afraid to risk him.

Q. You were acting for Mr. Merrick? A. Yes, sir; in his business.

Q. Were any others mixed up in that quarrel? A. No, sir; with the hands, not with him. In settling up there was some difficulty in the measurement. It was not for me to have any feeling at any rate; it was a matter of Mr. Merrick's. I had no feeling at the time; it was between the hands. It was for him to say whether so much should be paid or not—it was between Mr. Merrick and the workmen; it was built by the day. The difficulty was there was too much time reported. They charged full time from the time they commenced. The architect was to keep the correct time he had charge of the building. They reported the time and he certified to it in the end, and Mr. Merrick thought he certified to too much—and that led to this talk. There was an agreement and we finally settled it. There was no difficulty between us; it was all between him and the workmen.

Q. The workmen didn't find any fault, did they? A. They didn't if they got their pay. Mr. Merrick found fault with Mr. Olmstead. He thought he did not pay sufficient attention to it. The workmen were satisfied.

71 Q. Did you hear them say what they believed as to the time certified? A. No, sir; I didn't hear them—they claimed the time certified for them. They said it was right certainly.

Q. Mr. Merrick thought too much time was certified? A. Yes, sir.

Q. And then he began to talk like Price and Richmond? A. This was before that building was done I talked with Price. I talked with Mr. Van Osdel and Mr. Granniss too. There are three Prices, brothers—one of them had the job.

Q. Who else did you hear? A. I don't recollect any others; I guess it is the man who had this business—I guess I heard Mr. Drake talk, I would not be positive, but Mr. Peterson I think. He had the plastering I think.

Q. Did Mr. Peterson and Mr. Olmstead ever have any difficulty? A. I don't know; I don't know as Olmstead ever had any difficulty with any of these men that I have spoken of.

Q. Did you say Olmstead certified the work on that building? A. I think so, I would not be certain about the Prices. I know they got together and it was finally settled and there was a deduction made, I don't remember about the last. It
72 was done by the day—there was a discount on the matter when it was settled. I could tell by referring to my bills.

Q. Didn't he refuse to certify in the end to the mechanics' bills? A. I would not be positive as to that, I can't recollect; I know there was an arrangement and a settlement and it was all agreed upon. They got together and made the compromise some way.

JOHN M. VAN OSDEL, called by the Plaintiff, sworn,

And examined by JUDGE SCATES.

Q. What is your occupation? A. Architect.

Q. How long have you lived in the city? A. twenty-two years.

Q. Were you in partnership with Mr. Olmstead at one time? A. Yes; about eleven months I think.

Q. During that time did your firm undertake to draw the plans or specifications of the Young America or some part of it? A. Yes, sir; an addition. It was so done by our firm; Mr. Olmstead had special charge of it. We had at the same time the Briggs House and I took charge of that specially, and Mr. Olmstead of the Young America specially. I was seldom in that building and he seldom in the other.

73 Q. Was that work paid for to you? A. At the time we dissolved there was an account of $320 against Mr. Cook for which I sued him and got judgment, the accounts being all assigned over to me, and I understood from Mr. Cook's lawyer that a petition was presented to the Court to set aside the judgment.

Q. Did you see that receipt? A. No, sir; I know the judgment was set aside.

Q. On what ground? A. I understood from his lawyer only.

Q. Who was his lawyer? A. Col. Carpenter.

Q. What Court was the judgment in? A. The Circuit Court, I believe.

Q. Did Mr. Cook ever pay you for that work? A. No, sir.

Q. You say that account fell to you in the division with Mr. Olmstead of the matters of the firm? A. All the matters of our firm for collection were set over to me; the firm was indebted to me.

Q. How long have you known Mr. Olmstead? A. About five years, sir.

Q. Where did you know him? A. I first became acquainted with him in this city, I think about five years ago.

Q. Are you acquainted with his general reputation for truth and veracity among men doing business with him? A. I am, sir.

74 Q. Is it good or bad? A. I am very much afraid—I was in hopes that would not be propounded to me.

COURT. Answer the question.

WITNESS. It is bad, sir.

Q. From that reputation would you believe him under oath? A. I should rather have it corroborated.

Cross Examined by Mr. Burgess.

Would you believe the statements of Mr. Olmstead in this case in reference to whom this contract was with? Objected to. Objection sustained.

Q. Have you and Mr. Olmstead had difficulties in the course of your business connection? A. Well, there were difficulties; I had a difficulty to get my share of the money, that was one difficulty.

Q. Did you have any other difficulty? A. Yes.

Q. What was its character? A. Do you want me to go fully into it? I have no feeling against Mr. Olmstead. The world is wide enough for us both. If it is necessary for the cause of justice I will go into it. I think the difficulty was all on one side.

Q. Was it on his or on yours? A. No, sir.

Q. You never thought he was doing wrong with you? A. No, sir; it is a difficulty of his making. I think I can appreciate a wrong, when I receive it.

75 Q. Have you not received what you conceive to be wrongs from him, and are you not testifying under the influence of that? A. No.

Q. Have you heard the other witnesses? A. I heard a part of Mr. Hamilton's. I have not been in Court more than fifteen minutes to day; I did not hear Mr. Richmond.

Q. Did you ever say anything to Mr. Richmond against the character of Mr.

Olmstead? A. I think it would be against his character. I said he got his building by telling a lie.

Q. Did he get it away from you? A. Yes.

Q. You thought he got it away from you? A. I know it. I wrote a letter to Mr. Richmond explaining the circumstances.

Q. Did you say anything more than to accuse him in that single transaction between you? A. I don't remember that I did.

Q. Did you ever say anything to Mr. Merrick about it? A. Very likely I did. I don't recollect—I don't recollect what I said.

Q. Did you say anything against his character for truth and veracity? A. Very likely I have spoken to a great many.

Q. You have gone around telling a great many people? A. I didn't say so;
76 I have had Mr. Olmstead's name brought up to me and the position we occupied a great many times.

Q. Was there not a great deal of rivalry as to the positions you occupied? A. Not on my part.

Q. Was there any dispute between you as to how to settle the unfinished business? A. No, sir; we divided the business on hand.

C. PRICE, called by Plaintiff, sworn,

And examined by JUDGE SCATES in chief.

