No. 12355

Supreme Court of Illinois

O'Regan

vs.

O'Connor

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United States of America
State of Illinois } S.S.
County of Cook

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas at a regular Term term of said Cook County Court of Common Pleas within and for the county of Cook and State of Illinois begun and holden at the Court House in the City of Chicago in said County and State on the Second Monday being the tenth day of September in the year of our Lord one thousand eight hundred and fifty five, and of the Independence of the United States the Eighteenth -

Present the Honorable John M. Wilson Judge
Daniel McKey, Prosecuting Attorney
James Andrew Sheriff
Attest - Walter Kimball Clerk

(12955-1)

Be it remembered that heretofore to wit on the twenty sixth day of April in the year of our Lord one thousand Eight hundred and fifty five came Charles O'Connor Plaintiff by his attorneys Arnold Larned & Lay and filed in the office of the Cook County Court of common Pleas, his petition for a Mechanic Lien which said Petition for a Mechanics Lien is in words and figures following to wit;

Cook County Court of Common Pleas

To the Hon John M. Wilson Judge of the Cook County Court of Common Pleas Of the June Term of said Court:

Your Petitioner Charles O'Connor would respectfully show unto your Honor that he is building mason and has been engaged in said business for a number of years past in the City of Chicago in the County of Cook and State of Illinois —

And your petitioner would further show that in the month of May and June in the year 1853 the Rt. Revd. James O Vandevelde then Catholic Bishop of the City of Chicago was seized in fee simple of Block forty eight in

Kinzies Addition to the City of Chicago and his successors in office in trust for the benefit of the Catholic Church of the State of Illinois and that said Block was bought and held by the said Bishop for the purpose and with the intent and object of erecting thereon a Cathedral or Church for the use of the said Catholic Church —— And your petitioner would further show that in the months of June 1853 a Church was contracted for and commenced to be erected on said Block with knowledge assent and under the superintendence of the Rt. Revd James O. Vandevelde then Bishop of Chicago under the name and designation of the "Church of the Holy name" —

That one J. H. Kinzelbach became and was at that time with the knowledge appointment and consent of the said Vandevelde as Bishop as aforesaid, Pastor and Treasurer of the said "Church of the Holy name", and by virtue of said appointment and with the knowledge and approval of the said Vandevelde so Bishop as aforesaid was fully authorized and empowered to make and enter into contracts for and on behalf of said Bishop and his successors in office for the building of said Church and for materials therefor and which said contract when so made were binding upon the said

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Bishop and his successors in office —"—

And your petitioner further shows that the said Kinsella did go on and make contracts for the erection of said building and that said church was under and by virtue of said contracts made by the said Kinsella erected upon the said Block forty eight during the years 1853 and 1854 —"—

And your petitioner would further show that the Rt Revd Anthony O'Regan in the month of A.D. 1854 became and was successor of the said James O. Vandwelde and as such successor by virtue of the statute in such case made and provided became and was seized in fee simple in trust as aforesaid for the uses of said church of the said Block forty eight as aforesaid —"— And your petitioner would further show that on the tenth day of April A.D. 1854 your petitioner and the then Catholic Bishop of the City of Chicago by and through the Revd J. A Kinsella the Pastor and Treasurer of the said "Church of the Holy Name" having the power and authority to make & enter into such contracts as aforesaid made and entered into a certain contract in writing a copy of which is as follows to wit:

"This Agreement made this 10th day of April 1854 between very Revend J. A Kinsella

and Chas O'Connor (building mason) all of Chicago Ills — Witnesseth — — —

The said Chas O'Connor for and in consideration of the payment hereinafter agreed to be made to him by the said P. A. Kinsella, has and does hereby agree to execute all the masonry of the walls of Church known as the Church of the "Holy Name of Jesus" situate at the corner of Wolcott and Superior St. Chicago as follows —

Said O'Connor is to build the walls of the building ready for roof and the front central tower to the height of the peak of roof & set the cut-stone which is required in the same; the said O'Connor to furnish all labor of every kind all scaffolding machinery tools &c that may be required in the proper execution of the work — The said Rev P. A. Kinsella furnishing all bricks cut stone lime & sand upon the ground ready to go into the work

And the said Rev P. A. Kinsella for and in consideration of the said C. O'Connor fully & faithfully executing the aforesaid work, according to the design furnished and to the full & complete satisfaction of Burling & Baumann Superintendents thereof, and as fast as the materials therefor are supplied by the said Kinsella does hereby agree & has agreed to pay to the said ~~O'Connor~~ Chas O'Connor as the work progresses the sum of

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Six Dollars and forty cents $6.40/100 per thousand bricks laid in the work, the quantity to be determined by Buling & Bauman who will measure the same by girthing the building on the outside and including in the measurement all the doors & windows, all cut stone to be measured as brick work. Steps for the entrance doors not to be included in contract —"

In witness whereof the parties hereto have set their hands the day and year first above written —"

Signed D. A. Kinsella Pastor "Abrams"
Chas O'Connor

as a reference to the original contract now in the possession of this petitioner, and ready to be produced as this Court shall direct will more fully appear

And your petitioner would further show that he did in pursuance of said contract so made as aforesaid go on with the work and labor thereon upon his part stipulated and agreed to be performed, during the spring summer and fall of 1854, and was ready and willing, and offered to complete and perfect the contract upon his part to be performed, but was prevented from so doing by the failure of the said D. A. Kinsella Treasurer as aforesaid and agent of the Bishop to furnish the brick and materials and money to carry on said work and that by and through

such failure your petitioner was unable fully to complete the said Job —

And your petitioner further states that according to the measurement of Messrs Burling & Bauman the superintendants of said building your petitioner under and by virtue of the terms of said contract did the following work and was entitled to the following pay therefor as follows to wit:

Laying 2,452,995 bricks @ $6.40		15,699.00
Cutting 200 ft of Stone @ 35¢		70.00
Laying 3429 ft rough stone @ 10		342.90
		$16,111.90

and that the amount and value of the work and labor so performed as aforesaid by your petitioner was sixteen thousand one hundred and eleven Dollars and ninety cents, and that the said work and labor was done & performed by and under the direction of the said P. A Kinsella for and in behalf and by the authority of the Catholic Bishop of the City of Chicago and said work & labor was done & performed in and about the erection of the said Church of the Holy Name —

And your petitioner further states that he did in like manner at the request & solicitation and by the direction of the said P. A Kinsella so acting as aforesaid for and in behalf of the

said Bishop during said year 1854, the precise time your petitioner cannot state, perform and do the following work and labor in about the erection of said Church in and upon said Block to wit; tallying brick 38¼ days at 10/- $47,81

And your petitioner further shows that he has received and paid applied in and upon said contract the sum of Nine thousand Nine hundred and forty three Dollars and fifty five & half cents and that the balance still owing your petitioner in & upon said contract and for his work & labor in and upon said building called the Church of the Holy name erected upon Block forty eight is six thousand two hundred and sixteen Dollars and fifteen and half cents —

And your petitioner would further show that he has demanded of the Rt Revd Anthony O'Regan Catholic Bishop and successor of the Rt Revd James O Vandevelde aforesaid the balance due for the said work and labor performed as aforesaid under said contract prior to the filing of this petition and which said amount so as before stated was the amount due your petitioner at the time of said demand, and that upon said demand the said Bishop Anthony O'Regan then and there neglected and refused to pay said amount — " —

And your petitioner avers that the said Anthony O'Regan Catholic Bishop as aforesaid failed to perform the part of the said contract hereinbefore set forth upon his part to be done and performed and that by reason hereof your petitioner without his own default has been prevented from completing said contract —

And your petitioner would further show that the said amount of six thousand two hundred and sixteen Dollars and fifteen and a half cents, has been for a long time due and payable to your petitioner and that although often requested the said Rt Revd Anthony O. Regan has not paid the same or any part thereof to your petitioner —

Your petitioner therefore prays that he may be declared to have a lien and may obtain a judgment for the amount of his claim and that a decree or order may be entered herein for the sale of the said Block forty eight and that the proceeds of the said sale may be applied for the discharge of said demand according to the provisions of the chapter entitled "Liens" of the revised Statutes of the State of Illinois —

Your petitioner also prays process of summons to the Rt Revd Anthony O'Regan Bishop of Chicago returnable to prime Term of this Court

Arnold Larned & Lay Solcs } Charles O'Conna

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Charles O'Connor
vs
Rt Revd Anthony O'Regan

Cook County Court
of Common Pleas

Clerk will issue summons in above case directed to Sheriff of Cook County commanding him to summon above named Defendant, returnable to June Term 1855 –

April 26. 1855.

Arnold Samed Lay
Solr for Petitioner

And thereupon on the same day and year last aforesaid, there issued out of the office of the Clerk of said Court, the People's writ of summons, which said writ and endorsement thereon is in words and figures as follows to wit:

State of Illinois } ss.
County of Cook }

The People of the State of Illinois to the Sheriff of said County = Greeting –

We command you that you summons Rt. Revd Anthony O'Regan if he shall be found

in your county, personally to be and appear before the Cook County Court of Common Pleas for the county of Cook on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the First Monday of June next to answer unto Charles O. Connor in his certain Petition for a Mechanics Lien filed in the said Court —

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

Witness — Walter Kimball Clerk of our said Court and the seal thereof at the City of Chicago aforesaid this 26th day of April A.D. 1855 —

L S.

Walter Kimball
Clerk

Served this writ on the within named Anthony O'Regan by delivering a copy thereof to him

James Andrew Sheriff
F. S. Bulkley Deputy

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And afterwards to wit: on the twenty seventh day of September in the year of our Lord one thousand eight hundred and fifty five comes the said Defendant by his attorneys Waller & Caulfield and filed in the office of the Clerk of said Court, his Answer, which said answer is in words and figures as follows to wit;

The answer of Anthony O'Regan to a petition under the Mechanics Lien Law filed in the Cook County Court of Common Pleas by Charles O'Connor —

This respondent reserving the benefit of all exceptions to the many errors of law & fact in said petition contained for answer thereto says, that he is now Roman Catholic Bishop of Chicago, but he denies that the Block of land referred to in complainants Bill was bought by any of his predecessors & held by them for the purpose & with the intent & object of erecting thereon a Cathedral or church He also denies that in the month of June 1853 or at any other time a church was contracted for & commenced to be erected on said Block with the knowledge assent & under the superintendance of Rt Revd James

O'Vandevelde then Bishop of Chicago —
He also denies that T. A Kinsella was at
that time with the knowledge appointment
& consent of said Vandevelde as Bishop as
aforesaid, Pastor & Treasurer of said Church
of the Holy Name & denies that said Kinsella
was authorized in manner shape or form
to make any contracts whatsoever which
would be binding upon said Bishop &
his successors, especially in relation to said
Church — This respondent admits that
he is the successor of James O'Vandevelde
as Catholic Bishop of Chicago but denies
that he was so on the tenth day of April
1854 & that at that time or at any other
time the said Kinsella by & with the
consent or approval of this respondent
made & entered into the contract referred to
in complainants bill, with said O'Connor
and says that he was not Bishop of Chicago
at that time, nor was the said Vandevelde either
This respondent denies all authority of said
Kinsella to act in the premises & refers to the
Court whether the said Kinsella had any
right to make a contract to be binding upon
the Bishop of Chicago, when there was no
Bishop of Chicago in existence as was the
case on the tenth day of April 1854 —

When he derived his authority from no one who ever had been the Bishop of Chicago -
This respondent denies that said Kinsella was pastor of said Church or held any office whatever under the Bishop of Chicago which would authorize him to bind said Bishop in any manner - This respondent also denies the correctness of the complainants account - if he is to be held responsible in any manner; therefore calls for full proof of the whole account -
He admits he did not pay said Conway as charged in said Bill and holds he is not legally bound to do so he denies that said Conway has any lien by virtue of said Mechanics Lien Law or any other law on the said building or on the lot on which it stands -
This respondent resists the prayer for a decree & sale having fully answered as advised prays to be hence dismissed with his costs &c -

Wallace & Caulfield } + Anthony O'Regan
Solicitors for deft } Bishop of Chicago

Cook County }
State of Illinois } S.S.

Anthony O'Regan being first duly sworn states that the foregoing

answer and the things therein contained are true so far as derived from his own knowledge and so far as derived from information of others he believes them to be true

+ Anthony O'Regan
Bishop of Chicago

Sworn & subscribed before me this 27 day of September A.D. 1855 –
Calvin D Wolf
Justice of the Peace

And afterwards to wit: on the second day of October in the year last aforesaid, the said Defendant by his said attorneys comes and filed in the office of the Clerk of said Court his Replication which said Replication is in words and figures as follows to wit:

Charles O'Connor
vs
Rt Revd Anthony O'Regan } Replication

The Replication of Charles O'Connor to the answer of Rt Rev Anthony O'Regan –

This Replicant having all manner of exceptions & right of exceptions &c for replication

thereunto says that he will aver maintain & prove his petition to be true certain & sufficient in the law to be answered unto; & that the said answer of Def is uncertain untrue & insufficient to be replied unto by the replicant without this &c

And hereby prays as on & by said petition they have always prayed —

Arnold Larned & Lay —
for petitioner

And thereafter to wit; on the eighth day of October in the year last aforesaid, said day being one of the days of the September term the following among other proceedings were had in said cause and entered of Record to wit;

Charles O Connor
vs
Rt Rev Anthony O Regan } Petition for Mechanics lien

And now comes the said Defendant by his attorneys Waller Caulfield & Bradley and move the Court to continue this cause to the next term, which motion is overruled by the Court, and it is Ordered that this cause stand continued from day to day at the costs of said defendant —

And afterwards to wit; on the thirty first day of October in the year last aforesaid - the said Plaintiff by his Attorneys Arnold Larned & Lay comes and filed in the office of the Clerk of said Court, his Amended Petition which said Amended Petition is in words & figures as follows to wit;

Cook County Court of Common Pleas

Patrick O Connor
vs
Rt Revd Anthony O Regan } Petition for mechanics lien

And now comes the said petitioner by Arnold Larned & Lay his Solicitors and amends his said Petition filed herein as follows —

And your petitioner further shows that the said Church of the Holy Name was erected with the knowledge and assent of said Bishop Vandevelde, and that the said Church has been accepted used and appropriated by the duly authorized agents and officers of the Catholic Church and the Bishop of Chicago the defendant herein

And your petitioner further shows that there is due your petitioner for work done and performed, and materials furnished

for the church of the Holy Name with the knowledge permission and assent of James O Vandevelde the Catholic Bishop of the City of Chicago the sum of $9943.55. and that said work and the labor and material have been accepted appropriated and used by the said Catholic Church, and you petitioner further shows that said Bishop knowing said work was being done and materials furnished made no objection to the same and further avers that the said Church of the Holy Name has been accepted used and appropriated by the duly authorized agents and officers of said Catholic Bishop Anthony O Regan

Arnold Larned Lay

Solicitor

And thereafter to wit; on the first day of November in the year of our Lord one thousand eight hundred and fifty five. said day still being one of the day of the September term of the Cook County Court of Common Pleas the following further proceedings were had in said cause and entered of Record to wit:

Charles O Conner

vs

Rt Revd Anthony O Regan } Petition for Mechanics Lien

And now at this day comes the said petitioner by Arnold Larned & Lay his solicitors and said Defendant by Waller & Caulfield his solicitors also come, and said petitioner withdraws his amended petition from the files and the motion to continue by said defendant is over-ruled by the Court, and thereupon this cause came on to be heard on the Petition answer & Replication thereto and on motion of said petitioner it is ordered that a Jury come, and thereupon came a Jury of good and lawful men to wit: George W. French R. N. Fisk S. W. Graves Benjm Marshall George W. Laird, George Anderson Theodore Hubbard, G. G. Chilcott Asa Fitch J. S. Roberts. Thomas Wile & S. M. Kelly who being duly elected tried and sworn well and truly to try the issue joined in this cause after hearing a part of the testimony adduced the further hearing of this cause is postponed until to-morrow morning to which time the Jury are permitted to separate –

And thereafter to wit: on the second day of November in the year last aforesaid the following further proceedings were had in this cause and entered of Record to wit:

Charles O'Connor
vs
Rt Rev Anthony O'Regan } Petition for Mech's Lien

And now again come the parties aforesaid by their Solicitors and the Jury empannelled in this cause also come and after hearing a part of the evidence the hour of adjournment having thereupon arrived, the further consideration of this cause is postponed until to-morrow morning to which time by consent of parties the Jury are permitted to separate —

And afterwards to wit: on the third day of November in the year last aforesaid the following further proceedings were had in said cause and entered of Record

Charles O'Connor
vs
Rt Rev Anthony O'Regan } Petition for Mech's Lien

And now again come said parties by their said Solicitors and the Jury in this cause empannelled also come and after hearing the remainder of the testimony and a part of the argument of counsel the hour of adjournment of the present Term of the court having arrived, by agreement and stipulation of said parties — It is also Ordered that the further consideration of this cause be

continued to Monday morning next the first day of the November Vacation term of this Court, and that the cause be submitted to the Jury on that day for the rendering of their verdict, and that their verdict may be received, and entered and have the same effect as though received and entered at the present September term of this Court. And that the Jury be permitted to separate and meet the Court on Monday morning.—

And afterwards to wit: on the fifth day of November in the year Eighteen hundred and fifty five, said day being one of the days of the November Vacation Term, the following further proceedings were had in said cause and entered of Record to wit:

Charles O. Conner
vs
Rt Revd Anthony O. Regan } Mechanic's Lien

And now at this day again come the said parties by their Solicitors aforesaid, and the Jury empannelled in this cause also come, and after hearing the closing argument of counsel, and instructions of the Court (which were excepted to by defts Counsel as follows:) retire to consider of their verdict.

said defendant enters his exceptions to the instructions given by the Court to the Jury and afterwards the Jury come into Court and say, We the Jury find the issue for the complainant on the contract and that there is due said complainant for work and labor done under the contract, set forth in the complainants petition the sum of Six thousand two hundred and sixty three dollars and ninety six cents, and said defendant thereupon enters his motion herein for a new trial in this cause, which motion after being heard is overruled by the Court to which ruling and decision of the Court the said defendant here excepts —