Q. How long have you lived in the city? A. About twenty-two years off and on.

Q. Are you acquainted with Mr. Olmstead? A. I am by reputation, I have known him four or five years.

Q. Are you acquainted with his general reputation for truth and veracity? A. Amongst a certain class of people I am—the mechanics. He has been dealing with mechanics here.

Q. Is that reputation good or bad? A. Bad.

Q. Is that reputation confined to mechanics? A. I believe it is with people that have had deal with him.

Q. You mean his acquaintances? A. Those that are acquainted with me.

THE COURT. Amongst your acquaintances that are acquainted with him? A. Yes.

77 Q. Would you believe him on oath from that reputation? A. I should hate to believe him on oath.

Cross Examined by Mr. Burgess.

Q. Who have you heard say anything about him? A. Mr. Sollitt, Mr. Hays, Mr. Johnson, Mr. Van Osdel, Mr. Malcolm.

Q. All contractors? A. Yes, most of them.

Q. Have they had any difficulties with Mr. Olmstead? A. Mr. Malcolm had some little; nobody else that I know of.

Q. Did you gather it from their conversation? No; it was his general reputation amongst them. Mr. Malcolm had some feeling, but the others had no more than—

Q. What? A. Common conversation came up. Mr. Malcolm said he was a dangerous man for mechanics to deal with. He was not a fair man; not honest in his dealings.

Q. Was it not that he would not certify their work as high as they wanted? A. Some said he would not certify at all.

Q. They were capable of doing it as well as he was? A. He would not certify to it when it was done well. I never dealt with him myself. They said he was very contrary.

78 Q. He looked a little too much after the owner rather than the mechanic? A. I don't know. He looked after himself pretty much.

Q. What possible interest could the architect have between the owner and the mechanics? A. His reputation generally was that he liked to be paid for estimates.

Q. By whom? A. By the mechanics.

Q. Do you say that he was ever paid? A. No, sir; I say that that was what they said — what they complained of. I never had difficulty with him.

Q. Had your brother? A. I don't know that he did.

Q. Have you had difficulties with Mr. Cook? A. No, sir.

Q. Your brothers had? A. Not that I know of.

Q. Didn't you have some difficulties about the south end of the Young America building? A. No, sir. I just notified Mr. Cook that the building was in danger.

Q. Didn't you threaten to tear it down? A. No, sir.

Q. Didn't you tell him it was to be torn down in twenty-four hours? A. No, sir; I told him if it was dug out, it would fall down. Mr. Cook said if the build-

79 ing was torn down he would make me pay. I told him I didn't notify him except as any other man.

Direct Resumed by Judge Scates.

Q. You are a contractor and mason? A. Yes.

Q. You are a brother of Ex-Postmaster Price? A. Yes.

SANFORD JOHNSON called by Plaintiff,

Being duly sworn, was Examined in chief by JUDGE SCATES.

Q. Where do you reside? A. West Division.

Q. How long have you lived here? A. Twenty-five years.

Q. What is your occupation? A. Carpenter and joiner.

Q. Are you acquainted with Mr. Olmstead? A. I have known him some four or five years

Q. Are you acquainted with his general reputation for truth and veracity? A. I have never had anything to do with him myself. His general reputation is bad. That is, I have always heard men speak bad of him; I never heard men speak well of him.

Q. From that reputation, would you believe him under oath? A. Not having anything to do with him, I would not like to swear.

Q. If he was what people say, would you believe him under oath? A. No,
80 sir; particularly if he was interested.

Cross examined by Mr. Burgess.

Q. What if he was not interested? A. Then he could tell the truth, if he was a mind to, as well as anybody else. I have had no difficulty with Mr. Olmstead. The only difficulty ever was between us was at the time he was in partnership with Mr. Van Osdel building the Briggs House. When Mr. Van Osdel went to Springfield, he came up there and ordered some timbers and I ordered him out. For it was the distinct understanding with the Briggs House that he was not to have anything to do with it, and I ordered him out. When Mr. Van Osdel came home, he sanctioned it and said it was right. If you may call that a difficulty, that is the only word of difficulty Mr. Olmstead and me ever had. I never did anything under him; I always refused. I heard Mr. Foot find fault with him, and the Price boys and all that ever worked under him that ever said anything. I can't call to mind who all worked under him. May be I heard Mr. J. Y. Scammon speak of him not very well. He said Mr. Olmstead said he did a great deal of building in the way of building hotels in New York, and he wrote down there and the man wrote back that he did not know such a man. I was not acquainted with him and did not know about these things.

Q. Do you know of raising any money to drive Mr. Olmstead out of town? A. No, sir; I never gave money to turn any man out of the city.

SAMUEL L. WALTER Sworn, Examined in chief,

81 By JUDGE SCATES.

Q. Where do you live? A. In Chicago.

Q. What is your occupation? A. Brick mason.

Q. Did you do the brick work in the Young America? A. No, sir; my brother and me. I had the superintendence of it.

Q. Do you know Mr. Olmstead? A. Yes; I have known him since the fall of 1853 in the city.

Q. Are you acquainted with his general reputation for truth and veracity among business men? A. I have heard it spoken of frequently; I have conversed with mechanics and builders.

Q. Is his reputation for truth and veracity good or bad? A. It is bad as far as I have heard. So far as I have any knowledge — so far as mechanics are concerned — I have heard him spoken of, I have never heard it spoken of other than not being truthful myself. I have been acquainted with him for several years.

Q. Would you believe him under oath from that reputation? A. I would not.

Cross Examined by Mr. Burgess.

Q. Have you had difficulties with Mr. Olmstead? A. No, sir.

82 Q. Did you agree with him as to the amount of work, &c. on the Young America? A. No, sir; not as to the amount of work, that was with my brother.

Q. Did you not agree with your brother? A. Yes, sir.

Q. Then you differed from his opinion? A. Of course I did; as it regards that matter there was a difference, but not personal. I meant a personal one between us. There never was any altercation between us two.

Q. Was there not a law suit grew out of that matter? A. Yes, sir.

Q. You testified on that and he did? A. Yes.

Q. Who have you heard say anything about him? A. I have heard Mr. Hughes, Mr. Button, (Q.) I have heard almost every mechanic I have conversed with in town speak about it.