Therefore it is considered adjudged and decreed that the said complainant have a mechanics lien upon the premises described in the petition in this cause as Block Forty eight (48) in Knizies addition to the City of Chicago with the building thereon situate for the said sum so found due as aforesaid according to the Statute in such case made and provided —

And it is further considered that the said complainant do have and recover of the said defendant out of the said premises the said sum of Six thousand two

hundred and sixty three dollars and ninety six cents as found due as aforesaid together with his costs and charges by him about this behalf expended and have execution therefor against the said described premises and that said premises be sold to satisfy the same –

And thereupon said defendant prays an appeal to the Supreme Court of the State of Illinois which is allowed on his filing an appeal Bond herein in the sum of Eight Thousand dollars with Security to be approved by the Judge of this Court in twenty days from this day – and thirty days time is given said defendant to prepare and file herein his bill of exceptions –

And afterwards to wit: on the twenty second day of November in the year last aforesaid the following among other proceedings were had in said Cause and entered of Record to wit:

Charles O. Connor
vs
Rt Revd Anthony O. Regan } Mechanics Lien

This day comes

said defendant by Waller & Caulfield his Solicitors and on his motion it is ordered that the time be extended to the first day of December next to file his appeal bond herein –

And thereupon, on the thirtieth day of November in the year last aforesaid, comes the said Defendant and filed in the office of the Clerk of said Court his Appeal Bond which said appeal Bond is in words and figures as follows to wit:

Know all men by these presents that We Anthony O'Regan Catholic Bishop of Chicago John Darlin & William Donohue are ~~hardly~~ held & firmly bound unto Charles O'Connor in the penal sum of Eight thousand Dollars – Witness our hands and seals this 28th day of November 1855 –

The condition of the above Bond Obligation is such that whereas the said Charles O'Connor, ~~dec~~ on the 5. day of November 1855, recover a judgment against the above bounden Anthony O'Regan Catholic Bishop of Chicago & upon the Church of the Holy Name in Block 48 in Kinzies addition to Chicago on a petition under the Mechanics

Lien law in the Cook County Court of Common Pleas at the September Term thereof for Six Thousand Dollars Two hundred and sixty three & 96/100 Dollars ($6263.96/100) damages & cost of suit & whereas the said Anthony O'Regan Catholic Bishop of Chicago has prayed for & obtain an appeal from said Judgment to the Supreme court of the State of Illinois returnable to the said Supreme Court to be holden at Ottawa in the third Grand Division in State of Illinois on the second monday of the month of June next

Now if the said Anthony O'Regan shall duly prosecute his said appeal and pay to the said Charles O'Connor such judgment cost & interest and damages as shall be allowed by the said Supreme Court in case the said judgment shall be affirmed then this obligation to be void else to remain in full force & effect

+ Anthony O'Regan (Seal)
Bishop of Chicago

November 28. 1855

John Devlin (Seal)
Wm Donohoe (Seal)

Approved by me this 30th day of November 1855
John M Wills
Judge of the Cook County Court of C. Pleas

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And afterwards to wit: on the sixth day of December in the year last aforesaid, comes the said Defendant by his said Solicitors and filed in the office of the Clerk of said Court his Bill of Exceptions which said Bill of exceptions is in words & figures as follows to wit:

Be it remembered that on the trial of the case of Charles O Connor vs. Anthony O Regan on petition for a Mechanics Lien upon the Church of the Holy Name on Block 48 in Kinzies addition to Chicago, in the Cook County Court of Common Pleas before the Hon D. McWilson; the following persons were introduced & cross examined as witnesses – said trial being at the September Term 1855 of said Court —

Rev Mr. Clowry introduced by complainants said he was a Catholic Priest & came to Chicago in 1849 that he found Bishop Vandevelde acting as Bishop of Chicago, when he came – He knew Rev P. A Kinsella, said Kinsella was President of St Mary of the Lakes & Pastor of the Church of the Holy Name – He knows the Church situated on Block 49 in Kinzies addition; the Church was commenced about 2d June 1853; he was

present at the laying of the Corner Stone —

"Here all parol evidence to shew Mr Kinsella acted as agent of the Bishop was opposed by Defts counsel — Objection overruled by Court & evidence admitted to which defts excepted" — " ——— — —

It was laid by Bishop Vandevelde — The foundation was two or three feet above the ground when the Corner Stone was laid — Bishop O Connor of Pittsburgh was present & Rev Mr Kinsella Rev Mr Hoge Rev Mr Breen. were also present Mr O Connor the complainant was present and two or three hundred people — Mr O Connor had the Stone prepared & took part in directing how it was to be laid — The manner of laying the corner Stone was by the Bishop going the walls saying prayers & psalms. there was a crop erected in the centre & when he came to the corner Stone he blessed it — The foundation walls then built are the same upon which the structure now stands = Mr O Connor and the Bishop were in a position to see each other. at the laying of the corner Stone —

Dont know whether the Bishop saw O Connor when the Stone was blessed, it was placed in its position by Mr O Connor. Bishop O Connor preached on the occasion of laying the corner Stone from the Balcony of the Colledge, which is just opposite the Church — His discourse was a Lecture on the unity of the Church — " —

He alluded to the church of the Holy Name and made a few remarks exhorting the people to be generous about contributing. of this he is not positive — It is his opinion — after laying of the Corner Stone, Mr. Knizella remained in the city until January 1855 — he acted as President of the University & Pastor of the Church & as treasurer — It is the custom as far as he knows in this Diocese for the pastor to act as treasurer in building Churches — & also for the pastor to make contracts for the building — The Bishop never signs the contracts as far as he knows. he thinks this is the general custom in this diocese —"

"All the testimony in relation to this custom was objected to by defendants counsel. objection overruled & evidence admitted by the Court subject to defendants exception" The Bishop must give his approbation for the building of the Church — The usual mode is for the Pastor to consult the Bishop. before commencing the church & get his approbation — It is then the duty of the Pastor to make the contracts — He saw the Bishop on one occasion after the laying of the corner stone at the College = He had to pass the church in going from his house to the College = From the 29th June when the work was commenced until August when the corner stone was laid. at which time the exterior was was built two or three feet above the

ground = Mr. O'Connor was doing the work = There was a Catholic paper in the city called the Western Tablet — The Bishop recognised it as his organ & he published communications to the people in that paper, he has seen that paper in the Bishops house —

Bishop Vandevelde left Chicago some time in November 1853. — He continued to act as Bishop until he left = From 1849 to Nov 1853 Vandevelde continued to act as Bishop of Chicago —

I found J. A. Kinsella occupying the position of Pastor of Church of Holy Name & President of the University of St Mary of Lake when I came and he continued to act in that capacity until January 1855 —

The Pastor of the Church is in this Diocese Treasurer by virtue of his office - Kinsella was Pastor & Treasurer — The Bishop can sign the contracts but seldom does so — He has never known Bishop Vandevelde sign a contract for the building of any Church in the Diocese during his administration —

Upon cross examination he stated - Bishop Vandevelde left Chicago November 1853. he the Witness did not know he had ceased to be Bishop of Chicago when he laid the corner stone = The functions of laying a corner stone of a Church are not episcopal as they can

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be performed by a priest – The laying of the corner stone of a Church by a Bishop he should think would of itself be sufficient approbation if the Bishop had previously refused his consent This he considered merely as theological question. and his opinion is not based upon any facts – He is not sufficiently well acquainted with the canons of the Church to say whether there are canons which require the Bishop's assent in writing before the commencing of a church –
He does not think that Bishop Vandevelde was in Chicago, when the Church was commenced He was absent on a visitation of the diocese, was gone two or three months, got back the day before corner stone was laid – The Bishop had just returned from Milwaukie – Mr Kinsella remained till January 1855 – he continued to act as president of St Mary of the Lakes and Pastor of Church till then – He thinks it is the custom in this diocese for the pastor to be treasurer
"Exceptions taken as to evidence of custom"
Mr Kinsella acted as treasurer = Before a church can be erected it is necessary to have the approbation of the Bishop – The Bishop can sign the contract for the building – He knows of his own personal knowledge of only one instance where the pastor of the Church signed the contract for Building viz: the frame Church on North

side near the new church – Mr Kinsella signed the contracts for that – After the approbation by the Bishop it is the Office of the Pastor to make the contracts – He saw the Bishop at the College once after corner Stone had been laid – The Bishop resides on Michigan avenue, corner of Madison Street & Michigan avenue – Mr O'Connor went on with the work from June till August & on to the Bishop O'Regan came to Chicago about August or September 1854 – He was consecrated Bishop 25th July 1854 at St Louis –

He understood Bishop O'Regan sent back to the Holy See his appointments as Bishop of Chicago & it was sent to him again – when he accepted it; This was in the Spring or Summer of 1854, a short time before his consecration

The Church of the Holy Name was opened last Christmas, and a collection taken up to help pay for the Church by the permission of Bishop O'Regan –

If application had been made to the Bishop and his consent refused a Church could not properly be commenced by the Pastor but if a Church was commenced without his approbation and he afterwards blessed the corner Stone it would be sufficient approbation –

The Bishop has power to stop the building

at his will. and to remove the Pastor. and if he does not interfere but allows the Church to go on, he thereby gives consent to the church being built — " — Bishop O'Regan gave permission to have the Church opened Dec 25 1854 — The usual services were performed — He gave his assent to the opening of the church — " — A. Church can not be opened against the wish of the Bishop —

I paid $100 to Bishop O'Regan out of the Collection taken up when the Church was opened — The Church has been regularly opened for service since that time —

An administrator has the same power which the Bishop has & can perform the same acts excepting that he can not ordain or confirm —

Re-examination by complainants counsel — A. Bishop can change a Pastor at pleasure — The catholic paper before mentioned was published by Mr Ballentine who is a protestant = All the priests at the University of St Mary of the Lake - collected contributions for the building of the Church — The list of contributions was published in the Western Tablet — While Mr Kinsella was president of the University Bishop Vandevelde sent to him to bring him the Keys of the College & give them up to him — Mr Kinsella sent him

word to come & get them himself — When a person is appointed to a Bishoprick he has the right to send back his appointment & his jurisdiction as Bishop does not begin until he accepts the appointment —
He has none before — appointment does not give jurisdiction, but acceptance — Resignation also deprives him of jurisdiction —

"Here contract between P. A. Kinsella & Charles O'Connor read to jury & excepted to by defendants counsel" —

This agreement made this 10th day of April 1854 — between very Reverend P. A. Kinsella and Chas O'Connor (Building Mason) all of Chicago Ills — Witnesseth —

The said Chas O'Connor for and in consideration of the payments herein after agreed to be made to him by the said P. A. Kinsella has and does hereby agree to execute all the masonry of the Walls of Church known as the Church of the "Holy Name of Jesus" situate at the corner of Wolcott and Superior St. Chicago as follows —

Said O'Connor is to build the walls of the Building ready for roof, and the front central Tower to the hight of the peak of

roof & set the cut stone which is required in the same = The said O'Connor to furnish all labor of every kind all scaffolding, machinery tools &c that may be required in the proper execution of the work = The said very Revd J. A. Kinsella furnishing all bricks cut stone lime & sand upon the ground ready to go into the work — And the said very Revd J. A. Kinsella for and in consideration of the said, C. O'Connor fully & faithfully executing the aforesaid work according to the design furnished and to the full & complete satisfaction of Bunling & Bauman - Superintendants thereof, and as fast as the materials therefor are supplied by said Kinsella - does hereby agree & has agreed to pay to the said Chas O'Connor as the work progresses the sum of Six Dollars and forty cents $6.40 per thousand bricks laid in the work, the Quantity to be determined by Bunling & Bauman who will measure the same, by girthing the building on the outside and including in the measurement all the doors & windows = all cut stone to be measured as brick work — Steps for the Entrance doors not to be included in contract — In witness whereof the parties hereto have set their hands the day and year first above written — J. A. Kinsella Pastor, C. H. Keane

Chas O'Connor

The signature of said D. A Kinsella to said contract was admitted by the Deft —

Rev Mr Breen = introduced by Plffs = He was teacher in university of St Mary of the Lake is a catholic priest = came to live in Chicago in 1849 = He knows Bishop Vandevelde = don't remember when Bishop Vandevelde came to Chicago was Bishop when he came to Chicago He knows church of Holy Name, it is just in front of College = It was commenced latter end of June 1853 — Corner stone was laid 3d August 1853 = the walls of the entire building were then two or three feet above the ground = Mr O'Connor was the builder = Bishop Vandevelde officiated at laying corner stone = The Bishop & priests went in procession around the walls & the corner stone was blessed by prayer — Mr O'Connor officiated as mason in laying corner stone — Mr Kinsella was present & was pastor of church — was so till last Fall = It is the custom for pastors in the diocese to make contracts for building churches —

"Evidence of custom again objected to & overruled & exception taken" —

He has never known any contracts for building of churches in this diocese to be signed by the

Bishop – He dont remember the particulars of the sermon preached by Bishop. O'Connor Thinks he tryed to stimulate the people to contribute to Church = It is province of pastors to build churches =

"Objected to by Defendant, objection overruled"

The Western Tablet was the Organ of Bishop of Chicago, both Bishops Vandevelde & O'Regan ("objected to & overruled") Remember Bishop Vandevelde did pass by the Church & saw it after corner stone was laid –

I have always considered the Pastor acted as Bishop. agent in the matter of the building of Churches – & made the contract in his own name – I have never known a contract for the building of a church to be signed by a Bishop –

They have always been signed by the Pastors, as far as I know – After the lay of the corner stone of a Church by the Bishop it would be the duty of the Pastor to go on & complete the Church

"Cross examined"

It is necessary that the Bishop should give his consent before commencing a church – He does not know that the Bishop never signs

the contracts for the building of Churches –
I dont know of any facts in relation to the customs of Pastors making contracts for building churches in this diocese (Here again all testimony of custom objected to by defendants counsel & objections overruled by the Court)

The Bishop was not responsible for the things in the Tablet – There was no obligation on part of editor to exclude & publish pieces for the Bishop He the witness assisted in collecting money from the people to build the Church; Several members of the congregation & from priests were employed in collecting – He had frequent conferences with Rev Mr Kinsella about the collections – Rev Mr Kinsella & they intended to pay for the Church by contributions from the people & of the Bishop – He promised to contribute – He believes the Bishop was absent on visitation of the diocese when the Church was commenced in Dune – he was also at Milwaukie – got back very shortly before laying of corner stone – The Bishop promised a contribution – He invited Bishop Vandevelde to lay corner stone in the forenoon of the day when it was laid – He (the witness) has been absent from Chicago since last January – Rev Mr Kinsella, Rev Mr Clowry & he left at the same time, they went to New York & now reside there – Bishop O'Regan called on them

for their resignation & had offered them different positions in the diocese sometime previous to their resignation = The Bishop gave us - no exeats = He came here during this trial because he always had an anxiety about this Matter He feels a deep interest in it - He came on a letter received from Rev Mr. Clowry = one motive he had in coming here was to attend this trial He wishes to have it decided honestly & justly & thinks it would be honest & just to decide it for Mr O'Connor = He (the witness) & Mr Clowry have been much together & conversed about this case - Has seen much of Mr O'Connor since he came to town & talked about this case with him = Rev Mr Clowry & witness have been in Mr O'Connors house since coming to town - & had frequent conversations with him = has no interest but that justice may be done in the Matter = He remembered that in the sermon Bishop O'Connor spoke of the generosity of the people in building a Church -
The Church was opened last Christmas day for service & a collection was taken up to pay for church = There was nothing but the walls up & roof on the building -

("~~Here Wattson tablet was produced of Oct 29 1853 & objected to by defendants counsel objection overruled by the Court~~") ~~and exception taken~~

The Pastor always acts as agent of Bishop in the building of Churches & signs the contracts This has been the usual course = I know it from the knowledge which I have of the relation between the Bishop & Pastor —
I have been six years a Priest & have never known a Bishop to sign a contract for the building of a church = The Bishop has only to say one word & he can stop all proceedings = The day that Bishop Vandevelde laid the corner stone he promised a subscription for the Church —

Here Western Tablet introduced — Oct. 29 - 1853. & objected to by defendants Counsel. objections overruled by the Court & exceptions taken.

J. F. Ballentine publisher of Paper (Western Tablet) introduced = He was the proprietor in Oct 1853. — It was the official organ of the Bishop = It was so by his permission = The manuscript of publications were generally destroyed — sometimes burned & sometimes preserved = He is a Presbyterian = Western tablet had the Inscription "Organ of the Bishop of Chicago" because the Bishop in the habit of publishing his adresses & communications to the people; and making known his official acts & visitations, in no other way was it his Organ — The paper was sent to the Bishop — Here a proclamation of Bps. Vandevelde's in the paper was offered = the list of subscriptions

to the Church, Diocesan Intelligence —
Papers of Sept 3d 1853 (List of subscriptions offered
admitted (excepted to) also no of paper of Aug-
ust 6th July 30th — July 9th — 16th — 23d = June 25
9th July —

New Catholic Church North Chicago

The very Rev J. A Kinsella has opened a subscription list for the erection of a large church so much needed by the people of his Parish = He has already made application to some of his congregation, who as the subscribers list testifies have contributed very generously = Before the next issue of the Tablet he will be able to call on the remaining and largest portion of his flock from whom he expects the same generosity —

The following have subscribed towards the Erection of the Church the sums attached to their names

List of Subscriptions in "Tablet" of date 25 June 1853 —

Charles O'Connor	Walcott St	$500,00
Tobias B Kehoe	Chicago	20000
Thomas Haley	Clark St	20000
William Flemming	Kinzie St	15000
Richard Laphin	Chicago Avenue	10000
Anthony O'Brien	North Water St	10000
Austin Jones	Kinzie St	10000
John Sweeny	Corner LaSalle St	10000
John Gavan	Wells St South Side	10000

William Keating Cor of Kinzie & Cass	100,00
John Healy Dearborn St	10000
Thos Fanny Cor of Ohio & Rush St	10000
Peter Connolly Nth Water St	10000
John Farrell Ohio St	5000
Mrs Brannan Cor Michigan Ave & Rush St	5000
James Duffy Ohio St	5000
Michael Whelan Michigan St	5000
John McQuen Kinzie St	5000
Patrick O'Connor Nth Water St	5000
Patrick Power Michigan St	4000
Daniel Ryan Do	3600
James McCarthy Do	3600
James Murphy Nth Water St	3000
Mary Harrington Rich Galway	2400
John McHale Illinois St	2500
Patrick McKeon Do	2500
John Lensodine Kinzie St	2000
James Quin Kinzie St	2000
Maurice Cliffnd Do	2000
Miss Norora Sutton Chicago Ave	2000
" Anne McGee Michigan St	2000
William Kehoe Wadsworth St	2000
Peter Brady Do	2000
Patrick Lynch Cor Wallace & Kinzie	2000
Thomas Armstrong Kinzie St	3000
Patrick Ryan Nth Water St	2400
Michael Hyland Do	2600

John Daily	Do	2500
A. C. C. a Catholic convert	Chicago	200
Mrs Healy	Dearborn St	200
Lawrence Nolan	Kinzie St	300
Richard McLaughlin		500
Miss Mary Ann Barrett	Cor Wol. & Erie	150
" Mary Lynsley		1000
" Rosana Kennedy		1000
Mrs Mary Higgins	Cor Mich. & Erie	1200
" Egan	Do	600
" Judith Darcey	Do	600
" Thorpe	Do	1200
Patrick Considine	Do	1200
Michael Quigley	Do	600
John Harley	Do	1200
Owen Hondhan	Do	1200
John Gerrety	Illinois St	1200
James Boyn	Do	300
John White	Do	1000
Michael O Mealia	Do	1200
Simon Quiligan	Do	1200
Miss Margaret Power	Do	600
James Hyland	Cor Sand & Ind St	1200
James Dooley	Indiana St	1200
Mrs Keserran	Do	100
Mr Smyth	Do	1200
John Brenan	Do	1200
Thomas Quinn	Do	1200

James Quinn	Indiana St	1200
Darby Cuttle	do	1200
Mrs Branigan	on Cap. & Ind. St	500
Miss Maria Burke	do	600
" Mary Ann Coleman	do	600
Mrs Chrodine	do	300
Timothy Connell	Kinzie St	1200
Mrs O'Brien	do	300
John McGnepin	Chicago	25
M Laflin	do	7,00
Miss Honora Fogarty	Indiana	300
James McGrale		1200
Edward Fogerty	on Ind & Wash St	1200
Michael Duffy	" & Rine	1200
James Cady	" & Rine	1200
Patrick Hogan	Ontario St	1000
James Dunigan		1200

Subscriptions to Church of Holy Name North Chicago In paper of 20th July 1853

Patrick O'Connor North of Chicago Avenue		$50.00
Thomas J Knella Superior St		30.00
Patrick Connolly	do	20.00
James Farrell Sand St		20.00
Owen McCarthy on Kinzie & Dearborn St		20.00
Mr Thos J Knella Superior St		5.00
John Jones Illinois St		12.00
W. T. Anonymous Chicago		17.00
Anonymous	do	5.00
Mrs Ryan Michigan St		2.00
Mrs McDongal Lasalle St		1.00
Anonymous from Cincinnatti		11.25
Patrick Griffin North Water St		5.00
Michael Bartley Sand St		12.00
William James Kinzie St		5.00
John Ensleng North Water St		6.50
Mrs Roone	do	5.00
Mrs Dalton	do	1.00
James Keegan	do	12.00
James Larkin	do	5.00
Anne Walsh	do	1.00
Luke Walsh	do	00.50
John Redpath	do	00.50
James McNally	do	12.00
John Flynn Kinzie St		5.00

Thomas Broderick	State St	2.00
John O'Leary	do	6.00
John Kenny	do	12.00
James McCome	do	10.00
Thomas Fitzsimmons	N. State St	1.00
Lawrence Fox	Indiana St	5.00
Robert O'Donnell	Michigan St	12.00
Michael Ryan	do	8.00
Michael Quigley	do	6.00
Patrick Rogan	City Hotel	12.00
Edward Reddy	Cor Wolcott & Mich St	12.00
Michael Murphey	Clarke St	5.00
William Dunne	Kinzie St	10.00
James O'Rafferty	do	10.00
Mrs Mary McIntyre	Ohio St	6.00
Bridget Bales	Wabash Avenue	8.00
Sarah Joyce	Michigan St	5.00
Ellen Mahony	Washington St	1.00
Anna Hanlon	State St	5.00
Ellen Rochford	State St	5.00
Mary Anne Donohy	Mich Avenue	2.00
Mary Daly	Clarke St	5.00
Mary Finlay	do	2.00
Hannah Connell	do	2.00
Johanna Duggan	do	1.00
Margaret Ryan	do	2.00
Bridget Rock	Ontario St	5.00
Hannah Rock	Randolph St	2.00

Ellen Liston	Wells St	1,00
Catharine Brady	do	1,00
Honora Kolzig	do	1,00
Mr Devoy	Sherman House	5,00
Anonymous	Chicago Avenue	10,00
John Walsh	Chicago Avenue	5,00
Laurence Nolan	do	3,00
James McGuire	Jackson St	12,00
Daniel Byrnes	do	5,00
Patrick Power	do	5,00
C. P. Anonymous	Chicago	3,00
Samuel Gamy on the shore protection Mr Smith Pa		10,00
Patrick Long	do	5,00
John Kerce	do	2,00
John Mollaney	do	2,00
John Ryan	do	2,00
Patrick Sweeny	do	2,00
Thomas Colleton	do	2,00
John Dempsey	do	2,00
John Brennan	do	2,00
Daniel Curry	do	2,00
William Clancy	do	3,00
Robert Caples	do	1,00
Michael Murphy	do	1,00
John Smyth	do	1,00
Michael Gleason	do	1,00
Daniel Flatty	do	1,00
John Ryan	do	1,00

Michael Finlee	do	100
Daniel Roach	do	100
John Byrne	do	100
Patrick Handekin	do	100
John Handekin	do	100
Daniel Coffey	do	100
John Griffith	do	100
John Shuttan	do	100
Edmond Mack	do	100
John Daly	do	100
Thomas Riley	do	100
John Riley	do	100
Edmond Kain	do	100
John Crom	do	100
John Merner	do	100
John Murray	do	100
James Clemmer	do	100
John Hollyman	do	100
James O'Hara	do	100
Thomas Kavanagh	do	100
Patrick Kavanagh	do	100
Arthur Doyle	do	100
William Calliton	do	100
Philip Brien	do	100
Patrick Redmond	do	100
Patrick Keely	do	100
Wm O'Brien	do	100
Patrick Bolger	do	00 50

James Curry	do	100
Garrett Moore	do	100
Laurence Redmond	do	100
Thomas Doyle	do	100
John McGuire	do	100
Michael McGuire	do	100
John Barry	do	100
Patrick Lyons	do	100
Christopher Wright	do	100
Henry Barenbrook	do	100
Daniel Maloy	do	100
Charles Oconnor	do	100
James Heeley	do	100
Philip Wates	do	100
Patrick McCabe	do	100
Wm Gorman Kinzie st		1200
Ellen Redmond Wolcott st		100
John Devitt	do	1200
Patrick Walsh on Michl Wolcott st		500
Thomas Howard	do	1200
James McGrath	do	600
Michael Galford	do	1200
Laurence Redmond	do	1200
John Keating	do	200
Ann Rafferty Wm Michael Whelan Kinzie st		1200
Bridget Walsh	Chicago	100
Catharine Roe	do	600
Ellen Rourke	do	200

Elizabeth Herring	do	5,00
Elizabeth Kelly	do	5,00
Mrs Glasher Rush. Stud		5,00
Maria Deogas	do	25
James Fitzgeralds. cor. Wolcott & Mich		1200
Catharine Lamb	Chicago	600
Cornelius McCarthy	Kinzie St	20,00
Thomas Fitzgerald	Wells St	1200
Mrs Fitzgerald	do	1,00
Austin Mullholand	Shanties Mitchigan Ave	12,00
Martin Hogan	do	1200
Thomas O'Brien	do	1200
James Malone	do	1200
Mrs Mills	do	6,00
Patrick Wells	do	12,00
Malachy McNamara	do	600
Mrs Connally	do	,36
John Stock	do	1200
William Mallory	do	1,00
Mrs Cunningham	do	600
James Harvey	do	1200
William McGain	do	1200
Thomas O'Brien	do	600
James Crogan	do	1200
William Hardy	do	1200
Andrew Hickey	do	600
Michael Hennessy	do	12,00
George Quinott	do	1200

Michael Mangon	Do	1200
Cornelius Vaugh	Do	600
John Barrett	Do	1200
Mrs O John Kerwin	Do	1200
Patrick Finikan	Do	300
John Connolly	Do	600
Andrew Lynnott	Do	600
Mark Sullivan	Do	600
Phillip Sullivan	Do	600
John Doolan	Do	600
Dennis Haynes	Do	600
John Curran	Do	300
Nathan Quigley	Do	600
Patrick O'Keefe	Do	1200
Jerry Hafey	Do	100
Patrick Healy	Do	300
Owen Cabet	Do	1200
Patrick Williams	Do	1200
Peter O'Lynn	Do	300
John Sylvord	Do	800
Phillip Fuling	Do	1200
William Keyes	Do	1200
Nicholas Monghan	Do	1200
Thomas Maher	Do	600
Hugh O'Berne	Do	1200
Patrick Fuller	Do	1000
John Barry	Do	600
Michael Dwyer	Do	1200

Patrick Walsh	Do	1.00
Thomas Barry	Do	200
Mrs Reerden	Lasalle St	300
John Ryan	Do	1200
Thomas Mansfield	Do	500
Edward McEvy	Do	1200
Thos Daly	Do	2000
Jeremiah Connors	West Side	100
Peter Butler	Chicago	100
Mrs John Murphy	N. Water St	1000
Richard O Dowd	Do	100
Mrs Maria O Mulen	on Rush & Ohio	1000
James Kepper	Kinzie St	1200
Margaret Slone	Chicago	500
Catharine Sullivan	N Water St	100
Charles Brown	Do	1200
Mrs McKeon	Illinois St Do	484
Maurice Green	Kinzie St	1200
Ellen Sullivan	Do	500
Timothy Harrington	Kinzie St	1200
Patrick Connors	Do	1200
Michael Moran	Do	1200
James McDonald	Do	1200
Edward Coffee	Do	1200
Michael Connors	Do	1200
John McNamara	Do	1200
James Connors	N. Water St	1200

Henry Connors	Knizie St	1200
William Connors	do	1200
John Griffin	do	1200
Patrick Carmody	do	1200
Patrick Griffin	do	1200
Michael Cunningham	do	1200
Patrick Sweeny	do	1200
John Bartley	do	1200
Mrs Gallagher & Water St		600
John O'Mealy	Knizie St	1200
David Horgan	do	1200
Patrick Kerby	do	1200
Terance McClean	do	1200
Patrick Quigley	do	1200
Peter Connors	do	1200
Thomas Brown	do	1200
Jerry (Collins) Rogers	do	1200
John Collins	do	1200
Daniel Cronane	do	1200
Patrick Oconnor	do	1200
Patrick Kelleher	do	1200
Patrick Madden	do	1200
James Cliffond	do	2000
Henry Barrett	do	1200
Patrick Daghney	do	1200
Rosey Reify	do	1200
James Ohehan	do	1200
James Keatley	do	1200

	Patrick Sullivan	Do	1200
	Timothy Sullivan	Do	1200
	Owen Byrnes	Do	600
	Martin Duffy	Do	600
	Michael Wallace	Do	1200
	Charles Brown	Do	1200
	Michael Loftus	Do	1200
	Andrew Scott	Do	600
	George Chenes	Do	50
	Michael Doran	Do	1200
	Patrick Stannes	Do	1200
	George Shepford	Do	1200
	Norton Miller	Do	1200
	John Leahey	Do	2000
Do. Papers July 16	Mr Quinan	Rock Island	500,00
	John Graham	Michigan St	10000
	Daniel C. Scally	Sherman St	10000
	Patrick McAlpine	Dearborn St	10000
	Edwd D Colgan	Michigan St.	50,00
	Michael O'Neil	Kinzie St	5000
	James Shields	Rockford Ill	3600
	Mrs. O. Reilley	Indiana St	5000
	Thomas McCarthy	Illinois St	3500
	John Maddock	Chicago	2000
	Patrick Maddock	Do	1000
	Peter Dolan	N Wells St	1000
	Miss McLean	LaSalle St	10,00

55

Michl O'Beirne	cor Market & Kinzie	1500
James Quirk	Clark St	1000
James Grady	West side	1000
Timothy Kelly	Clarke St	500
Mrs Sargent	Do	1000
John Ennis	Do	1200
John Lowell	Do	1200
Michael Bestor	Do	1200
Mrs Melvin	Ohio St	500
Charles Crasapi	Do	600
Barney Mathews	Do	200
John Campbell	Do	600
Timothy Carey	LaSalle St	1200
Timothy Regardn	Do	200
James Christy	Indiana St	2500
James Hughes	Do	2500
James Mc[illegible]	Kinzie St	1200
James Costello	Do	1200
Thomas Cannon	Do	1200
Peter Cannon	Do	1200
James Hyland	Do	1200
Patrick Farrell	Do	1200
Mrs Mary Ryan	LaSalle St	1000
C L McDougal	Do	1000
Henry Seth	Do	1000
John Crawford	Do	1200
Dennis O'Neil	Illinois St	1200
Thomas Griffith	Do	800

$12,800.00

John J. Reynolds	Do	6.00
John Daly	Do	500
John Maher	Do	1500
Martin Brennan	Do	500
Thomas Brennan	Do	500
James Donagan Lasalle St		1200
John Clifford	Do	600
Thomas Clifford	Do	1200
Mm Carroll	Do	300
John Morgan	Do	250
James O'Brien	Do	1200
Thomas McCrean Lasalle St		300
William McGrath	Do	300
John Crosby Indiana St		1300
Mm Brady	Do	1200
Jeremiah Prendergast	Do	1500
Daniel Johnson	Do	1500
James McMahon Wells St		2000
Patrick Kranangh Lasalle St		2000
James Murphy	Do	2000
James Dalton	Do	2000
Miss Jane Sweeny	Do	600
Hugh Kelly	Do	2000
Grace Sweeny	Do	600
Michael Farrelly	Do	1200
William Mullen Indiana St		500
Daniel Connolly	Do	300
James Connolly	Do	100

John Bourke	Ohio St	1000
John Leary	Do	1000
David Flemmy	Do	1200
John Hoare	Coal St West side	600
Archibald Craig	Blake St	300
Michael Walsh	St Walter St	1200
William Lee	Kinzie St	600
Owen McCauley	Kinzie St	600
Patrick Walsh	Do	1500
Patrick Hennifen	Do	500
Richard Gibbons	Do	1200
Patrick Gibbons	Kinzie St	1200
William Rogan	St Walter St	1200
Mrs Gavaghan	Kinzie St	1200
Mrs Barrett	Do	1200
Mrs McCarthy	St Walter St	600
Edmund McCarthy	Do	1200
Charles Cohen	Do	1200
Martin Nolan	Do	1200
Henry Cohen	Do	500
Michael McGovern	Kinzie St	800
John Canfield	Do	1000
Thomas Cannick	Do	1000
Thomas Stack	Do	1000
Michael O'Neil	Do	1200
Michael Quigley	Do	1200
David Cahill	Do	1200
William Fitzgerald	Wells St	1200

Mrs Fitzgerald & Do		600
Thomas Gary	Do	1000
Catharine Dunne	Do	300
Mrs Farrell & Water St		300
Patrick Casey	Do	1200
William Connors	Do	1200
Mrs Mary Manalis McCormac		600
Dennis Manalis on Randolph & Dearborn St		1000
Bridget McGann Illinois St		300
John McDonagh Kinzie St		500
Thomas McCabe Ann. Cor Wells		300
Timothy Haney	Do	100
Patrick Lennard	Do	500
John Walsh	Do	300
Dennis Callinan	Do	100
John Cullen	Do	100
John Coughlan	Do	400
William Feley	Do	100
John Gary	Do	100
Patrick Graham	Do	100
Michael Gavan	Do	100
Michael Faher	Do	100
James Kelly	Do	100
John McKenna	Do	500
Edmund Murtal	Do	100
James Fitzgerald	Do	500
Thomas Fitzgerald	Do	200

James Malony	Do	100
Patrick Fallon	Do	150
John Fitzpatrick	Do	200
James Grogan	Do	200
Andrew Splann	Do	200
John O'Connell	Do	200
James Meanzell	Do	200
Daniel Caslein	Do	100
John Fibbin	Do	500
Thomas McGough	Do	200
John Mahony	Do	100
Anne O'Dard	Do	200
John Hurley	Do	100
Daniel Fenlon	Do	100
Im papu July 25 Phillip Conly St Charles Salem- Oak Street		500,00
Eliza Taylor Illinois St		10000
Capt John Mundville Chicago Ave		5000
Patrick W McDonought Clark St		3000
William Hand Indiana St		3000
Cornelius Dwyer Dearborn St		2500
William Scott Wells St		2500
Thomas Ryan Clarke		2500
William Walsh Division St		2500
Peter Cutter Chicago		2000
Patrick O'Neil Superior St		2000
John Ellabre Ohio St		2000
Daniel O Longhlin Indiana St		2000

Timothy Lynch	Division St	20,000
John Walsh	Do	2000
Mrs O'Keeffe	Do	2000
Catharine Williams	Mich Avenue	1500
Mrs Mary Holleran	cor Ontario & Dearborn St	11,000
Catharine Byrne	Wells St	600
Margaret Gargan	Tremont House	600
Cornelius McMahon	cor Lasalle & Mich	500
Thomas Strickland	Chicago	100.
Edward Cread	Do	1000
Stephen Sexton	cor Lasalle & Mich	1000
Thomas Lynch	Lasalle St	500
Mrs Smyth	Erie St	1000
William Power	Lasalle St	300
Mrs Long	Huron St	1200
Mrs Scanlan	Lasalle St	1200
Mrs Frost	Huron St	500
Miss Winifred O'Keeffe	Superior St	300
Patrick Gerraty	Do	1500
James O'Keeffe	Division St	1200
Mrs Honora Ryan	Erie St	300
Denis Ryan	Do	1200
Patrick Ryan	Do	1200
Patrick Healey	Carroll & Wells Side	1000
Thomas Whyte	Superior St	1200
Mrs Murphy	Huron St	600
William Power	Chicago Avenue	1000
John Miller	cor Franklin & Ohio	15,000