Q. Did it not all grow out of work that he superintended? A. Yes; I did not hear them say anything as it regards the certificates. They said he would not speak the truth. He would say one thing and then say another. That I know myself. I knew him to say things and then swear in the contrary myself.

Q. What was the ground of that difficulty with the mechanics? A. He was not a fair man in business transactions as superintendent.

83 Q. He sided with the owners, did he? A. I don't know what he did in all cases; many think when his interest was there he acted.

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83 Q. He sided with the owners, did he? A. I don't know what he did in all cases; many think when his interest was there he acted.

Q. There was still a difference between him and the mechanics? A. Yes.

Q. All these mechanics had difficulties? A. Yes; for instance, my brother had a difficulty and the difficulty was this——

Never mind that, there are two sides to every story.

Rebutting testimony closed.

SUR-REBUTTING TESTIMONY OFFERED BY THE DEFENDANT.

L. D. WILKINSON called and sworn. Examined by Mr. Burgess.

Q. Do you know W. B. Olmstead? A. Yes; the architect. I have known him since the spring of 1855.

Q. Are you acquainted with his reputation for truth and veracity? Yes; I am.

Q. What is it? A. It is good.

Q. Would you believe him under oath? A. Yes, sir; I have had occasion to enquire into it.

Q. Were you present at the trial wherein Judge Morris was an arbitrator? A.
84 I was attorney in that case for Mr. Walters against Isaac Cook, for the mason work on the Revere House. I heard him testify on that occasion.

Cross Examined.

Q. Did you hear anything said of his character? A. I did, on that occasion, hear it questioned by my client.

Did you ever hear it questioned by another man? Is that the only time? A. Yes.

Q. Your profession is that of a lawer, I believe; you have not been out among the laborers and builders? A. Some; enough to hear anything said about him among that class of humanity.

Q. Did you hear it questioned? A. You ask me a very safe question unless you allow me to answer it in my own way.

Q. Tell the simple fact. A. It was known perhaps by those builders that I was attorney in that case, and it was a very hard fought case and in which Captain Olmstead was the material witness for Mr. Cook. The builders and architects have frequently spoken in reference to that case. If you will now allow me with

that exception I will answer. My answer would be that among the architects of this city his reputation for truth is good.

Q. I asked if you had heard it questioned? A. I have heard it spoken of in connection with that case and no other case.

85 Q. Have you heard his character for truth and veracity questioned, disputed? Have you not heard builders, mechanics, architects, &c., question his truth and veracity, his fairness, &c.? A. I think I have.

Direct Examination resumed.

Q. In what connection? A. In connection with the explanation of that suit.

Q. Who were they? A. I would rather not tell, but I think I have heard Mr. Hawks speak rather unkindly of Captain Olmstead. I have heard a man not now living in the city, Mr. Foster, now somewhere in Wisconsin or Minnesota, I am not sure. The Captain knows better than I do whether the architect of this building, Mr. Van Osdel, has spoken unkindly of him; I think I have heard him do so—I think perhaps I have heard Mr. William Thomas, I am not sure about it. I would make that answer under safety. This occurred in connection with this suit, all in conversation growing out of this suit of Walters versus Cook, in which I endeavored to break his testimony but didn't succeed.

Second Cross Examination.

Q. Mr. Hawks is an architect? A. Yes.

Q. Mr. Foster? A. He was a builder also; he has now left the city.

86 Q. Mr. Thomas? A. He is a builder also; now I believe engaged in Indiana in architecturing a building down there. He architected my building and that is why I happened to know about him.

REUBEN CLEVELAND, called and sworn.

Examined by Mr. Burgess.

Q. Do you know W. B. Olmstead? A. I do.

Q. How long have you known him? A. Since about the summer of 1854—he is an architect.

Q. Do you know anything about his reputation for truth and veracity in the neighborhood in which he resided then? A. Well, I never heard it questioned that I know of until to-day; it is good so far as I know.

Q. Have you heard people talk about him? A. I have heard a good many.

Cross examined by Judge Scates.

Q. You say you have heard talk about him. Did you ever hear anybody question his truth and veracity? A. I think I never did until to-day.

Q. Why did they speak of it? A. I have done a great deal of work under Mr. Olmstead—I am a carpenter by trade. I never heard it questioned until to-day.

Q. You didn't know his character? A. I did not know of his character being such as I heard it to-day; I rather took him for an honest, upright man.

87 Q. Are you the individual who bought the safe of Mr. Olmstead? A. I have bought a safe of Mr. Olmstead. It was very early in the spring, along in March or April — one that he left here when he went away, with his son-in-law.

Q. What did you give him for it? A. I was to give him about seventy dollars for it. I did not get it. A gentleman named King claimed the safe and said he had sold it. He did'nt say who to.

Direct Examination Resumed.

Q. You are City Superintendent? A. Yes, sir; I am.

Q. Were you one of the arbitrators in that case of Walters vs. Cook. Objected to. Objection sustained.

Second Cross Examination.

Q. Have you any ill feelings towards Mr. Hunt? Have you some controversy? A. He has sued me; I don't know whether you call that a controversy. I have no feeling against him. He is in my office every few days.

E. J. HIGGINS called and sworn.

Examined in chief by Mr. BURGESS.

Q. Do you know Captain Olmstead? A. I do.

88 Q. How long have you known him? A. A little over fifteen years; I knew him in this city ever since he has been here; I don't know how long it is. He is an architect.

Q. Are you acquainted with his reputation? A. I thought I was; I think so now.

Q. What is his reputation for truth and veracity? A. All correct as far as I know. I never knew anything out of the way in him anywhere.

Q. From what you know of him would you believe him under oath? A. I would as quick as any man I know of.

Cross Examined by Judge Scates.

Q. What is your occupation at present? A. My occupation in years gone by was machinist. I was in the army about seventeen years; since then I have been here in Chicgo the last eight years. I had charge of a foundry of a machine shop. For the last four or five years I have had charge of the Masonic Temple. Now I am a sort of what some people would call the Masonic Temple Janitor. I am getting old and feeble.

Q. Is Mr. Olmstead a fellow in that society? Is Mr. Cleveland? Objected to. Objection sustained

Q. Did you ever hear anybody question his truth and veracity? A. No, sir; not that I know of.

89 Q. Did you ever hear Mr. T. O. Wilson make any complaints? A. He told me he and Mr. Olmstead had some little difficulty but never questioned his truth and veracity. He is the only man I ever heard make any complaints about him.

S. C. LUM, called and sworn,

Examined by MR. BURGESS.

Q. Do you know Mr. Olmstead? A. I do; I became acquainted with him in the summer of 1854 in Chicago. He was an architect at the time.

Q. Do you know his reputation for truth and veracity? A. I never heard it questioned before until since I have been in this room.

Q. From what you know of him would you believe him under oath? A. I certainly should from my own knowledge, as far as I have heard his general reputation has been good; I never heard anything to the contrary. I have had conversations with persons that named him and never questioned his truth and veracity.

Cross Examined by Judge Scates.

Q. You never heard any talk in reference to him about this subject. A. Never any more than common casual conversation; I never heard him questioned for truth and veracity. I have lived here six years this fall.

90 Q. What business do you follow? A. I am keeping a boarding house and saloon, 89 Dearborn Street.

Q. Are you connected with some lodge? A. No.

Q. You never heard this subject mentioned? A. Never, sir; never heard him questioned.

Q. Never heard him praised for truth and veracity? A. No, sir; I have heard him spoken of as a business man since 1854. I don't recollect that I ever heard anything said about it.

ROBERT McLEAN, called and sworn,

Examined by MR. BURGESS.

Q. Dou you know Mr. Olmstead? A. Yes, sir; since 1855. He has been engaged as architect.

Q. Do you know his reputation for truth and veracity? A. So far as I know it has always been good. I am on my farm. I was in the fruit business.

Cross Examined by Judge Scates.

Q. You say as far as you know—what do you know? A. I used to be in Mr. Olmstead's company a great deal. I got his reputation from being with him and around him. He is captain of a military company I belong to. There are a great many members and he is always spoken well of. I never heard anybody say anything about his character for truth and veracity.

Q. Neither one way nor the other? A. I have heard it spoken of as good.
91 In business contracts I have heard them speak of it that he was a nice pleasant man to deal with and they thought a great deal of him.

Q. Did they say he always told the truth? A. Yes; I don't know why they said so. In dealing with a man very often you speak of him as being a nice man to deal with. I don't know as I can give any particular reason. I have heard men say Mr. Olmstead was a nice man, not particularly to the point of truth and veracity, I have not.

Direct Examination Resumed.

Q. Was the captain of that company elected? A. Yes.

Q. Was you a member when he was elected? A. He was captain when I was elected.

Second Cross Examination.

Q. Didn't they vote him out of the company? A. No, sir.

Q. How did he get out? A. The company broke down.

Q. How came you to be captain? A. I was not captain. He was captain and I was an active member.

J. N. BARKER called and sworn. Examined by Mr. Burgess.

92 Q. Do you know Mr. Olmstead? A. Yes; I think I have known him about four years.

Q. Do you know his reputation for truth and veracity? A. I don't know that I do much; I don't know anything against his reputation for truth and veracity.

MR. MCALLISTER. The question is whether you are acquainted with it? A. I don't know. I have known him for that many years.

Q. Do you know his friends and acquaintances? A. No, sir; I never heard his reputation spoken of at all.

Q. Never heard it questioned? A. No, sir; not to my knowledge. I never heard anything said against him until this morning. I heard they were intending to impeach him. I am acquainted with his friends. I have been in his office a great many times. He was the architect for a house I built on Wabash Avenue. I knew nothing against his general reputation as a man of fair and upright dealing, including truth and veracity.

JUDGE SCATES. Do you know it? A. I know it only in that way. I know a great many of his friends, and have never heard anything against it from them or others. That is all I know about it.

Q. From what you have heard said of him, would you believe him under oath? A. Yes, sir. Objected to. Objection sustained.

Defendant's counsel excepted.

93 WITNESS. I say I have known Mr. Olmstead and known persons he has done business with, and I never heard them say anything against his reputation for truth and veracity at all.

Cross Examined by Judge Scates.

Q. You say you never heard anybody say anything for him? A. I don't know that I ever heard it questioned; never heard it for or against.

WILLIAM H. KING, called and sworn,

Examined by MR. BURGESS.

Q. What is your business? A. Practicing attorney.

Q. Do you know Mr. Olmstead? A. I have no particular acquaintance with him, I have known him for a few years as an architect in the city.

Q. Do you know his reputation in the community? A. I derive it from his friends, from those who done business with him. It is first rate.

Q. Would you believe him under oath? A. Unhesitatingly.

Cross Examined by Judge Scates.

Q. Did you ever hear it questioned as against? A. No, sir; I have heard it highly spoken of. I never heard it on the other side until I came into this Court-room. I have heard what has been said since I came in. I was not here this
94 forenoon.

TURNEY GILBERT, called and sworn,

Examined by Mr. Burgess.

Q. Dou you know Mr. Olmstead? A. Very well; I think I have known him some four or five years.

Q. Are you aquainted with his friends and acquaintance? A. Tolerably well. I have done business with him myself.

Q. Do you know anything of his general reputation for truth and veracity? A. Yes, sir; it is good.

Q. From your own knowledge of it would you believe him under oath? A. I would, sir. I have had business relations and transactions with Mr. Olmstead and I have always found him to be true. I know his general reputation in regard to that matter with other parties to be most unquestionable.

Cross Examined by Judge Scates.

Q. How many did you hear speak of it? A. I am unable to say; I never heard his character for truth and veracity questioned until I came in here—I have been here about half an hour.

Q. You are an attorney? A. Partially so.

Mr. Burgess. Have you ever done business with him? A. Yes, sir.

ISAAC SPEER called and sworn,

95 Examined in chief by Mr. Burgess.

Q Do you know Mr. Olmstead? A. Yes, sir; I have known him about three or four years I guess. He has been an architect. I do not know his friends and acquaintances.

Q. Do you know anything about his reputation for truth and veracity in the community in which he lives? A. No, sir; I never heard it questioned. I never heard anything said against him.

Q What is your business? A. Jeweller. I have lived in Chicago twenty years. I have not known Mr. Olmstead particularly. I have seen him about his office and around in the city a good deal. I have never heard anything against his character at all in any shape whatever.