John Regan	Franklin St	12 00
James Daly	Do	12 00
Michael Quinlan	Ohio St	10 00
Dane Quinlan	Do	3 00
Rody Mahony	Do	10 00
Michael Cahill	Do	3 00
Mrs Miller	on Franklin & Ohio St	3 00
William Rice	Ohio St	3 00
Thomas Brennan	Ohio St	15 00
John Holoman	Indiana St	12 00
Thos Buckley	Clark St	12 00
Thos G. Prendergast	Do	10 00
Patrick Cullen	Illinois St	1 00
Laurence Grant	Do	8 00
Bridget Carroll	Do	2 00
John O'Brien	Chicago	00.25
Michael Muskin	Shanties North Fourth Street	4 00
Thomas Coughlin	Do	1 00
Anton Horrigan	Do	1 00
Patrick Galvan	Do	1 00
Patrick Mahony	Do	1 00
Denis Coughlin	Do	1 00
John Hammell	Do	1 00
Denis Connolly	Do	1 00
Timothy Coffee	Do	2 00
John Cuddy	Do	12 00
Michael Kelly	N Wells St	10 00

John Kelly	Market St	600
Patrick Kinnehan	Do	1200
Richard Kissan	Do	600
James Walker	Do	1200
James McGadden	Do	1200
Henry Gibbons	Do	1000
Patrick Kinehan	Do	1000
Denis Clifford	Do	1000
Jeremiah Foley	Market St	1000
Michael Brennan	Do	1200
Michael Synan	Do	1000
Anne Dodge	Kinnan St	500
Timothy Fogerty	Market St	1500
John Lynch	Franklin St	1000
Thomas Walsh	Dansion St	1200
Patrick Walsh	Do	1200
John Murphy	Do	500
Patrick O'Ruffe	Do	1200
John Forney	Sedgwick St	1000
Daniel O'Shanessy	Do	1200
Thomas Olemens	Do	1000
Mary Olemens	Do	500
John Sullivan	Do	1200
Cornelius Forney	Do	1000
Jeremiah Dempsey	Do	300
Ellen Kavanaugh	Market St	1000
Bridget Gavin	Market St	1500
Margaret Brennan	Madison St	200

August 6th.	James Bonte North Water Street	$100,00
	Edward McCall Ohio St	5000
	John Kearney Ontario St	2500
	James Barry do	2500
	Bernard McCarthy Wolcott St	2500
	Cornelius McCarthy Clarke St	2000
	Denis Smith Dearborn St	2000
	Michael Cunningham Division St	1200
	Hannah O'Donnel Chicago	300
	Thomas Connolly do	100
	Ellen Lynn do	200
	Patrick McDonald do	200
	Patrick Martin Clarke St	1200
	Charles Callihan do	100
	Mathew Whyte Southern Depot	500
	Thomas O'Hara & Water St	1000
	Patrick Crawley Kinzie St	1000
	John Flood cor Mich & Wolcott St	1000
	James Byrne Kinzie St	1000
	Anonymous Wolcott St	1000
	Patrick & Mary St George LaSalle	2000
	Lawrence Walsh Indiana St	1200
	Elizabeth Walsh do	300
	Margaret Walsh do	300
	Michael McGagnee North Water St	300
	Bridget McGahan Fremont Home	100
	Michael Hartney Kinzie St	1000
	Ellen Hartney do	300

Bernard Meeney	La Salle St	1000
Richard Carberry	Michigan St	1500
John Ambrose	Illinois St	500
Thomas Fahy	La Salle St	600
Johanna O'Brien	Dearborn St	500
Philip Fanlong	Shantis by on big ditch	1200
Francis Hughes	do	1200
Timothy Grenchan	do	1200
George Gillmartin	do	500
James Halloran	N Water St	1200
Ann Darcey	Wells St	500
Catharine Darcey	Randolph St	500
Patrick Sweeney	N Water St	200
James O'Hara	do	100
Patrick Masterson	on Jefferson & Carroll	800
James Ready	on Clinton & Jefferson	800
Ann Gogning	Malteson House	200
Ann Sullivan	do	300
Julia Mahony	do	500
Margaret Lynch	do	200
Susan Hillman	do	500
John Kenedy	do	500
Ann Lynch	do	200
Matilda Huston	do	200
John Lore	do	200
John Churchill	Garden City House	100
Mary Hillman	City Hotel	200
Ellen Redmon	do	100

Mary McAllister	City Hotel	100
Caroline Nolan	do	100
Bridget Gidney	do	100
Margaret Regan	do	100
Frank Friend Kinzie St		500
Michael Quigley		600
Thomas McAvilly	do	600
Daniel Lanigan	do	1000
Mr Bonke Randolph & West side		200
Francis Wilch on Rose & Indiana Sts		1200
Richard Joyce Kinzie St		600
Walter Joyce	do	200
John Dailey	do	600
Mr Crawford Clarke St		1200
Michael O'Donnell Water St		100
William Conley		500
Charles Callahan Clarke St		900
William Gorman Kinzie St		1200
Louis Walsh		500
Stephen Nelson Kinzie St		200
Michael Rean Kinzie St		100
John Regan	do	2000
Edmund Lake LaSalle St		200
Sept 25 Robt Brennan Randolph & Wells		10000
Michael Doyle Superior St		10000
John McGovern Madison St		2500
Martin & Bernard Whyte Illinois St		2500
Patrick Murry Market St		1500

Edward Mooney South Water St	1500
Francis Gallahu Clark St	1000
Patrick Sheehan do	800
Daniel Redman Halsted St	500
Anonymous Chicago	100
Ellen Higgins Dearborn Street	1000
Michael Fitzpatrick Cannon Car Co	500
Lawrence McCarthy Chicago	1000
Anonymous do	200
Thos Egan Kinzie Street	100
John Mullen do	200
Mary McKean do	200
John McGrath do	100
Denis Hanlon North Water Street	100
Dennis Kavanaugh	100
John Walsh on S. Water and LaSalle	500
Michael Cannon Chicago	100
Patrick Smith do	200
Michael O'Brien LaSalle Street	1000
Michael Mooney do	500
Ellen Reynolds Wabash do	100
Mrs McGrath State Street	500
Edward Connally S. Water Street	1000
Mary Conway do	100
Philip Ruedy do	100
John Ferdinand	300
Cornelius Ryan	100
Thomas March Dearborn Street	200

James O'Hara	South Water St	100
James Gillmartin	do	200
Michael McGrath	Dearborn St	200
Patrick Baxter	South Water St	500
Anthony Moore	do	500
Daniel McKillop	do	500
Patrick O'Neill	do	200
James Bagan	do	200
John McSherry	Market St	500
Patrick Brennan	Madison St	500
John Gorry	Market St	1000
Mr John Gorry	do	200
John Dalton	Ship Yard on North Branch	1000
Michael Kelly	do	500
Thomas Dunne	do	1000
Daniel Green	do	500
Alexander Kennedy	do	500
Martin McMahon	do	1000
Charles McNamara	do	1000
Felix Finnie	do	100
Mathew Reardon		1000
Daily Cuttle	Ohio Street	500
Denis Finnegan	Kinzie Street	500
James Murphy	Michigan St	300
Owen Coyne	Kinzie Street	1200
John Kinsella	do	100
Richard Joyce	do	50
Bridget Brennan	corner Rush & Indiana	500
Anne Hughes	do	500

(12355.55)

Annie Burton		100
Thos Fanling	Little Rock Ills	100
William Lewis	Fremont Ohio	1000
Charles O'Reilly	Huron Street	500
Mary Kife	Kenzie Street	200
John McKeman	Chicago	100
Catharine Hayes	do	200
Paul Gorey	do	500
John Mullen	Kenzie St	200
Dennis Cannon	North Water St	500
Ann Smyth	Kenzie Street	1000
Patrick Conlan		1200

July 25	John Fanstin	Indiana St	5,00
	Michael Brophy	Clarke St	10,00
	Owen Byrne	North Water St	10,00
	James Cassidey	Do	6,00
	Timothy Byron	Do	10,00

In paper of July 9th publication of visitation by Bishop Vandevelde admitted under assurance from Competent Counsel - that they would prove the Bishop ordered it - also editorial notice of visitation admitted in same manner -

Episcopal Visitation - for the Month of July

We are informed that after blessing or consecrating the recently finished Church of Chester Randolph County on the 29th inst Feast of the Apostles S.S. Peter and Paul our Right Rev Bishop will protract his visitation of the Southern part of the State; though he purposes to return a little time to that very flourishing portion of his Diocese during the course of the present summer or ensuing autumn -

The following is the itinerary of the visitation for the Month of July -

Saturday 2 July he will at the request of the Most Rev Arch Bishop of St Louis

administer the sacrament of confirmation in the church of the Fathers of the Society of Jesus dedicated to St Ferdinand at Florissant St Louis County Mo —

Sunday 3rd July he will administer the same sacrament at high Mass in the church of the Fathers of the same society at St Charles Mo and after Vespers at the German church in the same town

Tuesday 5th July visitation and confirmation at the French village St Clair County Illinois —

Wednesday 6th July at the town of Waterloo Monroe County Illinois —

Thursday 7th July at the united congregations of Jones Mills and Adelsberger —

Friday 8th July at Cahokia St Clair County Illinois —

Sunday 10th July at Springfield Sangamon County —

Monday 11th July at Jacksonville Morgan County

Tuesday 12th July at Beardstown Cass County

Wednesday 13th July at Mount Sterling Brown County

Thursday 14th July at Pittsfield Pike County —

Friday Saturday and Sunday 15th 16th 17th July various congregations of Calhoun County —

Tuesday 19th July at Pekin Tazewell County and Peoria

Thursday 21st July at Cap and Log Dupage County —

Sunday 24th July Confirmation at St Joseph's Church Chicago —

Monday 25th July visitation and confirmation at St Joseph Church New Trier Cook County —

Tuesday 26th July at Buffalo Grove Lake County —

Wednesday 27th July at Murrays settlement Lake County

Thursday 28th July return to Chicago

Saturday 30th July departure for Milwaukie —

Sunday 31st July Consecration of New Cathedral of Milwaukie Wisconsin —

We have just received intelligence that on the 21st June feast of St Aloysius our Right Rev Bishop celebrated pontifically and gave confirmation to 69 persons at the Church of St Francis Xavier attached to the University of St Louis: and that on the following Thursday 23rd he administered the same Sacrament in the Church

of St Liborius St Clair County and conferred the tonsure and minor Orders on Ferdinand Kalsellage a seminarian of the Diocese

It being the anniversary of the consecration of the Church of St Liborius (the first Church ever consecrated by Bishop Fondevelde) solemn High Mass was sung by the Rev Henry Fortmann of Hanover Washington County; Deacon Rev G. H. Ostlangenberger of Belleville - Sub-deacon - Rev Herman Lienmann of Centreville St Clair County assistant Deacon Rev Augustus Brickwedde Pastor of the Congregation and Rev Father Joseph Patschowsky of St Joseph's Church St Louis who delivered a very eloquent and impressive discourse analagous to the occasion

Rev Isadore Labelle for complt – Is a catholic priest was for five years employed on mission in this diocese – Bishop Vandevelde was Bishop when he first took the mission – Bishop O'Regan was Bishop. Vandevelde's successor = He knew Rev Mr Kinsella – He was pastor of church of Holy Name = He was present at laying the corner stone = It is the general custom in the diocese for pastors to make contracts for building churches – (Here again testimony of custom admitted by court subject to exceptions of defts counsel) He built two churches under Bishop Vandevelde and one under Bishop O'Regan in this diocese. The contracts of these churches were made by him as Pastor = But I had the approbation of the Bishops –

Cross examined = He holds no official position now in catholic church = The pastor signs contracts for building if he chooses = He paid the workmen for building the churches & collected the money from the people for the purpose = He knows of of his own personal knowledge no other instance of pastors signing contracts but those mentioned by Mr. Clowry himself –

Mr Daniel O'Hara for complt = Said he used to act as editor of Western Tablet = that the notice of the Bishops visitations of Sept 3 1853 was written by the Bishop =

Itinerary of Epis capal visitation &c for the Month of September –

1st Thursday Bloomington McLean Co
2d Friday Springfield Sangamon Co
3d } Saturday } Ordination at Alton or St Louis
4th } Sunday }
5th Monday } will be at St Louis
7th Wednesday Confirmation at Highland Madison Co
9th Friday do at Centropolis, Effingham Co
11th Sunday do at Marshall Clark Co and blessing of Church
13th Tuesday do at Baldwinville Edgar Co and blessing Church
14th Wednesday visit to St Marys of the Woods & Terre Haute
16th Friday Will be at Vincennes
17 Saturday Confirmation at St Francisville Lawrence Co
18 Sunday do at Mount Carmel Wabash Co
19 Monday do at Stringtown Richland Co
20 Tuesday do at St Marie Jasper Co
22 Thursday Salem & Marion Co
23 Friday Carlyle Clinton Co
25 Sunday Belleville St Clair Co
26 Monday Will be at St Louis
29 Thursday Brandstown Calf Co

That the manuscripts of such notices were generally thrown away as waste paper that the heading of the paper was selected especially by the Bishop

"The Western Tablet"

"Official organ of the diocese of Chicago" "Detroit"
"Where the spirit of the Lord is there is Liberty" 2 Cor III. 17

That the paper was left at the Bishops House every week = that the Bishop generally saw proofs of whatever was written by him —
In paper of Nov 5/53, article headed diocese of Chicago, Editorial cant say who wrote it positively - showed that such an article would not appear without Bishops knowledge & assent, objected to admitted subject to exceptions — " —

"Diocese of Chicago"

Last week Bishop Vandevelde made an excursion to Will County and visited Joliet twelve Mile Grove and Wellmington — In the last place he administered the sacrament of confirmation to 61 persons many of them adults and made arrangements to complete the Church which is there in progress of erection, and is to be dedicated to God in honor of St. Rose of Lima —

On last Sunday 30th October eight Sisters of Mercy were admitted to the solemn profession in the Chapel of the

convent near the cathedral at Bishop Vandeveldes Mass, which was celebrated at 6 o'clock A M, the religious names of the Sisters are Mary Catharine Mary Gonzaga, Mary Agnes, Fr. Francis Regis Mary Louis M. Chilo-mena Mary Benedict and M. Patricia

On the same day Bishop Vandeveldes preached at the High Mass in St Mary's Cathedral and before the benediction announced that it was the last time he would appear before the congregation as connected with the diocese of Chicago as the Rt Rev Dr Henni of Milwaukie had been appointed administrator of the Diocese and the Most Rev Archbishop of St Louis would act as administrator of the newly erected Diocese of Quincy — He stated that during the week he would leave Chicago on his way to Natchez made some remarks relating to his translation to another see a fact which he had obtained from the Sovereign Pontiff at his own particular request = exhorted all to remain firm in their allegiance to their ecclesiastical superiors, to assist and maintain their authority Among as St Paul asserts that they are placed

over them to rule the church of God and that they shall have to give an account of the souls entrusted to them to the Prince of Pastors from whom they receive their commission and authority –

He concluded by asking pardon of all for any offence or disedification which he might have given them during the period of his episcopacy and protested that from the bottom of his heart and in the presence of God he forgave all those that might have injured, offended or afflicted him and especially those who might at any time have endeavored to alienate their esteem and affections from him –

Finally he recommended himself to the prayers of all and promised that he would never forget them in his supplications to the Father of Mercies, but would endeavor to draw down upon them the choicest blessings of Heaven, peace happiness and fidelity to the grace of God in this World and eternal felicity in the world to come –

The Bishop was frequently interrupted by the intensity of his feelings and the tears and sobs of many members of the congregation evinced how deeply they felt and appreciated the parting words of him, who for nearly five Years had been the chief

pastor of the Diocese of Chicago –

When the emotion had partly subsided the Bishop entered and gave the last benediction — Nov 5. editorial, objected & admitted subject to exceptions – all the extracts above admitted subject to defts exceptions –

Nothing which concerned the Bishop personally was inserted in the paper without its being first submitted to him –

Edward Burling for complainant = Said he was an architect - was present at laying of the corner stone. it was laid by Bishop Vandevelde assisted by Mr. O'Connor & myself = He & his partner superintended the erection of the Church -
Their firm name was Burling & Bannan = The foundation except front part was entirely completed in 1853 - The reason front was not completed they wanted large stones & winter coming on prevented us getting them - He made the estimate of the work as exhibited by bill used on in this case -
It is correct according to the contract = he wrote the contract at the solicitation of Mr O'Connor
He was surprised at the quantity of brick made out more than was in the building - he went over it again according to his estimate there were 2,452,995 brick in church costing $15699 00
Pltff here offered the certificate of Burling & Bannan of the amount due on the contract = which which witness proves to have been made by him & which is thereupon read to Jury - & which is in the words & figures following viz:

Church of Holy Name To Chas O'Connor Dr

1854	Masonry of New Church Building		
	To laying 2,452,995 = Brick	@ 6,40	15,699,00
	" Cutting 200 ft of Stone	@ 35¢	70,00
	" laying 3429 ft of Rough Stone	10¢	342,90
			$16,111,90

(12255-41)

To Very Revd J. A. Kinsella.