Q. From what you know of him would you believe him under oath? Objected to. Objection sustained.

Defendant's counsel excepted.

WITNESS. I have never had business enough to do with him to know his general character, any more than a man in the community the same as anybody else. I never heard anything against him in the world; never heard anything about it one way or the other. I always considered him a good, fair man.

THOMAS BLACK called and sworn. Examined by Mr. Burgess.

96 Q. Do you know Mr. Olmstead? A. I have known him pretty near six years about as well as any man in the city. I have done about as much business with him as anybody.

Q. Do you know his reputation for truth and veracity? A. It is about as good as any man in the community.

Q. From your knowledge of it would you believe him under oath? A. Yes.

Q. In what business are you engaged? A. The liquor business. I have known him in St. Louis since he came there; he has lived there for two years.

Cross examined by Judge Scates.

Q. You saw him nearly every day? A. Yes.

Q. Who were his associates? A. Mr. Cook and a hundred others I could mention. I speak of men doing business with Mr. Olmstead; I know his business as an architect. I used to keep saloon under the Matteson House. That was where I saw him.

Q. And his associates were those who came there drinking? A. No, sir; if I saw a man with him I supposed they were gentlemen; I didn't see him go with loafers. I don't know that I ever heard his reputation spoken about at all for truth and veracity.

Q. How do you know it is good? A. I have done some little business with him, and I am talking about his honesty; I don't know any person who has the
97 hardihood to tell me he was not a man of truth and veracity.

Q. What would follow? A. I would tell him he was no gentleman.

Q. The question is whether you know his reputation for truth and veracity, hard as the case might seem—do you know it? A. He might have told lies that I never heard of, but I believe he is a gentleman.

Q. What do people say of him? A. I never heard anything about it; I have heard men speak well of him. He belonged to a company and his company used to patronize me. He can get up a good company in St. Louis.

Q. Did you ever hear any man say he was a man of truth? A. I never had any conversation of that kind with a gentleman.

Q. You never heard any man say he was a liar? A. No, sir; I should not like to hear him say so.

Q. Never heard anybody say anything on the other side? A. No, sir.

L. N. PARSONS, called and sworn. Examined by Mr. Burgess.

Q. Do you know Captain Olmstead? A. Yes; I have known him about three and a half years—he is an architect. I am in the insurance business now.

Q. Do you know anything about his friends and acquaintances? A. Yes, sir; I can't say I know the men he has done business with—that I am personally ac-
98 qainted with them. I have known him and people that have been intimate at his house.

Q. Do you know what his reputation for truth and veracity in this community is? A. I never heard it called in question before. I have been personally acquainted with him since three years ago last December. I knew him before by reputation, I think two years or more; I don't know the exact time. I knew some men who worked in his office. I knew a man named Mitchell that was his foreman or whatever you call it. I never heard anything against his character for truth and veracity. He was born in the place I came from last, within a mile of the place, Auburn, New York, and I have heard many speak of him there. My father-in-law lived here during the summer and fall of 1857. I came here in May and done business here.

Cross Examined.

Q. Did you hear any anybody say he was a man of truth? A. I have heard my father-in-law speak of it in that manner, of his being a man of truth, I asked him; we were intimate with the family and he has spoken of him to me.

Q. Anybody else? A. I don't recollect. I can't mention names.

J. D. JENNINGS called and sworn. Examined by Mr. Burgess.

99 Q. Do you know Captain Olmstead? A. I have known him only for a short time — three or four months before he left. He was an architect. He drew up the plan for my present dwelling. I don't know that I knew many of his friends and acquaintances. He left three or four months after my acquaintance was formed. I never heard his reputation questioned, never heard it spoken of either way that I know of. I have supposed that it was good, but my acquaintance was short. I knew nothing to the contrary.

ISAAC L. MILLIKEN called and sworn.

Examined by Mr. Burgess.

Do you know Captain Olmstead? A. I do; I have known him for several years, perhaps five or six; he has been an architect. He never has done any business for me. I think I know some of his acquaintances, business men. I don't know as I know any considerable number of his business friends, but I think I know his acquaintances generally; many of them.

Q. Do you know what his reputation for truth and veracity in this community is? A. I can only say I have never heard it questioned. I have never heard anything said one way or the other as to his reputation for truth and veracity. I think he is a man pretty generally known. His character is good so far as I know.

Cross Examined by Judge Scates.

Q. Can you speak from reports or your own personal opinion? A. No, sir; I don't speak from my own personal opinion. I don't know that I know his char-
99 acter, except that I never heard it questioned. I was acquainted with those among whom he was acquainted. I have heard him frequently spoken of. I never heard his truthfulness questioned.

CLINTON R. JONES called and sworn.

Examined by Mr. Burgess in chief.

Q. Do you know Mr. Olmstead? A. I do; I should think I have known him seven or eight years. I think I am acquainted among his friends and acquaintances.

Q. Do you know his general reputation among persons who know him in this community for truth and veracity? A. I never heard anything against him. I have frequently heard him spoken of as a man and never heard him questioned for truth and veracity.

Q. From what you know about him would you believe him under oath? A. I certainly should.

Cross Examined.

Q. Did you ever hear anybody say he was a man of truth? A. No, sir; I never heard him spoken of on that subject. I have been acquainted with a good many of his acquaintances but not the question of his truth and veracity at all.

WILLIAM L. CHURCH, called and sworn,

Examined in chief by Mr. Burgess.

Q. Do you know Captain Olmstead? A. Yes; I don't know how many years I have known him. He was an architect.

Q. Are you acquainted with many of his friends and acquaintances?
100 A. I don't know that I know who his intimate friends are; I only knew him as I know lots of other persons, men in the place. I never heard his reputation for truth and veracity questioned; I believe he is a man well known in this community. I do not call to mind when I have heard him spoken of. I never heard his reputation questioned; I know him like Mr. Van Osdel and others. I can't call to mind when I have heard Mr. Van Osdel spoken of.

Q. You are clerk of the Circuit Court? A. Yes.

Q. Have a pretty general acquaintance? A. Yes; I have been sheriff of the County.

Judge Scates. You say you never heard him spoken of as respects his reputation for truth and veracity one way or the other? A. No, sir.

WILLIAM BROSS, called and sworn,

Examined in chief by Mr. Burgess.