We certify that we have carefully measured & calculated the above quantities and know them to be correct according to contract for same

Burling & Bauman
Architects & Supt

Chicago Dec 5/54

We would further say that the workmanship done by the said O'Connor is of the best quality of its kind, and altogether entirely satisfactory

Burling & Bauman

Measurement of Brick work in Church of Holy Name

4 Octagonal Towers		4021.	4
18 Buttress	22 x 3 x 35	4095	"
18 Do	76 x 94	1260	"
Lower Section Girth	328 x 11½ x 29	10373	"
Upper Section "	512.4 x 35 x 29	49302	"
4 Buttresses	78 x 78 x 116	2704	4
18 Do	87 x 11.6	1776	"
Tower 1st Section	162 x 31.6 x 4	20412	"
" 2d "	139.8 x 9 x 4	5028	"

4 Gables	243.6		2898.6
12 "	1115		3465 "
4 "	179.6	× 29	1974 6
1 "	336		924 6
12 Piers	1.4 × 1.8 × 4½		117 "
14 "	3 × 2 × 5½		462 "
28 "	1. × 1.8 × 4½		210
			10.9122 " 8
			22½
			218144
			218144
			54511
Total amt of Bricks –			2.452.995

Cut Stone Work 75 × 28 = 200 ft

Rough Stone –

14 Piers	5 × 5 × 3	1150
12 "	2½ × 2½ × 2½	187
Wall	162 × 2.8 × 4	1728
"	84 × 2.8 × 1	224
"	211 × 3 × 4	24 "
		3429

This certificate correctly states the amount due to O'Connor according to the contract –
The work was done in a satisfactory manner –
The stone work was at the same price as the contract of the year before the amt due for stone work was $348

The whole amount due – $16,211.90

There was a failure to provide bricks and the men were discharged by O'Connor for the want of Brick They could not go on for the want of Brick – If there had been no interruption for want of Brick the work could have been completed –

Cross Examined

The number of brick astonished him – He made a proximate estimate of the number = The meaning of girthing according to his construction, is to take a line & go all around the building & measure into all the angles and around the projections – He & Mr O'Donnor had a controversy about the mode of measurement he first measured the tower, ten feet of building by taking the length & breadth of the building then measuring the buttresses & adding both together = in this measurement the walls & openings and buttresses were measured as solid = there are eighteen Buttresses all hollow – each hollow 8 inches by 16: The upper thirty two feet of the building were measured according to the construction of girthing by which the projections are all measured twice = all the corners are measured twice = the walls are hollow the opening between them is eight inches – There are twenty one windows = Thirty six feet high by eight wide = The measurement of the upper 32 feet was made by adapting the line to all the indentations and measuring around all the projections and angles = it would require 242000 brick to fill openings of windows & doors 1/4 of hollow space between the walls is filled by arches & connections – The contract was departed from by the parties several times – The design was furnished

by him a year before this contract was made — There were several plans afterwards proposed by Mr Hinsella — The Brick gables on top of the church are considerably in error — They are not built according to the contract — persons are now engaged in taking them down — There are six gables on each side — Mr. O'Connor had the plan — would not say whether the fault is his the witness or Mr O'Connors — He thinks an allowance for this defective work was made by him in his estimate to which Mr O'Connor agreed — The plans he furnished O'Connor were correct & the work does not correspond with the plan —

There might have been an error in the plan in respect to the gables — Mr O'Connor always claimed that he had built according to the plan —

The building was 46½ feet high — The original plan was 36 feet — but it was afterwards altered & made 10 feet higher — The extra ten feet were of course worth more proportionaly than the rest of the wall — The difficulty & expense of the Job — increasing in proportion to the hight — No extra charge made on a/c of this addition to hight by O'Connor —

The number of bricks included in the computation exceeded the actual number in the building from 600,000. to 700,000. This was made up by contraction measurement —

Ordinary hollow walls are usually measured solid = That is the custom = The reason is that it is much more trouble to build a wall hollow than it is to build it up solid – Chimneys are always measured solid – I am now employed upon the Church as architect – I was employed by O'Hara the Pastor of the Church On this case considering that the space in the wall is 8 inches the space ought to be reckoned as solid –"–

McDermott for complainant – He worked for Mr Olcanna on the Church – Saw the present Bishop at the Church in August or September 1854 = The Bishop was looking at the building dont know whether Mr Olcanna was there or not The Bishop was inside & outside of the building

Cross Examined

Has been a mason for twenty years – has been three years in this city = The ordinary price for laying brick the season the church was built was about $4.00 – he has never built any such building – He does not know how the building was measured – Knew nothing about the contract or mode of measurement –

Mr Scally for complainant – He is Stone cutter furnished the cut Stone for the building –
It was more difficult in this case to set stone than in an ordinary building from the inclined position in which they had to be placed
The large Stones had not to be raised high the Small Stones had to be raised high –
Cant tell what it was worth to raise them (after making and estimate) think that the full value of laying the cut Stone in the building would be £ 1400 –
The Stones were by the plan required to be laid at an angle where the bearing was at so few points, it was difficult to hold them in place & the work was difficult & laborious –

Defence –

Mr Ballentyne re-called by defence He was the proprietor & publisher of the Western Tablet – The pastoral & letter of the Bishop to his flock were published in it – The list of contributions were handed in to be published by Rev Messrs Breen & Clowry – They were published like any other advertisement & paid for by them – He is a Presbyterian & the Bishop was not answerable or responsible for what appeared in his paper – The adoption of the paper as the Bishop's organ was the

mere use of the paper as a medium of communication to his flock —

Here the following question was put by defence "Are you or not aware of any public declaration of Bishop Vandevelde prior to the 10th of April 1854 to the effect that the building of the Church of Holy Name was against his approbation? If so state where, on what occasion & when it was —

(Objected to as irrelevant — & objection sustained exceptions taken by defence —

Objected to unless shown to have been made in the presence or hearing of the plaintiff or brought home to his knowledge or unless the party offering states that he expects to prove the pltff had knowledge thereof —

Charles O. Conna
vs
Rt Rev Anthony O'Regan } Cook County Court of Common Pleas Mechanics Lien —

Messrs Arnold Larned & Lay
Attys for Plaintiff } Take Notice — That on the 9th day of October 1855 I will sue out from the Clerks office of sd Court a dedimus potestatem directed to any Judge or Justice of the Peace for the City of Natchez State of Mississippi to take the Deposition of the Rt Rev —

James O Vandevelde of D. City who is a non-resident of the State of Illinois on the interrogatories hereto attached to be read in evidence in said suit on the part of the Defendant

Anthony O'Regan

(Interrogatories by Defendant to James O. Vandevelde —"—

Int 1st Did you ever hold any office in the Catholic Church in the City of Chicago Illinois? If so what was it, how long did you hold it & when were you divested of it?

" 2d Who succeeded you as Bishop of Chicago & when was your successor consecrated, Bishop of Chicago & when did he enter upon the duties of his office—

" 3d Did you while Bishop of Chicago by yourself or any agent make any contract with Charles O'Conner, in regard to the Stone or brick work of the Church of the Holy Name? If so what was it & whom did you make it —"—

" 4th Did T. A Kinsella hold any office by virtue of which he had authority to make any contract with Charles O'Conner or any one else in regard to the erection of said Church or any Church —

Ant 5th When was the building of the Church on Block 48 in Kinzie's addition to the Town of Chicago known as the Church of the Holy Name, commenced & what were the circumstances under which it was begun & carried on?

" 6th Did you ever authorise said Kinsella to make any contract about the building of said Church? Did you ever recognize the authority of said Kinsella to build or contract for the building of said Church

" 7th According to the rules & regulations of the Catholic Church what sort of authority must a person have to build a Catholic Church - whether he be an officer or not in said Church?

Waller & Caulfield
Defts Attys

Cross Interrogatories to be propounded to Revd P. A. Vandevelde —

1 How long did you live in the City of Chicago after the commencement of the Church of the Holy Name

2 Did you mark out the spot on which said Church was to be built?

3 Did you direct on what portion of said Block 48 said Church of the Holy Name was to be built?

4 Did ~~you~~ not Revd S. A. Kinsella, select a place for said church nearer the centre of said Block 48 than it now stands and did he not place it where it now is in conformity with instructions from you?

5 At what time did you select & designate the place upon which said church of the Holy Name should be erected and how long before the commencement of said church?

6 Were you aware that the said Church was in the course of erection on said Block and for how long were you aware of it?

7 Was it not within your power to have stopped the work on said church at any time after it was commenced or to have prevented its being commenced at all if you thought fit so to do?

8 Did you not know that money was being raised in Chicago to defray the cost of erecting said Church and were not the list of subscriptions therefor published in the Western Tablet and did you not take said paper and publish notices in said paper under your hand and seal and was it

not your Organ in the Diocese?

9 To whom did you give direction as to where said Church should be placed and who had the superintendence care and management of the work of erecting said Church?

10 Was it a part of the duty and business of Rev D. A Kinsella as Pastor of the Church of the Holy Name to superintend the erection of said Church and to attend to the execution of the contracts for the work done thereon and to the payments therefor?

11 Is it not the ordinary and usual duty of the Pastor of the Church to attend to the business connected with the erection of a church edifice for the Church of which he is Pastor?

12 Have not all churches which have been erected in the diocese been erected under the superintendence of their Pastors and did you ever in your capacity as Bishop make or sign the contracts for the erection of such churches, and if so state when and where and on what occasion and for what Church you signed such contracts?

13 Have not a number of Churches been built in the Diocese while you were Bishop there of and if so state about how many and state whether the contracts for the building of such Churches were not made by the Pastor of said Churches respectively?

14 Were not the Pastors of these Churches entirely subordinate to you in your official capacity as Bishop and had you not the power of removing any parish priest from your diocese at your pleasure?

15 Was not Revd J. A Kinsella appointed Pastor of the Church of the Holy Name by your predecessor Rt Revd Bishop Quarter and did you ~~not~~ ever remove him from said office by letter or verbally, or did you appoint any other person Pastor of said Church and if so whom, when, how and in what manner did you so appoint such other person?

16 Were you or not aware that a Church was being erected or in the progress of erection on Block 48 in Kinzies addition the title to which was in your name as Bishop, and that the erection of said Church was under the superintendence of Revd J. A Kinsella the Pastor of said Church?

17 Did you not know that in the ordinary course of such business the said Kinsella would be likely to enter into contracts for work, labor and materials for the erection of said Church?

18th Were you not aware that Charles O'Connor the plaintiff in this suit was at work on said Church or had a contract for doing work thereon

19th Did you not at various times see workmen at work on said building or know of their being so at work?

20th If you saw workmen at work on said building or knew of their being so at work, by whose directions and under whose superintendence did you suppose them to be employed

21st Did you ever direct any of the persons so employe on said building to desist from working thereon or give them any reason to know that the work on which they were engaged was not sanctioned or authorized by you?

22d If you knew that the building was going on under the direction of Rev. J. A. Kinsella and you had the power of removing him at once at your option and the churches in the Diocese were usually erected

under the superintendence of the Parish priest) and the contracts made by him and you did not remove him or give any notice to the persons at work under said Kinsella the said church was unauthorized by you were you not holding the said Kinsella out to such persons as authorized by you to make contracts for the erection of a church on said Block?

23 At what time did you lay the corner stone of said church?

24th At the time you laid the corner stone of said church were you not exercising episcopal authority in said diocese?

25th Did you at the time of laying said corner stone or at any other time give notice to the public through the Western Tablet your organ or in any other manner that the acts of said Kinsella in contracting for the building of said Church were not authorized by you?

26. At what time did you make known to the diocese that you had ceased to be Bishop of the Diocese or at what time did you cease to appear as Bishop or to perform and assume the episcopal functions and authority in the diocese?

2 7th At the time Revd T. A Kinsella was superintending the erection of the Church and at the time you consecrated said Church was it known in the Diocese or to the public, that you were removed or transferred or were you not at said time recognized and regarded in the Diocese as its Bishop and assuming to be and act as such?

Arnold Larned & Levy for Plffs

Answers of the Right Revd James O'Fandevelde of the City of Natchez & State of Mississippi to Questions or Interrogatories prepared by Waller & Canfield. Attorneys to Rt Revd Anthony O'Regan of Chicago. Defendant in the suit of Charles O'Connor vs. Rt. Revd Anth O'Regan

Answer to Interrogatory 1st

I was Catholic Bishop of Chicago nominated on 3d of October 1845; consecrated in St Louis on the 14th February 1849 & was transfered to the See of Natchez on the 29th July 1853.

Answer to Interog 2d =

My immediate Successor as Bishop of Chicago was the present incumbent Rt Revd Anthony O'Regan = If I rightly remember, he refused

to accept, when first appointed & was appointed again in the Spring of 1854 & then accepted = He was consecrated at St Louis on the 25th July 1854. but entered upon the duties of his office or at least had a right to do so as soon as he had accepted the appointment, being then Bishop elect & having full jurisdiction over the diocese

Answer to Interr 3d

I never made any contract of any kind with Charles O'Connor in regard to the Church of the Holy Name, nor ever had any conversation with him on the subject of that Church —

Ans to Interr 4th

Rev J. A Kinsella never held any office in the Church or under me in virtue of which he had authority to make any contract with any one about the erection of any Church

Answ to Interr 5th

I do not precisely remember when the Church of the Holy Name was commenced — I was then absent for several months on the visitation of the Western & Southern part of the Diocese & said Kinsella commenced it without my knowledge or consent. When I returned to Chicago the stone work was raised two or three feet above the

ground, & that on my own property –
I expressed my disapprobation to himself & to several of the Priests of the Diocese & to some of the Laity – I was told that Dav'd Kinsella had given out that he acted as my agent but I never appointed him nor acknowledge him as such. I called him to account & reproved & condemned him for his refractory conduct

Answer to Inter 6th

I never authorized Revd Mr Kinsella to make any contract for said Church, nor recognised his authority to contract for it, or to build it –

Answer to Inter 7th

According to the rules & regulations of the Catholic Church, no one is allowed, whatever may be his office or station to erect a Church for Catholic worship unless he has the express permission or consent & approbation of the Bish op of the Diocese in which it is proposed to build it – Ita, omnia testor

J. B. Van Dievelde
B. K. Hatches

Answers of the Rt Revd James O. Vandeveldé Bishop of Natchez to the Interogatories proposed by Messrs Arnold Larned & Lay Attorneys for the Plaintiff Charles O'Connor

Answer to Interog 1st

As I was ~~seat~~ absent from Chicago & do not know when the Church was commenced I cannot specify the time I lived in Chicago after its commencement –

Answer to Interog 2d

Before the Church was commenced I did not mark out any spot where I wished the Church to be built. though I had formed a plan about it –

Answer to Interog 3d

I never directed in what part of Block 48 a Church for the North Side was to be built & I would never have built it where it now stands

Ans to Int 4 Rev J. A Kinsella never acted under my instructions with regard to selecting the site or to building the Church of the Holy Name.

Ans to Int 5 I never selected or designated the place on which the Church should be built before it was commenced – But after I returned to Chicago

& found the church commenced. I stated to several Priests & to some of my friends, that my original plan was to build the church in the very centre of the lot & on one side to build a seminary, & on the other a House for the parish clergy on the plan of the Philadelphia & Milwaukie = & this I would have done had I built the church myself —

Answer to Int 6th

I was not aware of it till I returned from the Southern part of the Diocese (having been absent several months) when I found the stone work several feet above ground —

Ans to Int 7. If I had recourse to law I might have stopped the work, since it was an encroachment on my own property — but fearing the consequences & knowing that I was to be removed from Chicago I thought it ~~xxxxx~~ most expedient, not to resort to legal measures I tried ecclesiastical measures, but found that the remedy would be worse than the evil, as Rev Mr Kinsella positively told me that he would not submit to my authority — I could not have prevented the commencement of the church since it was commenced during my absence & without my knowledge

Ans to Int 8. I repeatedly saw lists of contributions to the church

of the Holy name in the Western Tablet = These lists were first published during my absence –
I took the paper & it was my organ only in as much as I used it as a medium to publish official documents in my capacity as Bishop to the Clergy & Laity of the Diocese = & I was responsible only for such pieces or articles as appeared under my official signature = As Bishop holds himself responsible for any other matter, editorial, communicated or copied that may appear in a paper called his Organ – I may add that when some of the subscribers discovered that Rev. Mr Kinsella was building the church without my consent they withdrew or refused to pay their subscriptions

Ans to Int 9 I never gave any directions to any one as to where the Church should be placed, and never knew who had the Superintendence of the Building

Ans to Int 10 It was no part of his duty or business to superintend the building of said Church unless appointed by me, which he never was

Ans to Int 11. It is the Pastors usual duty to attend to the building of a Church if he be capable & be authorised by the Bishop of his diocese. not otherwise – 11 –

Ans to Int 12 All the regular churches built in the Diocese of Chicago, have been built with my permission & consent - & generally speaking, not I, but the Pastors or others appointed by me made & signed the contracts - which I approved —

Ans to Int 13 The answer to this Question is contained in the preceeding —

Ans to Int 14 All the Priests of the Diocese are & ought to be subordinate to their Bishop who has the power of removing them though, as in Rev Mr Kinsella's case it may not always be expedient to do so —

Ans to Int 15 There was no Church on the North Side under my predecessor except St Joseph (German) Church Rt Rev Dr Quarter, I believe, given Rev Mr Kinsella Jurisdiction over the english speaking people of the North Side - I informed him as pastor, but as he was president of the college, he employed Rev Mess Clowry & Breen to act as his assistants or as Pastors under him with my aprobation

Ans to Int 16 First part answered in Interog. 6th. - The Block (No 48) belonged to me & my successors in office - I never had a title to the Church built on it — As regards the Church, the building of it & contracting for it Rev Mr Kinsella was alone responsible & those who contracted

with him probably knew that he acted against my will & that I owned out him by legal process –

Ans To Int. 17. Whilst Bishop of Chicago, I never knew anything about Revd Mr Kinsella's contracts for building said Church – Of course I thought it likely, that he had entered into such contracts on his own hooks

Ans To Int. 18 It was only when the corner stone was laid that I was told that Mr Chas Cleaver had taken the contract for the stone work –

Ans To Int. 19 I saw workmen at work at the Church as I saw other workmen at other buildings but never interfered with them. nor ever went to look at the work or speak with them. I scarcely ever visited the College after the Church had been commenced. I believe the only visit I made there after it had been commenced was at the laying of the corner stone –

Ans To Int. 20 Once or twice riding about in a cab I saw work men at work at the Church, but I never enquired nor positively knew, by whom they were employed nor under whose superintendence they worked of course I supposed that they worked under Revd Mr Kinsellas Superintendence, though I had no certainty of it –

Ans To Int 21 I never did for I never spoke to them whilst at Rome

Ans To Int 22. Nearly all this has been answered above = I will merely add that I never held out Revd Mr Kinsella as authorized by me to make contracts for the erection of said Church. but frequently stated that he had commenced the Church without my consent & against my will & that those who contracted with him did so at their own risk

Ans To Int 23 I dont precisely remember at what time I laid the Corner Stone of said Church. I think it was on the first Wednesday of August 1853 — Yes I now remember this was the day —

Ans To Int 24 The laying of the corner stone of a Church is not an act of Episcopal authority since it may be done by a simple Priest — " —

Ans To Int 25. I repeatedly told several persons especially Priests of the Diocese that Revd Mr Kinsella was not authorized by me to build said Church & that he did it against my will but I do not think that I ever gave any Notice of it in the Western Tablet — " —

Ans To Int 26 I know from the Propaganda & from the Pope himself. before I left Rome in 1852 that

I would be removed from Chicago & transferred to another diocese & on my return to Chicago in December 1852 I mentioned it to several persons — The next Spring 1853 = I knew I was to be transferred to the See of Natchez & this too I mentioned to several of my friends & it appears to have been known in Natchez during the month of June = The decisive appointment to Natchez took place on the 29th July of that year 1853. but I continued to exercise episcopal functions in the Diocese of Chicago. till I left it on the 3d & 4th November of that year = This was done for the benefit of the Diocese though I no longer had episcopal authority over it, when I left it — My permission to exercise Episcopal functions, quite a different thing from Episcopal Jurisdiction or authority was obtained from the Archbishop of the Province Most Rev P.R. Kenrick of St Louis — " —

Ans To Int 27 Answered in the preceding = Neither I or any other Bishop ever, consecrated the Church of the Holy Name — I laid the corner Stone at the request of the Bp of Pittsburgh who had been asked to do it by Rev Mr Kinsella who preached on the occasion — As I mentioned before any simple Priest may lay the corner Stone of a Church = So far from its being an

act of Episcopal Jurisdiction or authority it is not even strictly speaking an Episcopal function

2nd testor –

J. O Vandevelde
Bp of Natchez

I the subscriber a Justice of the Peace in and for the County of Adams and State of Mississippi residing in said the City of Natchez do certify that the foregoing Deposition of James O Vandevelde was taken by me at my office in the City, County of Adams in the State of Mississippi on the twentieth day of October A.D. 1855, that the said witness was first duly sworn by me and that the same was written by said witness and after carefully reading the same the said witness signed the same in my presence –

Witness my hand and seal at Natchez this October 20th A.D. 1855

Ro. M. Wood J.P. (Seal)

State of Missippi } S.S.
Adams County

I, Richard A Inge Clerk of the Probate Court of the County of Adams State of Missippi do hereby certify that Robert M. Wood whose genuine signature appears to the above certificate, is and was at the date hereof, an acting Justice of the Peace in and for said County of Adams duly elected qualified and commissioned and that all of his acts in the premises are and ought to be entitled to full faith and credit in Indicature thereof —

In testimony whereof I have hereunto set my hand and the seal of said Court at the City of Natchez the 20th day of October A.D. eighteen hundred and fifty five —

L.S.

Rich^d A Inge
Clerk.

James Boggs was then called for defence = He is a carpenter = He & his partner Dunoho put the roof on the Building = They did it according to the drawing & model furnished them by Building & Burman the architects = Building directed them about the work = The roof is made right but it does not fit on the small gables = they are too small & do not correspond with the plan — the gables are not built right = They are twelve (12) of them = They were not made to fit according to the models They dont fit by three feet = the angles at the apex are too obtuse & the perpendicular is not sufficiently high by three feet — The gables are now being torn down partially and rebuilt to correspond with roof = The roof is correct according to the model —

Mr Carter by defence = I am an architect = has seen the building known as Church of Holy Name has not examined it particularly = Does not know its size except from the plans which he has examined & are before him — The number of bricks in the building according to the measurement which he has made from said plans including half the openings of the windows is 12061.11 = in this he does not compute the

hollows of the walls = The walls being hollow some allowance would be made —
The space between the walls of eight inches being filled up one fourth by connections one third of the hollow space should be considered in the measurement as solid —
The mode of measurement adopted by Bruling in his construction of girthing makes a hundred & eighty feet of wall more than there is in the Church — The word "girthing the Building" in the contract would not justify the construction of Bruling by which this Quantity is arrived at = Girthing the building means to adapt a straight line on the outside to each side of the building & then multiply the length thus obtained by the hight & thickness of the wall for the Quantity = To this the buttresses would then be added —
In ordinary hollow walls we usually measure the walls solid because it is more work to make them — I never measured a wall of this kind = Dont know what the custom as to openings — Where the person doing the work does not furnish the material = Where the workmen furnishes the material the custom is to include for the openings as solid & in this case the builder gets the value of materials as well as labor not actually furnished —

It would be worth double the price of ordinary brick laying per thousand to lay the brick in such a building as this —"—

I made my computation known to in my direct examination on the basis of a building 36 feet high = If the building was ten feet higher — of course the number of bricks would be increased proportionably = I know nothing of the quantity of brick in the building from actual measurement of the building —

I have made my computation entirely from the plans of the building, submitted to me & which I supposed to be correct —

These plans gave 36 feet as the hight —

Cut stone work is worth more than ordinary brick work — There was no building like this put up in Chicago —"—

On a re-calculation of the amount of bricks in the building, according to my mode of getting — and including ½ the openings & counting ¼ the wall solid and I make 1,907,000 brick — If the wall was 46½ feet high — that proportion should be added viz $\frac{10\frac{1}{2}}{36}$ of the above sum should be added to it to get the whole number of Bricks —

Rev Mathew Dillon for defence = Says he is at present President of University of St Mary of

the Lake has charge of the parish of Holy Name
He was stationed in the diocese of St Louis
before Bishop O, Regan came here = He came
here with Bp O Regan about 13th August 1854
Bishop O Regan requested him to come = Bishop
O Regan rejected his first appointment as Bish-
op of Chicago & sent it back to Rome = He
recd a second appointment and accepted
it & on 12th July he the witness recd a letter
from him requesting him Mr Dillon to come
to his consecration on 25th July & accompany
him to Chicago = He the present Bishop was
then President of a Seminary at Carondolet
near St Louis – Thinks he the Bishop recd
his second appointment in July 1854 –
An administrator is clothed with episcopal
functions to a certain extent – The councils
of Baltimore are binding on all the Catho-
lic Clergy in the Country –
Here the defence offered a canon of the 5th
Baltimore council in evidence & the counsel
for pltffs agreed the witness might write a
translation of it & it could be offered after-
wards –
Mr Dillon further said that a pastor must eit-
her have written or express authority from his Bishop
before he can commence to build a church –
It is the duty of the pastor when he has the

"This evidence was allowed to be excepted to by the Pltffs. Counsel, the witness stated that the appointment refused & a conference was all in writing"

assent of his Bishop to build Churches —

"We urge Bishops that they be vigilant lest their priests should burden Church property or destroy confidence to the detriment of religion by contracting debts in the imprudent erection or repairing of Churches or in any other manner therefore they must require at least a yearly statement of their accounts & not permit them to contract debts either in the name or for the purposes of the Church without written permission so to do" —

A. church commenced without the authority of the Bishop would be improper = The jurisdiction and authority of a Bishop commences when he accepts of his appointment – an administrator is clothed with episcopal functions, but can do no act to bind Church property = His appointment is merely temporary in the absence of a Bishop to maintain the discipline of the Church until the vacancy is filled with a Bishop – his appointment comes from the Metropolitan not from the Holy see whence alone a Bishops appointment can come –

If a Bishop's resignation of a Diocese were accepted by the Holy see such Bishop might nevertheless be retained in his place & continue to exercise all the duties of the office until his successor was appointed if so directed or empowered by the Holy see –

Reproduction of testimony by complts

W. Price for complainants = Is a master builder

Contracts to amount to $75.000 a year

Think that the price stated in the contract is not too much for work of that character = The extra price is caused by the want of floors the necessity of having high scaffolding built = Openings similar to those in the plan (here produced)

are much trouble – Thinks the contract was a fair one – & would not have taken it on the same terms –
The price of common brick laying was $4 a thousand –
Cross Exam – The price $6 40/100 is much above the common price of laying brick, but is right for jobs of this kind – It was worth $4 a thousand that season to lay common brick –
Above evidence of Quantum meruit was objected to by defence – objection overruled evidence admitted subject to exceptions of defts counsel – & so of all the rest of the testimony on Quantum meruit –

Price – Am a master builder & have large contracts from the Church of Holy Name I was familiar with the O'Connor contracts consider it was no more than a fair contract – I would not have taken it on the same terms – The price of common brick laying was $4 a thousand that year –

M Dermot – for Complts – He set all the cut stone in the building – It was very troublesome Dont think price of contract too high –
It was a fair price for the work –
And this was all the evidence introduced in this case

The defendant moved the Court to instruct the Jury

1 No Lien can exist in this case unless the contract was made for the work with the owner of the lot on which the building was erected or with his agent expressly authorized to contract –

2 If the Jury believe that the contract sued on was made with J. A. Kinsella & not with the owner of the lot the complainant can not obtain a lien upon the property –

3 If the Jury believe from the evidence that J. A. Kinsella did not obtain the assent of Bishop Vandervelde to the erection of the Church of the Holy Name, but commenced the same on his own responsibility. the ceremonial of laying the Corner Stone by the Bishop was not such an act of ratification of any contract made by J. A. Kinsella as would make said Bishop or his successors responsible

4 If the Jury believe said Church was commenced without the previous assent or authority of Bishop Vandervelde and that said Vandervelde ceased to be Bishop of Chicago on 29th July 1853 & laid said corner Stone on 3d August following – the act of laying the corner Stone

[12955-58]

after he ceased to be Bishop aforesaid can have no binding force upon the land of the Bishop of Chicago & his successors in office —

4 That the act of an administrator cannot render the Land of the Catholic Church in the Diocese of Chicago vested in the Bishop of Chicago his successors responsible —

5 If the Jury believe that O'Donnell undertook to build said Church on his own responsibility intending to pay for the same by such contributions & collections as he could raise from the people & made this contract with the Bishop with the understanding express or implied that he was to be paid in this manner no lien can exist in this case —

6 If the Jury believe from the evidence that said Vandwelde had ceased to be Bishop of Chicago & had left the diocese before the contract was made and said O'Regan was not then Bishop of Chicago — no act of Vandwelde before leaving bind the property of Bishop of Chicago through that contract — no acquiescence or bonds, or act of said O'Regan after he became Bishop indicating an acceptance of the work can be construed into a ratification of said contract

unless they believe from the evidence that the existence of said contract and its terms were brough home to the knowledge of said O'Regan;

7 If the Jury believe that when Chas O'Connor made the contract in this case with P. O'Kinsella said O'Connor gave credit to said Kinsella & looked to him for payment - no lien can exist in this case —

8 It is incumbent on the complainant to show that there was a Bishop of Chicago capable of contracting as such for the work at the date of the contract & that he also did contract with said O'Connor in order to recover a lien under said contract —

9 If the Jury believe that said church was commenced with permission of the Bishop of Chicago & that permission extended only to authority to build the church on his land without authority to bind him or hold him responsible therefor = No lien can then exist in this case —

10 That permission by the owner to build upon his land does not create an implied undertaking on his part to pay for the building

11 If the Jury believe from the evidence that Obannon has not executed the work according to the contract he can not recover a lien under said contract in this case —

12 If the Jury believe that said church was built without the authority of the Bishop of Chicago & they further believe that said Bishop has accepted or used the building such acceptance or use is no approval of the contract in this case & he or said church can not be held responsible in this proceeding

13 If the Jury do not find upon the contract in this case they can not find on a Quantum Meruit under this proceeding —

14 That the mere approval of the work and acceptance or use of the same is no approval or acceptance of the contract under which it was built —

15 That a principal can not ratify an act done by an other which he would have no authority to do himself at the time it was done and that if said Kinsella made the contract in this case before said O'Regan was made Bishop he could not ratify said contract by any act proven in this case

that would make him responsible in this proceeding—

16 That the denials in the answer of Bishop O'Regan of the statements of the petition are to be taken as true unless contradicted by two witnesses to the same fact or one witness with strong corroborating circumstances—

17 The Jury will disregard all parol evidence introduced by the complainants to show that the contract in this case made by Charles O'Connor with P. A. Kinsella was made by said Kinsella as agent of the Catholic Bishop of Chicago—

18 The Jury will disregard the testimony of Messrs Clancy Breen & Labelle touching the custom of Pastors signing contracts for the building of churches in the Diocese of Chicago——

Which instructions the court refused to give and the defendant then and there entered his exceptions to the opinion of the Court in refusing said instructions—

Instructions by the Court —

If the Jury believe from the evidence that the Pastors of the Churches respectively according to the uniform custom of the Catholic Church in the Diocese of Illinois are the proper persons to make contracts for the building of the Churches authorized by the Bishop to be built for the use of their respective congregations & if the Jury further believe that the Pastor of the Church of the Holy Name of Jesus that while Pastor he made the contract proved in this case & set forth in the petition & if you further believe from the evidence that the building of the said Church was authorized by the Bishop or administrator of the diocese of Chicago Then the Petitioner is entitled to recover the amount due by virtue of the contract less the amount admitted to have been paid upon the contract by the petitioner —

If the Jury are satisfied from the evidence that the custom is not uniform in the diocese of Illinois or that the building of the Church was not authorized by the Bishop of the Diocese of Illinois the complainants can not recover upon the contract —

If the Jury believe from the evidence that while the Sd Church was erecting the Bishop

or administrator of the diocese of Chicago was cognizant of the fact & saw the work progressing without making objection after the work was done, took possession of the church & appropriated it to the use of the church of which he was the representative head - The petitioner is entitled to recover what the work was reasonably worth -

The Jury must adapt the mode of Carter & not of Barling - - - The above instructions were excepted to by Defendants counsel. And the defendant prays that this his bill of exceptions be signed & sealed by the Judge of said Court which is accordingly done -

Done at Chambers this 6th day of December 1855 } John M Wilson Judge of the Cook County Court of Common Pleas {Seal}

State of Illinois
County of Cook } S.S.

J. Walter Kimball Clerk of the Cook County Court of Common Pleas in & for said County & State do hereby certify that the foregoing is a full true and correct Transcript of all the papers filed and

~~and~~ Orders entered of Record in said Court in the case of Charles O'Connor Plaintiff and Rt Rev Anthony O'Regan defendant as the same now appear on the files of said Court now in my office

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago this 29th day of May A D 1856.

Walter Kimball Clerk

Anthony O'Regan } Supreme Court at Ottawa
vs } Term Jan AD 1856
Charles O'Connor }

And now the said Anthony O'Regan by his Attorneys Caulfield & Brickwille come before the said justices and say that in the judgment decree, record and proceedings aforesaid, there is manifest error in this.

1st In the court overruling the motion for a new trial of said O'Regan in said cause

2d In the court admission illegal, improper and impertinent ~~evidence~~ testimony in the trial of said cause for the purpose of showing that said Kenrillen was the agent of the Bishop of Chicago, and for the purpose of showing a custom on the part of the pastors of churches to make contracts for the building thereof, and other illegal and impertinent ~~evidence~~ testimony

3d In the refusal of said court to give each & every of the instructions asked for by said O'Regan

4th In the court giving of the instructions to the jury as set forth in the record.

5th In the court admission of testimony as to the value of the work & labor done by said O'Connor.

6th In the court rendering a judgt or decree in favor of said O'Connor, when upon the whole record such judgt or decree ought to have been in favor of the said O'Regan

Therefore for the errors aforesd & for other errors upon the face of said record & proceedings, he prays that the said judgt or decree may be reversed & held for nothing held & that he may be restored to all things which he has lost by the same. By his Attys Caulfield & Brickwille

[1235542]

And said Appellee by T. L. Dickey comes and says that there is in said record and proceedings no errors such as is alleged by appellant and asks that said judgment & decree may in all things be affirmed

T. L. Dickey for
Appellee —

Charles O'Connor

Rt Rev. Anthony
O'Regan

Trustee

Bees. Drawn $30
Paid by Repeal Ass.