Q. Do you know Captain Olmstead? A. Yes; I don't remember how long; It is quite a long time since I have known him. He is an architect here—I have been in his office frequently. We had some considerable talk about some plans at one time, but we have never had any business. I don't know who he may have done business with; he was here a long time and did a great deal of business.

Q. Do you know anything about his reputation for truth and veracity? A. I
101 never heard it questioned, sir. So far as I am personally concerned I have never known anything but what was perfectly fair; I don't think I ever heard anything against him. So far as I know his reputation is very good. With me it would be so.

Cross Examined by Judge Scates.

Q. You don't know his reputation for truth and veracity? A. I know it simply as I know every other man's in the city. I never heard anything against him. I never heard him spoken of one way or the other as to veracity. So far as I know his reputation is entirely good. I know it only as I know hundreds of others. I never heard anybody speak of him except as a business man—an architect.

Q. I am speaking of truth and veracity. A. Well!

Q. Do you know anything about what is said by the community in relation to his truth and veracity? A. No, sir; I don't know as I do.

Which was all the evidence in the cause, and that the bill of particulars filed with Narr. is as follows:

CHICAGO,----------

ISAAC COOK, Esq.

1854 **To EDWIN HUNT,**

October 31,	543½ lbs. soil pipe, 4 in. @ 12½ c. .	$67 94	
	3 S. Traps, $5.00	15 00	
	5 Bends, 4.00	20 00	
	35 lbs Solder, 40 c. (see footing for deduction)	14	
102	11½ lbs ½ in. lead pipe, 10 c. . .	1 15	
	55 lbs 1¼ in. waste do. 10 c. . . .	5 50	
	5½ days plumber and helper, 5.00 . .	27 50	
	2 " " " " " . .	10	——161 09
November 11,	430 lbs 1¼ in. lead pipe, 10 c. . .	43	
	1426 lbs 2 in. " " " . . .	142 60	
	625 lbs ¾ in. " " strong, . .	62 50	
	181 " 4 in. soil " 18¾ c. . .	33 94	
	112 " solder, 31¼ c. .	35	
	57 " sheet lead 10 c. . .	5 90	
	15 " tacks 12½ c. .	1 88	

	270 lbs 1 in. strong pipe	$27		
	170 " ½ " " " . . .	17		
	155 " ⅝ " " "	15	50	
	4½ " nails @ 6 c.		27	
	2 gro. screws 1 in. @ 75 c. . . .	1	50	
	1 4½ in. bend.	4		
	12½ days plumber and helper, 5.00 . .	62	50	
	30 lbs 1 in. strong pipe, 30 c. . .	3		
	25 " ⅝ in. med.	2	50	
	1 gro. screws, 75 c., 2 lbs tacks, 12½ c. 25	1		
	4 days plumber and helper, 5.00 . .	20		
	Paid balance on permit . . .		50	
	354 lbs 1 in. strong pipe, 10 c. . .	35	40	——514 99
December 13,	1087 lbs 8 lb sheet lead, 10 c. . .	108	70	
	1 coil 1¼ in. lead pipe, 169 lbs . . .	16	90	
	2 " ¾ " " strong, 353 lbs . .	35	30	
	69 lbs solder 31¼ c. 51.56, 13 lbs tacks 12½	163	23	19
103	44 lbs ¾ in. strong pipe . . .	4	40	
	1 gro. 1 in. screws		75	
	2 days plumber and helper, 5.00 . .	10		
	½ days labor. 1.50		75	
	2 1 in. rough stop cocks, 2.75 . .	5	50	
	3 traps en. 2 in. 2.00, 3 in. 3.00 . .	15		
	27½ lbs ⅝ in. strong pipe . . .	2	75	
	22 " ¾ " " "	2	30	
	4 " 2 " trap screws, 1.25 . .	5		
	46 " 1¼ in. waste pipe . . .	4	60	
	6 days plumber and helper, 5.00 . .	30		
	1 " labor	1	50	
	4 " plumber and helper, 5.00 . .	20	00	
	607 lb sheet lead, 10 c.	60	70	
	670 " " " "	67		
	1 1¼ in. rough stop cock	3	75	
	1 " " finished	4	75	
	1 iron hopper	8		
	1 3 in. S. trap	4		
	20 bush. charcoal, 15 c.	3		
	47 lbs solder, 31¼ c. . . .	14	69	——452 53
	3 ⅝ in. rough stop cock, 1.50 . . .	4	50	
	6 days plumber and labor, 5.00 . .	30		——34 50

	26	798 lbs sheet lead	$79	80	
		13 days plumber and helper, 5.00 . .	65		——144 80
	30	72 lbs solder, 31¼ c.	22	50	
		30 " strong lead pipe . . .	3	00	
		32 bush. charcoal, 15 c.	4	80	
104		1 water closet basin	16		
		1 " " cistern	15		
		1 ball cock and ball	4		
		8 flange wash trays cocks, 2.00 . . .	16		
		4 lbs putty, 6 c.		25	
		6 ⅝ in. flange screw bibb cocks, 3.25 . .	19	50	
		2 ¾ in. finished stop and water cocks, 2.00	4		
		2 lbs nails		13	
		10½ days plumber and helper, 5.00 .	52	50	
		2 4 in. bends, 4.00	8		
		2 shower flange cocks, 2 50 . . .	5		
		1 cop. shower, 2.00, 1 bath tub, 18.00 .	20		
		5½ days in shop, 5.00 . . .	27	50	
		778 lbs sheet lead, 10 c.	77	80	
		322 " " " strong 10 c. . .	32	20	
		Additional service cock, cash paid for this by E. Hunt, ...	3		
		1 coil strong lead pipe 1.80 . . .	18		
		1 1 in. rough stop cock . . .	3		
		4 days labor, 1.50	6		——394 43
1855		2 ½ in. rough cocks lever hals, 1.25 .	2	50	
January 25,		1 1½ in. bath plug	1	50	
		2 1 in. rough stops LH 3.00 . .	6		
		2 ⅝ in. fininished stops, 1.50 . . .	3		
		1 ⅝ in. stop and water	1	50	
		1 gro. 1 in. screws, 75 c., 14 " tacks 12½ c. 175	2	50	
		1 ¾ in. stop and water cock finished .	2		
		3 marble slabs, 10.00	30		
		3 wash-bowls, 3.00	9		
105		3 plug washers plated, 1.25 . . .	3	75	
		6 No. 3 close plated basin cocks, 9.00 .	54		
		2 1 in. finished stop cocks, 3.25 . .	6	50	
		1 1¼ in. " " . . .	4	25	
		4 3 in. strainers, 31¼ c.	1	25	
		2 1¼ in. stop cocks, 4.25 . . .	8	50	
		1 4 in. double action pump . .	45		