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Anthony B. Keegan
vs
Charles O'Connor

Filed June 10 1896
S. Leland Clerk

Be it remembered that on the trial of the case of Charles O'Donnor vs. Anthony O'Regan on petition for mechanics lien "upon the Church of the Holy Name", on Block 48 in Kinzies addition to Chicago in the Cook County Court of common pleas before the Hon S. W. Nelson the following persons were introduced, sworn & examined as witnesses - said trial being at the September Term 1855 of said Court -

Rev Mr. Cleary introduced by complainants said he was a Catholic priest & came to Chicago in 1849 that he found Bishop Vandevelde acting as Bishop of Chicago when he came - He knew Rev Mr. Kinsella - said Kinsella was President of University of St Marys of the Lake & Pastor of the Church of the Holy Name - He knows the church situated on Block 49 in Kinzies addition: the church was commenced about 29th June 1853 - he was present at the laying of the corner stone "Here all parol evidence to show Mr Kinsella acted as agent of the Bishop was opposed by defts counsel - objections over-ruled by court & evidence admitted - to which defts excepted". It was laid by Bishop Vandevelde - The foundation was two or three feet above the ground when the corner stone was laid - Bishop O'Donnor of Pittsburgh was present - & Rev Mr Kinsella. Rev Mr Hoge Rev Mr Breen - were also

[12355-64]

present – Mr. O'Connor the complainant was present and two or three hundred people Mr O'Connor had the stone prepared & took part in directing how it was to be laid – The manner of laying the corner stone was by the Bishop going the walls saying prayers & psalms – there was a leaf erected in the centre – and when he came to the corner stone he blessed it – the foundation walls then built are the same upon which the structure now stands – Mr O'Connor and the Bishop were in a position to see each other at the laying of the corner stone – Dont know whether the Bishop saw O'Connor, when the stone was blessed, it was placed in its position by Mr O'Connor, Bishop O'Connor preached on the occasion of laying the corner stone from the balcony of the College which is just opposite the Church – His discourse was a lecture on the unity of the Church – He alluded to the Church of the Holy Trinity and made a few remarks exhorting the people to be generous about contributing – of this he is not positive – It is his opinion – After the laying of the corner stone Mr Kinsella remained in the City until January 1855. – he acted as President of the University & master of the Church & as Treasurer – – It is the custom

as far as he knows in this diocese for the pastor to act as treasurer in building churches & also for the pastor to make contracts for the building — The Bishop never signs the contracts as far as he knows. He thinks this is the general custom in this diocese (all the testimony in relation to this custom was objected to by defendants counsel, objection over-ruled & evidence admitted by the court subject to defts exceptions) the Bishop must give his approbation for the building of the church — The usual mode is for the pastor to consult the Bishop before commencing the church & get his approbation — It is then the duty of the Pastor to make the contracts — He saw the Bishop on one occasion after the laying of the corner stone at the college — He had to pass the church in going from his house to the college from the 29th June when the work was commenced until August when the corner stone was laid at which time the exterior wall was built two or three feet above the ground — Mr Clemmer was doing the work — There was a Catholic paper in the city called the Western Pastor — The Bishop recognized it as his organ & he published communications to the people in that paper he has seen the papers in the Bishops House —

Bishop Vandevelde left Chicago some time in November 1853 — He continued to act

as Bishop until he left — From 1849 to Nov 1853 Vandevelde continued to act as Bishop of Chicago — I found P. A. Kinsella occupying the position of Pastor of Church of Holy Name & President of the University of St Mary of Lake when I came, and he continued to act in these capacities until January 1855 The Pastor of the Church in this diocese became by virtue of his office — Kinsella was Pastor & Treasurer —

The Bishop can sign the contracts but seldom does so — He has never known Bishop Vandevelde sign a contract for the building of a Church in this diocese during his administration —

Upon cross-examination he stated — Bishop Vandevelde left Chicago in November 1853 he the witness did not know he had ceased to be Bishop of Chicago when he laid the corner stone — The functions of laying a corner stone of a church are not episcopal as they can be performed by a priest — The laying of a corner stone of a Church by a Bishop he supposed think would of itself be sufficient approbation if the Bishop had previously refused his consent — This he considers merely as a theological question — and his opinion is not based upon any facts —

He is not sufficiently well acquainted with the Canons of the Church to say whether there are Canons which requires the Bishops assent in writing before the commencing of a church — He does not think that Bishop Vandevelde was in Chicago when the Church was commenced —

He was absent on a visitation of the Diocese was gone two or three months got back the day before corner stone was laid — The Bishop had just returned from Milwaukie — Mr Kinsella remained till January 1855. — He continued to act as president of St Mary of the Lake and Pastor of Church till then — He thinks it is the custom in this Diocese for the Pastor to be treasurer — Exception taken as to evidence of custom — Mr Kinsella acted as Treasurer — Before a church can be erected it is necessary to have the approbation of the Bishop — The Bishop can sign the contracts for the building — He knows of his own personal knowledge of only one instance where the pastor of the church signed the contracts for building viz, the frame church on North side. near the new church — Mr Kinsella signed the contracts for that — After approbation by the Bishop it is the office of the pastor to make the contracts He saw the Bishop at the College once after corner stone had been laid — The Bishop

resides on Michigan Avenue corner of Madison Street & Michigan Avenue — Mr O'Connor went on with the work from June till August & on to the — Bishop O'Regan came to Chicago about August or September 1854 — He was consecrated Bishop 25th July 1854 at St Louis He understood Bishop O'Regan sent back to the Holy see his appointment as Bishop of Chicago & it was sent to him again — When he accepted it — this was in the Spring or Summer of 1854 — a short time before his consecration —

The Church of the Holy Name was opened last Christmas and a collection taken up to help pay for the Church by the permission of Bishop O'Regan — If application had been made to the Bishop & his consent refused a church could not properly be commenced by the Pastor but if a church was commenced without his approbation, and he afterwards blessed the corner stone it would be sufficient approbation —

The Bishop had power to stop the building at his will, and to remove the Pastor, and if he does not interfere but allows the Church to go on — he thereby gives consent to the church being built — Bishop O'Regan gave permission to have the Church opened Dec 25, 1854 The usual services were performed — He gave his assent to the opening of the Church.

A Church can not be opened against the wish of the Bishop –

I paid $100 to Bishop O'Regan out of the collection taken up when the Church was opened – The Church has been regularly opened for service since that time –

An administrator has the same power which the Bishop has & can perform the same acts excepting that he can not ordain or confirm –

Re-examination by complainants counsel –

A Bishop can change a pastor at pleasure –

The Catholic paper before mentioned was published by Mr Ballentine, who is a protestant – All the priests at the University of St Mary of the Lake collected contributions for the building of the Church – The list of contributions was published in the Western Tablet – While Mr Kinsella was President of the University, Bishop Vandevelde sent to him, taking high the keys of the College & give them up to him – Mr Kinsella sent him word to come & get them himself; when a person is appointed to a Bishopric, he has the right to send back his appointment ~~back~~ & his jurisdiction as Bishop does not begin until he accepts the appointment – He has none before – appointment does not give jurisdiction, but acceptance – Resignation also deprives him of jurisdiction –

[10256-67]

(Here contract between D. A. Kinsella & Charles O'Connor read to Jury & excepted to by defendants counsel)

(Here insert copy of the contract)

The signature of said D. A. Kinsella to said contract was admitted by the Defts –

Rev Mr Breen – introduced by Plffs – He was teacher in University of St Mary of the Lake is a catholic priest – came to live in Chicago in 1849 – He knows Bishop Vandevelde, dont remember when Bishop Vandevelde came to Chicago was Bishop when he came to Chicago He knows Church of Holy Name – it is just in front of College – It was commenced later end of June 1853 – Corner Stone was laid 3d August 1853 – the walls of the entire building were then two or three feet above the ground – Mr O'Connor was the builder – Bishop Vandevelde officiated laying corner stone – the Bishop & priests went in procession around the walls & the corner stone was blessed by prayer – Mr O'Connor officiated as Mason in laying corner stone – Mr Kinsella was present & was pastor of church; was so till last January It is the custom for pastors in this Diocese to make contracts for building churches – (Evidence of custom again objected to over-ruled

& exceptions taken) He has never known any contracts for building of Churches in this Diocese to be signed by the Bishop — He dont remember particulars of the Sermon preached by Bishop O'Connor — Thinks he tryed to stimulate the people to contribute to church — It is province of pastors to build Churches (objected to by defendants, objection overruled) the Western Tablet was the organ of Bishop of Chicago both Bishop Vandevelde & O'Regan — (objected to & overruled) remember Bishop Vandevelde did pray by the Church & saw it after corner stone was laid — I have always considered the Pastor acted as the Bishop's agent in the matter of the buildings of Churches & made the contracts in his own name — I have never known a contract for the building of a Church to be signed by the Bishop — They have always been signed by the Pastors as far as I know — After the laying of the corner stone of a church by the Bishop it would be the duty of the Pastor to go on & complete the Church —

Cross examined — It is necessary that the Bishop should give his consent before commencing a church — He does not know that the Bishop never signs contracts for the building of Churches — I dont know of any facts in relation to the customs of pastors making

contracts for building churches in this Diocese (Here again all testimony of customs objected to by defendants counsel & objection over-ruled by the Court) The Bishop was not responsible for the things in the Tablet. — There was no obligation on part of Editor to exclude or publish pieces for the Bishop — He the witness assisted in collecting money from the people to build the Church; several members of the congregation & four priests were employed in collecting he had frequent conferences with Rev Mr Kinsella about the collections Rev Mr Kinsella & they intended to pay for the church by contributions from the people & of the Bishop — He promised to contribute — He believed the Bishop was absent on visitation of the diocese when the church was commenced in Rome he was also at Milwaukee — got back very shortly before laying of corner stone — The Bishop promised a contribution — He invited Bishop Vandevelde to lay corner stone in the forenoon of the day when it was laid — He (the witness) had been absent from Chicago since last January — Rev Mr Kinsella Rev Mr Clinny he left at the same time, they went to New York & now reside there —
Bishop O'Regan called on them for their resignation & had offered them different positions in the Diocese sometime previous to their

resignation — The Bishop gave us no excuse —
He came here during this trial because he
always had an anxiety about this matter — He
feels a deep interest in it — He came on a letter
received from Rev Mr Cleary — one motive he had
in coming here was to attend this trial — He
wished to have it decided honestly & justly &
thinks it would be honest & just to decide it for
Mr O'Connor — He (the witness) & Mr Cleary
have been much together & conversed about
this case —
Has seen much of Mr O'Connor since he came
to town & talked about this case with him —
Rev Mr Cleary & witness have been in Bp O'Connors
house since coming to town, & had frequent
conversations with him — has no interest but that
justice may be done in the matter —
He remembers that in the sermon Bishop O'Con-
nor spoke of the generosity of the people in
building a church — The Church was opened
last Christmas day for services & a collection
was taken up to pay for church — There was
nothing but the walls up & roof on the building
(Here Western Tablet introduced of Oct
29th 1853 & objected to by defendants counsel
objection overruled by the Court) and excep-
tions taken — — The Pastor always acts as agent
of Bishop in the building of Churches & signs
the contracts — This has been the usual course —

I know it from the knowledge which I have of the relation between the bishop & Pastor — I have been six years a Priest & have never known a Bishop to sign a contract for the building of a church — The Bishop has only to say one word & he can stop all proceedings — The day that Bishop Vandevelde laid the corner stone he promised a subscription for the church —

J. J. Ballentine publisher of Paper (Western Tablet) introduced — He was the proprietor in Oct 1853 — It was the official organ of the Bishop — It was so by his permission — The manuscript of publications were generally destroyed, sometimes burned & sometimes preserved — He is a Presbyterian — Western Tablet had the inscription "Organ of the Bishop of Chicago" because the Bishop is in the habit of publishing his addresses & communications to the people; and makes known his official acts & intentions; in no other way was it his Organ — The paper was sent to the Bishop — Here a proclamation of Bp. Vandevelde in the paper was offered — the list of subscriptions to the Church, Diocesan Intelligence — Paper of Sep 3rd 53 (List of subscriptions offered admitted (excepted to) also No of paper of August 6th) July 30th July, 9th-16th 23rd June 25 — 9th July, (here insert them)

due to O'Connor according to the contract. The work was done in a satisfactory manner. The Stone work was at the same price as the contract of the year before — The amt due for Stone work was $343 —
The whole amount due $16.211.90 = There was a failure to provide brick and the men were discharged by O'Connor for the want of Brick — They could not go on for the want of brick — If there had been no interruption for want of Brick the work could have been completed —

Cross Examined

The number of brick astonished him. He made a proximate estimate of the number — The meaning of girthing according to his construction is to take a line & go all around the building & measure into all the angles and around the projections — He & Mr O'Connor had a controversy about the mode of measurement — he first measured the lower ten feet of building by taking the length & breadth of the building — then measuring the buttresses & adding both together; in this measurement the walls & openings and buttresses were measured as solid; there are

In paper of July 9th publication of visitation by Bishop Vandevelde admitted under assurance from complts counsel, that they would prove the Bishop ordered it - also Editorial notice of visitation, admitted in same manner (here insert) -

Rev Isadore Labelle for complt. = Is a catholic priest - was for five years employed in mission in this Diocese - Bishop Vandevelde was Bishop ~~was Bishop~~ when he first took the mission Bishop O'Regan was Bishop Vandevelde's successor - He knew Rev Mr Kinsella - He was pastor of Church of Holy Name - He was present at laying the corner stone - It is the general custom in this diocese for pastors to make contracts for building Churches (Here again testimony of custom admitted by court subject to exception of defts counsel) -

He built two Churches under Bishop Vandevelde and one under Bishop O'Regan, in this diocese - The contracts of these churches were made by him as Pastor - But had the approbation of the Bishops -

Cross-examined - He holds no official position now in Catholic Church = The Pastor signs contracts for building if he chooses - He paid the workmen for building the Churches & collected the money from the people

for the purpose – He knows of his own personal knowledge of no instance of pastors signing contracts but those mentioned by Mr Clowry & himself –

Mr Daniel O'Hara for compl. said he use to act as editor of Western Tablet that the notice of the Bishops visitation of Sep 3d 1853 was written by the Bishop – (here insert notice of Sept 3d in full) That the manuscripts of such notices were generally thrown away as waste paper – that the heading of the paper was selected especially by the Bishop (Here insert a copy of the Heading) That the paper was left at the Bishops house every week – that the Bishop generally saw proofs of whatever was written by him – In paper of Nov 3/53. Notice headed diocese of Chicago – Editorial – cant say who wrote it positively – should think such an article would not appear without Bishops knowledge & assent – objected to, admitted subject to exceptions – (Here insert a copy of said article).

Nov. 5 Editorial objected & admitted subject to exception – (Here insert them) All the extracts above admitted subject to defts exception – Nothing which concerned

the Bishop personally was inserted in the paper without its being first submitted to him — Edward Burling for complainants — Said he was an architect, was present at laying of the corner stone, it was laid by Bishop Vandevilde assisted by Mr O'Connor & Mr Pelz He & his partner superintended the erection of the Church — Their firm name was Burling & Bauman — The foundation except part part was entirely completed in 1853 —

The reason part was not completed they wanted large stones & winter coming on prevented us getting them — He made the estimate of the work as exhibited by bill sued on in this case — It is correct according to the contract — he wrote the contract at the solicitation of Mr O'Connor & he was surprised at the quantity of brick made out more than was in the building — he went over it again — according to his estimate there were 2.452.995. Brick in church costing $15699.00 —

Affs here offered the certificate of Burling & Bauman of the amount due on the contract which witness proves to have been made by him & which is thereupon read to-day & which is in words & figures following viz:

(Here insert certificate)

This certificate carefully states the amount

[12355-71]

due to O'Connor according to the contract
The work was done in a satisfactory manner

Cross-Examined

The number of Brick astonished him. He made a proximate estimate of the number
The meaning of girthing according to his construction is to take a line & go all around the building & measure into all the angles and around the projections. He & Mr O'Connor had a controversy about the mode of measurement - he first measured the lower ten feet of building by taking the length & breadth of the building - then measuring the buttresses & adding both together in this measurement the walls & openings and buttresses were measured as solid - there are Eighteen buttresses - all hollow - each hollow 8 inches by 16" according to the construction of girthing the projections by which the upper thirty two feet of the building were measured, are all measured twice - all the corners are measured

eighteen buttresses - all hollow - each hollow 8 inches by 16; According to the construction of gothing by which the upper thirty two feet of the building were measured the projections are all measured twice - all the corners are measured twice - The walls are hollow the openings between them is eight inches There are twenty one windows - Thirty six feet high by eight wide - The measurement of the upper 32 feet was made by adapting the line to all the indentations and measuring around all the projections and angles it would require 242000 brick to fill openings of windows & doors 1/4 of hollow space between the walls is filled by arches & connections - The contract was departed from by the Parties several times The design was furnished by him a year before this contract was made - There were several plans afterwards prepared by Mr Kinsella - The brick gables on top of the church are considerably in error - They are not built according to the contract - Persons are now engaged in taking them down - There are 6 gables on each side - Mr O'Connor had the plan - could not say whether the fault is his (the witness) or Mr O'Connors - He thinks an allowance for this defective work was made by him in his estimate to which Mr O'Connor agreed The plans he furnished O'Connor were correct

& the work does not correspond with the plan – There might have been an error in the plan in respect to the gables – Mr O'Connor always claimed that he had built according to the plan –

The building was 46½ feet high – The original plan was 36 feet – but it was afterwards altered & made 10 feet higher –

The extra ten feet was of course worth more proportionally than the rest of the wall – The difficulty & expense of the job increasing in proportion to the height No extra charge made on a/c of this addition to height by O'Connor –

The number of Brick included in the computation exceeds the actual number in the building from 500,000 to 700,000 This was made up by constructive measurement – Ordinary Hollow walls are usually measured solid – That is the custom – The reason is that it is much more trouble to build a wall hollow than it is to build it up solid – Chimneys are always measured solid – I am now employed upon the Church architect – I was employed by O'Hara the Pastor of the Church – In this case considering that the space in the walls is 8 inches the space might to be reckoned as solid –

Mr Dermat for complainants = He worked for Mr O'Connor on the Church - saw the present Bishop at the Church in August or September 1854 - The Bishop was looking at the building - dont know whether Mr O'Connor was there or not: The Bishop was inside & outside of the building -

Cross-examined

Has been a mason for twenty years - has been three years in this city - The ordinary price for laying brick the season the Church was built was about $4.00 - He has never built any such building = He does not know how the building was measured = Knew nothing about the contract or mode of measurement -

Mr Scally for complainants - He is stone cutter & furnished the cut stone for the building It was more difficult in this case to set stone there in an ordinary building from the inclined position in which they had to be placed - the large stones had not to be raised high the small stones had to be raised high - Cant tell what it was worth to raise them (after making an estimate) thinks that the fair value of laying the cut stone in the building would be $1400 -

The stones were by the plan required to be

laid at an angle where the bearing was at so few points, it was difficult to hold them in place & the work was difficult & laborious

Defence

Mr Ballantyne recalled by defence = He was the proprietor & publisher of the Western Tablet = The pastoral & letters of the Bishop to his flock were published in it; The list of contributions were handed in to be published by Messrs Breen & Blomy = They were published like any other advertisement & paid for by them = He is a presbyterian & the Bishop was not answerable or responsible for what appeared in his paper = The adaption of the paper as the Bishops organ was the mere use of the paper as a medium of communication to his flock -

(Here the following Questions were put by defence)

Are you or not aware of any public declaration of Bishop Vandevelde prior to the 10th of April 1854 to the effect that the building of the Church of Holy name was against his approbation; If so state when, on what occasion & when it was? (Objected to as irrelevant & objection sustained = exceptions taken by defence

Objected to unless shown to have been made in the presence or hearing of the plaintiff or brought home to his knowledge, or unless the party offering states that he expects to prove the plff had knowledge thereof

Here insert depositions of Bishop Vandevele

James Boggs was then called for defence
He is a carpenter
He & his partner Wm Donoho put the roof on the building – They did according to the drawing & model furnished them by Burling & Bannan the architects – Burling directed them about the work – The roof is made right but it does not fit on the small gables – They are to small & do not correspond with the plan – The gables are not built right – There are twelve (12) of them – They are not made to fit according to the models – They dont fit by three feet, the angles at the apex are to obtuse & the perpendicular is not sufficiently high by three feet – The Gables are now being torn down partially and rebuilt to correspond with roof – The roof is correct according to the model –

Mr Carter by Defence – Is an architect has seen the building known as Church of Holy Name has not examined it particularly – Does not know its size except from the plans which he has examined & are before

[12355.75]

him — The number of bricks in the building according to the measurement which he has made from said plans including half the openings of the windows is 1,206,111. in this he does not compute the hollows of the walls — The walls being hollow some allowance would be made — The space between the walls of eight inches being filled up one fourth by connections — one third of the hollow space should be considered in the measurement as solid — The mode of measurement adopted by Bowling in his construction of "girthing" makes a hundred & eighty feet of wall more than there is in the Church — The word "girthing the building" in the contract would not justify the construction of Bowling by which this quantity is arrived at — Girthing the building "means to adapt a strait line on the outside to each side of the building & then multiply the length thus obtained by the height & thickness of the wall for the quantity — To this the buttresses would then be added — In ordinary hollow walls we usually measure the wall solid because it is more work to make them — I never measured a wall of this kind — Dont know what the custom is as to openings where the person doing the work does not find the material

When the workman furnishes the material the custom is to include for the openings as solid & in this case the builder gets the value of materials as well as labor not actually furnished – It would be worth double the price of ordinary brick laying per thousand to lay the brick in such a building as this –

I made my computation soon to in my direct examination on the basis of a building 36 feet high – If the building was 90 feet higher – of course the number of bricks would be increased proportionally

I knew nothing of the quantity of brick in the building from actual measurement of the building – I have made my computation entirely from the plans of the building submitted to me & which I suppose to be correct – These plans gave 36 feet as the height – But stone work is worth more than ordinary brick work –

There was no building like this put up in Chicago – On a re-calculation of the amount of bricks in the building according to my mode of getting – and including for the openings & counting for the wall solid and I make 1,907,000 brick – If the wall was 46½ feet high & that proportion should be added 29/36 of the above sum should be added to it to get the whole number of Brick –

[12235-46]

Rev Mathew Dillon for Defence = Says he is at present President of University of St Mary of the Lake & has charge of the Parish of Holy Name — He was stationed in the Diocese of St. Louis before Bishop O'Regan came here — He came here with Bp O'Regan about 13th August 1854 — Bishop O'Regan requested him to come — Bishop O'Regan rejected his first appointment as Bishop of Chicago & sent it back to Rome — He recd a second appointment and accepted it & on 12th July 1854 he (the witness) recd a letter from him requesting him (Mr Dillon) to come to his consecration on 25th July & accompany him to Chicago — He the present Bishop was then President of a seminary at Carondolet near St Louis — Thinks he the bishop recd his second appointment in July 1854 — an administrator is clothed with episcopal functions, to a certain extent — The councils of Baltimore are binding on all the Catholic Clergy in the country — (Here defence offered a canon of the 5th Baltimore council in evidence — The counsel for plffs agreed the witness might write a translation of it & it could be offered afterwards) Mr Dillon further said that a pastor must have either written or express authority from his Bishops before he can commence to build a Church — It is the duty of the pastor when

"This evidence was all excepted to by Plff's counsel - The witness states that the appointment - refusal & acceptance were all in writing —

he has the assent of his Bishop to build churches –

Here insert the translation of the Canon" A. Church commenced without the authority of the Bishop would be improper – The jurisdiction and authority of a Bishop commences when he accepts of his appointment – an administrator is clothed with Episcopal functions – but can do no act to bind church property – His appointment is merely temporary in the absence of a Bishop to maintain the discipline of the church until the vacancy is filled with a Bishop – his appointment comes from the Metropolitan & not from the Holy See – whence alone a Bishop's appointment can come –

If a Bishops resignation of a Diocese were accepted by the Holy See such Bishop might nevertheless be retained in his place & continue to exercise all the duties of the office until his successor was appointed, if so directed or empowered by the Holy See –

Re-production of testimony by complts

N. Price for complts – Is a master builder & taken contracts to amt of $75,000. a year – Thinks that the price stated in the contract is not too much for work of that character –

[12355.77]

The extra price is caused by the want of floors & the necessity of having high scaffolding built – openings similar to those in the plan (here produced) are much trouble – Thinks the contract was a fair one & would not have taken it on the same terms –
The price of common brick laying was $4,00 a thousand –

Cross Examined –

The price $6,$\frac{40}{100}$ is much above the common price for laying brick but is right for work of this kind – It was worth $4, a thousand that season to lay common brick
Above evidence of Quantum Meruit was objected to by Defence – objection over-ruled evidence admitted subject to exceptions of Defts counsel – & so of all the rest of the testimony on Quantum Meruit – " –

Price Am a master builder & have large contracts – Knew the Church of Holy Name I was familiar with the Comm contract – consider it was no more than a fair contract – I would not have taken it on the same terms – The price of common brick laying was $4, a thousand that year – "

McDermot for complts – He set all the cut stone in the building – It was very troublesome – Dont think price of contract to high – It was a fair price for the work &c

Here insert instructions for complainants asked by counsel

Here insert instructions asked for defence by counsel (& exceptions on refusal) –

Here insert instructions given by Judge

Motion for new trial overruled &c

And the Defendant prays that this his Bill of exceptions be signed & sealed by the Judge of said Court which is accordingly done –

Done at chambers this 6th day of December 1855 } John M. Wilson (Seal)
Judge of the Cook County Court of Common Pleas

State of Illinois
County of Cook } SS

I Walter Kimball, Clerk of the Cook County Court of Common Pleas in & for said County and State, do hereby Certify, that the foregoing is a true Copy of the Bill of Exceptions as filed in my office on the Sixth day of December Eighteen hundred & fifty five, in the Case of Charles Hommer vs. Rev Anthony O'Regan.

In testimony whereof I have hereunto set my hand & the seal of said Court at Chicago in said County this 16 day of June 1856

Walter Kimball, Clerk

68.

O'Regan

vs

O'Connor

Filed June 18, 1856
L. Leland
Clerk.

Fees paid by Pltff atty. $6.50

State of Illinois
Cook Co } ss

Charles O'Connor
vs
Anthony O'Regan

Edwin C Larned on oath states that he is of counsel for the plaintiff in this suit - and was present when the Original Bill of Exceptions was presented for signature in this cause - to Judge Wilson and that he saw the same filed in the Clerks Office within a day or two thereafter - . That he carefully examined said bill at said time - and that in said Original Bill the following words following in

"And this was all the evidence introduced in "this case" were not inserted - nor was there in said Original Bill of Exceptions as filed any words to that effect - or any statement that the said Bill contained all the evidence

And this affiant further states that in said Original Bill - as filed - there was ~~[illegible]~~ no statement - of any exception - to the Instructions given for the Plaintiff - or to any instructions ~~given~~ asked by the defendants - or to any Instructions given by the Judge - . or that any exception was taken to overruling the motion for a new trial - . But the Original Record as filed showed no exceptions whatever to any of the Instructions - ~~and no~~ . . That this affiant ~~at~~ shortly after the time the said bill was filed called the attention of the Clerk of said Court to said bill - and stated to him that he this affiant desired him to note, that the bill of Exceptions filed in this cause contained no

or that any instructions were refused

statement that is contained as the evidence - and no statement of any exception to any of the instructions - & that said Bill ~~[illegible]~~ must not be altered, or changed in any particular, without notice to him

And this affiant further states, that he omitted to give any particular care to said Bill so far as the evidence was concerned & ~~[illegible]~~ omitted to have a good deal of the evidence for the plaintiff - by Burling & other interpr. - set forth in full - because as said Bill had been prepared he did not deem it necessary to bestow much labor on it -

And it was a subject of remark in the law office of this affiant & between him and his associates Mr Arnold & Mr Lay that the Bill as drawn did not require any particular detail of the evidence! -

And this affiant further states that no notice was ever given to him or to his partners as he is informed & believes of any alteration or amendment of said Bill of Exceptions - and that all the alterations & amendments made therein have been made without the knowledge or consent of this affiant - ~~or any of the ass~~ or his associates -

And this affiant has never seen the Transcript of the Record filed in the Supreme Court

But this affiant states that the "agreed" said Record contains - a statement - "that this was all the evidence which was offered" and also a statement that the instructions ~~given~~ asked for the Defendant ~~was~~ & refused were excepted to - ~~and~~ by the Defts Counsel - & that the instructions given by the Judge were - excepted to by Defts counsel - all of which statements - are additions & alterations to the Original Bill not found in said Bill when filed & inserted therein without any notice to a consent of the counsel for the plaintiff -

Subscribed & Sworn to before me this 13th day of June AD 1856
W Kimball Clerk
Cook Co Ct Com Pleas

Ann. Clarke

[12352.81]

Oreilly
vs
Oconner

affidavit of
E. C. Larned

Filed June 14 1862
L. Leland
Clerk

I B G Caulfield testify and say. that I was of counsel for Anthony O'Regan in the suit of O'Regan vs O'Connor now pending in this court. I further say that I obtained the order in the court below giving 30 days time to file bill of exceptions, and know that said order was made on the 6th day of November, and that said bill of exceptions was signed within the 30 days. — The record omits to distinguish between the time the verdict was rendered, and the time when said order was made whereas I distinctly recollect that the verdict was rendered on the 5th Nov, and the order giving time was made upon the ~~above~~ next morning the 6th Nov —

I further say that the bill of exceptions as originally made out, ~~contained upon~~ contained a direction to insert the instructions asked for by deft and upon that instructions was noted the fact the instructions were refused, and the refusal excepted to by the deft — In fact the refusal to give said instructions was excepted to at the time, and this deponent supposed that the clerk in making out the record would make it up in due form — This deponent further says. that the instructions given by the court were excepted to at the time when they were given — This deponent further says. that said bill of exceptions contains substantially ~~substantially~~ all the evidence given on the trial of said cause, ~~as appears upon the trial~~ — as this deponent understood when the bill of exceptions was signed. That upon examination of the record he applied ~~that~~ to the Judge of said court, in open court, and requested that said bill of exceptions might be amended, by inserting in accordance with the fact, that it contained all the evidence introduced in the cause, and that he refused to give instructions asked for by deft, and that exception was taken to such refusal and to the giving of the

* was ~~upon~~ handed to Judge Wilson by counsel on both sides — There was at that time some discussion about a portion of the testimony, Plaintiff's counsel insisting that it was finally agreed to by the Judge, and made by stipulation, and that it was omitted from the record by the clerk, and that the exception Mr Samuel stand as Mr Samuel claimed it, and the Judge ~~omitted~~ & the statement of the evidence being correctly made

[12255-82]

instructions which were ~~asked~~ given — The Judge ordered the bill of exceptions to be so amended and thereupon the clerk inserted such amendments in the transcript, and the same was altered appears in the aff't of said Clerk hereto annexed. The order for the amendment was made at the Sence Term of the Court of Com Pleas, and without notice to the opposite party —

B. G. Chilfield

Chas O'Connor
vs
A O'Regan

I Walter Kimball Clerk of the Cook County Court of Common Pleas being first duly sworn depose & say, that the amendments to the bill of exceptions in the case of above were made ~~at~~ on the application of B. G. Caulfield ~~to the~~ agts" atty to Hon John M Wilson whilst sitting in chambers during sitting of June term of court & deponent was acting as clerk, that said Wilson ordered said amendments to be made & then & there approved thereof above his certificate ~~certified thereto~~ and that the amendments were as follows" and this was all the evidence introduced in this case" — and it being noted in the former part of the record that exceptions were taken to the instructions given by the court — it was again inserted — "and that the exceptions to the refusal of the instructions asked by deftes were ~~noted~~ & are in the original bill of exceptions. as deponent verily believes ~~June 14th 1856~~ and deponent was mistaken in the affidavit made by him on yesterday when he stated that the last mentioned exceptions were not in the original bill of exceptions

Walter Kimball

Subscribed & sworn to before me this 14 day of June 1856

L. D. Ward
Cook Cir. Ct.

[12355-83]

Anthony O'Regan
vs
Charles O'Connor
Ex Aff &c

Filed June 16. 1856
L. Leland
Clk.

Supreme Court - June Term 1856 -

Anthony A. Regan
vs
Charles O'Conner

Appeal -
from Cook County
Court of Common Pleas

And now Comes said O'Conner and moves the Court to strike from the transcript of the record herein - the bill of Exceptions filed in the Court below on the 6th of December 1855 -

And if the Court should not sustain that motion - then to strike out - on page 112 of the said transcript the words "And this was all the evidence" "introduced in this cause" and also to strike on page 117 - the words "which instructions the Court" "refused to give and defendant then &" "there entered his exceptions to the opinion" "of the Court in refusing said instructions"

[12355-85]

O. Regan
vs
O. Conner

Motion to Strike out bill of Exceptions or a part thereof

Filed June 16. 1856
L. Leland
Clerk

State of Illinois } ss
Cook Co

Charles O'Connor
vs
Anthony O'Regan.

Walter Kimball on oath states that he is Clerk of the Cook Co. Court of Common Pleas - and was clerk on the 5th Dec - 1857. - That the original Bill of Exceptions filed in this cause - as the same was filed - did not contain - the following words viz -
"And this was all the evidence introduced in this case"
and that the said original Bill of Exceptions as filed contained no statement of any exception having made & overruled to any instruction by the Court - or of any refusal of the Court to give any instructions on either side -

That the words above mentioned viz. "And this was all the evidence introduced in this case" were inserted in said Bill after the same was copied into the transcript of the Record and during the present week. That they were inserted at the request of the Defendant's counsel and upon - the understanding of this deponent that their insertion had been authorized by the Court —

That the statement in said Record ~~Bill~~ that ~~the~~ any ~~exceptions~~ Instructions were refused - and of the exception taken by defts counsel thereto was also inserted after said transcript had been made up and during the present week - and this affiant himself wrote out the form of the same - and they were inserted in the transcript of Record sent up to the Supreme Court upon the understanding

[12355-86]

of this deponent that the same had been authorised & allowed by the Court

That the same alterations which ~~appear~~ were made in said Transcript of the Record were made - on the said Bill of Exceptions on file in this office at the same time of the alteration of the said Transcript -

Walter Kimball

Subscribed & Sworn to before me this 13th day of June AD 1856
Louis D. Hoard
Clerk of the Cir Ct

And this affiant further states that ~~the~~ E. C. Larned of Counsel for the plaintiff called upon him in his office about the time said Bill was filed - and called his particular attention to the fact that the said Bill of Exceptions as filed contained no statement that it contained all the evidence - & no statement that any instruction was refused & that any exception was taken to the giving & refusal of any instruction and that he desired this affiant to take particular notice of this - and that the said Bill of Exceptions must ~~to~~ not be altered or amended in any way without notice to this affiant

Walter Kimball

Subscribed & Sworn to before me this 13th day of June 1856
L. D. Hoard Clerk
Cook Co Cir Ct

O'reilly
vs
O. Connor

Affidavit of
Walter Kimball
Clerk of Co. Ct. Com. Pleas

Filed June 14, 1882
L. Leland
Clk

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois,

To the Clerk of the Circuit Court of County, GREETING:

WHEREAS, in a certain plea between plaintiff and defendant, lately depending in the Circuit Court of said county, wherein judgment was rendered for the said and against the said and the said the judgment of said Court, rendered against as aforesaid, to the Supreme Court, held at Ottawa, on the and in pursuance of the said a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said that the said record has been diminished, inasmuch as the time when the order was made giving 30 days time to file bill of exceptions hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, that, without delay, the said therein you cause to be transmitted to the Supreme Court, to be held at Ottawa, on the next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of said Court, and the seal thereof, at Ottawa, this day of in the year of our Lord one thousand eight hundred and fifty-

Clerk of the Supreme Court.

Anthony E. O'Regan
vs
Charles O'Connor
Precipe.

Filed May 21, 1856.

Chicago May 17th 1856

L. Leland Esq

Dear Sir – Wm F. Johnson was ~~pltff~~ compltt below & is the ~~pltff~~ compltt in error. It is a chancery case taken on writ of error from Cook County Court of Common Pleas – we are for Johnson. You will also please docket the case of Charles O'Connor vs Anthony O'Regan Catholic Bishop of Chicago, as if the record accompanied. This is an appeal from Cook County Court of Common Pleas. Chs O'Connor pltff below. A O'Regan plaintiff in the appeal, or appellant – we for O'Regan.

We enclose you $10 – to pay docket fees in both cases, or rather, as it is so dangerous to send money by post, I will send you a check on R. K. Swift & Co. of this place. May I ask you to inform us if you can when these cases are set for? We will send the records down as early as possible. Yrs &c Waller & Caldwell

STATE OF ILLINOIS, } ss. **The People of the Ssate of Illinois,**
Supreme Court,

To the Sheriff of the County of Cook **Greeting:**

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~circuit~~ Cook Court court of Common Pleas of Cook county, before the Judge thereof, between Charles O'Connor Plaintiff & Anthony O'Regan

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

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Charles O'Connor

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Charles O'Connor

notice, together with this writ.

WITNESS, the Hon. ~~Samuel H. Treat,~~ Walter B. Scates Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of May in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

[12355-92]

C 1171

Anthony O'Hegan
vs
Charles O'Connor
Sci Fa.

Filed June 7. 1856.
L Leland
Clerk

The accepts service of the within writ
Charles O'Connor
Per Stephen Chase
Atty

Service of the within writ
Aug 23 1856
R. C. Stuart
Sheriff