	6 lbs tacks 75 c., 135 lbs solder 31¼ c. 42.19	42	94		
	8 " block tin 45 c.	3	60		
	122 lbs 1 in. strong pipe, 10 c. . .	12	20		
	22 days work plumber and helper 5.00 .	110			
	105 lbs solder 31¼ c.	32	81		
	221 " sheet lead	22	10		
	1 2 in. tap screw	1	50		
	1 3 " S. trap	4			
	1 2 " bend	3			
	31 lbs 4 in. soil pipe 12½ c. 3.87, 1 4 in. bend 4.00	7	87		
	1 2 in. brass valve	1	50		
	18 feet brass chain, 3 c.		54	——	423 31
	3 " plated " 5 c. 15, 1 4 in. S. trap 5.00	5	15		
	47¼ lbs iron bolt 12½ c.	5	90		
1855	12 days plumber and helper, 5.00 . .	60		——	71 05
January 31,	46 lbs solder 31¼ c.	14	37		
	2 iron hoppers, 10.00	20	00		
	11 lbs tacks, 31¼ c.	1	38		
	1 coil 1¼ in. med. pipe 139½ 10 c. . .	13	95		
	2 4¾ stop hopper grates, 1.75 . . .	3	50		
	3 hopper hlds. and rods, 2.25 . .	6	75		
106	14 days plumber and helper, 5.00 . .	70		——	129 95
February 17,	1 day " " " " . .	5	00		
	90 lbs sheet lead, 10 c.	9	00	——	14
March 28,	12 " solder 31¼ c. 3.75, 1 gro. brass screw 1.50	5	25		
	1 pa. tacks 10 c., 1 strainer for iron sink 50 c.		60		
	3 sockets for boilers 1.25 . . .	3	75		
	2 ⅝ in. bibb cocks 1.50	3			
	1 No. 2 clon. plated basin cock . .	8			
	2 plated bath and water closet cocks 4.00 .	8			
	11½ days plumber and helper, 5.00 .	57	50	——	86 10
					2426 75
	Less 35 lbs solder overcharged 9 c. .	3	15		
	129 lbs cuttings returned 5 c. .	6	50		
	2 4 in. bends 4.00 . .	8			
	7 lbs solder 31¼ c. . . .	2	17	——	19 77
					2406 98
	Amount of bill for tin work . .				71 85
					$2,478 83

Because the Court allowed improper testimony to be given by the plaintiff.

Because proper evidence on part of defence was excluded from Jury.

Because the instructions given for the plaintiff were contrary to law.

Because instructions asked for by defendant were excluded from the Jury.

Because instructions of the defendant's were modified by the Court.

Because the verdict of the Jury was against the law of and facts proved in the case.

Because of improper conduct on part of Jurymen.

Because one of the Jurymen was taken sick and unable to attend to his duties as a Juror, and the Jury found a verdict to relieve him from his confinement.

Because instructions went to the Jury without being marked "given" or "refused" as required by law.

Because and for the reasons stated in the affidavits filed in support of this motion.

113 And that afterwards, said motion coming on to be heard, the said defendant read the affidavit of Isaac Cook and Charles Christopher as follows :

EDWIN HUNT, vs. ISAAC COOK, } Ass't.

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

Isaac Cook, the above named defendant, being duly sworn, says that he made a contract in writing with Charles Christopher to do work and furnish materials under which the work and materials for which this suit is brought were afterwards done and furnished. That the statement of Carlton L. Drake, a witness sworn on the part of the plaintiff, made on the trial of this cause, that no such contract had been made to his (Drake's) knowledge, and that said work and materials had not been done and furnished thereunder, took this defendant entirely by surprise, and that he was not prepared with evidence to prove those facts to be so within his knowledge, which he would have had had he supposed the plaintiff intended to controvert that fact. That at the time of the trial and for a long time prior thereto he

did not know where the said Christopher was so as to have procured his attendance or his deposition.

That at the time of the trial of this cause he, said Christopher, resided and was in Nebraska territory.

That immediately after the trial this defendant caused inquiries to be made for him, and then, after considerable inquiry, learned that he was at Omaha City, in said territory. That he immediately sent and obtained from said Christopher the
114 affidavit signed by him hereto attached. That this deponent expects, in case a new trial should be granted to him, to prove on such trial of this cause the facts set forth in said affidavit by said Christopher.

This deponent further states that since said trial of this cause he has caused a search to be made for said written contract and inquiries made from all persons whom he could learn there was a probability of its being in their possession, and that from all the facts he has been able to learn the same was lost in the confusion in the office of Olmstead consequent upon his abrupt departure from this city.

That this deponent has been informed by King, alluded to on the trial of this cause, as having had the safe in which the contract was supposed to have been left, that he did not find such a paper therein and never had such a paper in his possession.

I. COOK."

Subscribed and sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

"In the Superior Court of Chicago,

E. HUNT, vs. I. COOK. } ASSUMSIT.

NEBRASKA TERRITORY, } ss.
COUNTY OF DOUGLAS.

CHARLES CHRISTOPHER, of said county, being duly sworn, says that he formerly resided in Chicago aforesaid, that he then knew the plaintiff and defendant in

did not know where the said Christopher was so as to have procured his attendance or his deposition.

That at the time of the trial of this cause he, said Christopher, resided and was in Nebraska territory.

That immediately after the trial this defendant caused inquiries to be made for him, and then, after considerable inquiry, learned that he was at Omaha City, in said territory. That he immediately sent and obtained from said Christopher the
114 affidavit signed by him hereto attached. That this deponent expects, in case a new trial should be granted to him, to prove on such trial of this cause the facts set forth in said affidavit by said Christopher.

This deponent further states that since said trial of this cause he has caused a search to be made for said written contract and inquiries made from all persons whom he could learn there was a probability of its being in their possession, and that from all the facts he has been able to learn the same was lost in the confusion in the office of Olmstead consequent upon his abrupt departure from this city.

That this deponent has been informed by King, alluded to on the trial of this cause, as having had the safe in which the contract was supposed to have been left, that he did not find such a paper therein and never had such a paper in his possession.

I. COOK."

Subscribed and sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

"In the Superior Court of Chicago,

E. HUNT, vs. I. COOK. } ASSUMSIT.

NEBRASKA TERRITORY, } ss.
COUNTY OF DOUGLAS.

CHARLES CHRISTOPHER, of said county, being duly sworn, says that he formerly resided in Chicago aforesaid, that he then knew the plaintiff and defendant in

115 this suit above named; that this deponent also knew there, Carlton Drake, that this deponent during the year 1854 entered into a written contract with Isaac Cook for doing the plumbing work, &c., on the east addition of the hotel then known as the "Young America," situated in Chicago, Cook County, Illinois, and built by said Isaac Cook, that said contract was drawn up under the supervision or direction of William B. Olmstead, as I believe, (and signed by Isaac Cook,) then of the firm of Van Osdel & Olmstead, architects, in the said city, that the fact that said Cook had made such contract with this deponent was at or about the time of its being made, well known both to said Hunt and to the said Drake, that this deponent informed them both of the fact, and that an arrangement was made between this deponent and said Drake, as the agent of and acting for said Hunt, for the work under that contract to be done by said Hunt, or said Drake for said Hunt, for this deponent as a sub contractor under it and him this deponent, that this deponent was to receive the money therefor, retain a certain per centage and pay the residue to them or one of them, that according to this arrangement and under the contract with this deponent so sublet to the said Hunt, all the plumbing work of the east addition to the "Young America," done while that addition was in course of erection, was done either by said Hunt or by said Drake for him, that this deponent afterwards settled with said Cook for the work under said contract and received his pay therefor. That said Cook in the presence of said Drake and while the said plumbing work was in progress refused to recognize any person but this deponent as the contractor for it and refused to pay money to any other person but this deponent for said plumbing
116 work, that this deponent left said written contract in the possession of said Olmstead to be kept by him for both parties, that this deponent never received it or authorized any other person to receive it from said Olmstead. That the last he, this deponent, knew of it it was in said Olmstead's possession and that this deponent does not now know where it actually is or can be found.

CHARLES CHRISTOPHER.

Subscribed and sworn to before me this 8th day of October, A. D. 1859.

Attest, my hand and seal Notarial,

[SEAL] DAVID D. BELDEN,

Notary Public for Douglas County, N. T.

And the plaintiff read the affidavits of E. Hunt and David W. Hunter, as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY.

E. HUNT, vs. I. COOK. } ASSUMSIT. MOTION NEW TRIAL.

E. Hunt being duly sworn deposed and says that he has heard read a copy of an affidavit of Charles Christopher in relation to taking a contract of I. Cook for plumbing work on the hotel "Young America," and that the fact of his making said contract being well known to affiant at and about the time of its being made
117 and to C. Drake, and of his informing both of them of the fact, and the making an arrangement between said Christopher and said Drake, as agent of affiant for doing the work for him said Christopher, under said contract between him and said Cook, as a sub contractor to him said Christopher, by which said Christopher was to receive the money therefor and retain a certain per centage and pay the residue to affiant and said Drake, or one of them, and that he, said Christopher, accordingly sublet the said work to said Hunt, and that the work was done under the same for said Christopher, and that said Cook in the presence of said Drake, and while the work was going on, refused to recognize any person but said Christopher as the contractor for said work, and refused to pay anybody for it but said Christopher. And in relation to all these statements so made and sworn to by said Christopher, deponent says that so far as they relate to this affiant's knowledge of and participation in and consent to the matters therein stated, the same are severally and as a whole wholly false and untrue. Affiant states that he had no knowledge that said Christopher had taken a contract for said plumbing, and affiant never did make an agreement or contract with said Christopher to do said work, neither personally nor by said Drake to his knowledge, and further saith not.

EDWIN HUNT.

Sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

DAVID W. HUNTER, being duly sworn, deposes and says that he has been a clerk and salesman in E. Hunt's store for near ten years past and familiar with all
118 his business as a Wholesale Hardware Merchant and in his business of plumbing, and was so during the time of the doing the plumbing work on the "Young America," and he states that he never heard of a sub contract for said plumbing

work with said Christopher, but on the contrary thereof always and at the time understood that the said Hunt was doing or having the same done for said defendant, Cook, and that the entries upon the books of said Hunt for said work were made against said Cook as the contractor and debtor therefor. And further saith not.

DAVID W. HUNTER.

Sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

And the Court after hearing the arguments of counsel overruled said motion, to which the defendant then and there excepted.

And inasmuch as the several and various matters aforesaid do not appear of record in said cause the said defendant hath tendered said Court this his bill of exceptions to be signed and sealed in pursuance of the Statute, and it is done accordingly in open Court, as of the twenty-third day of November, A. D. 1859.

VAN H. HIGGINS, [SEAL]

Judge Superior Court.

ERRORS ASSIGNED.

1. The refusal to exclude Carlton Drake as a witness.

2. The admission of what Olmstead said in the absence of Cook, when Drake returned the order of December 13th, 1854, to Olmstead, and on other occasions excepted to in the course of the trial.

3. Refusing permission to the defendant to prove the contents of the written contract between Cook and Christopher.

4. In allowing the witness Olmstead to state what he had told his partner about Cook's paying him for their services.

5. In refusing to allow the defendant to read in evidence the receipt of Christopher to him, and the proof of payment to him to be given to the Jury.

6. In allowing N. P. Wilder to relate a conversation between him and Olmstead.

7. In refusing to allow witness Barker to state whether or not he would believe Olmstead under oath.

8. In giving the instructions for the plaintiff below.

9. In refusing and qualifying the instructions asked for by the defendant below.

10. In giving instructions to the Jury for plaintiff without marking them

11. In refusing the motion for a new trial.

12. The judgment was for plaintiff should have been for defendant.

W. T. BURGESS,

For Appellant.

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Cook vs Hunt

Abstract

Filed April 19, 1860

L. Leland
Clerk