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Supreme Court of Illinois

Cook et al

VS.

Rofinot & Rice

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Theodore F. Cooksothers Peter & Refinitely Mindon Ilevoit Eld. Leter Roferest that Record Record Film April 19. 1889 Le Leleurd Clack.

Sup ci Good Nal Rofinol Mici Porit Wiled april 29/59 L'Allmus Coloch Isould PE: 496/2

IN THE SUPREME COURT.

COOK ET AL.,
vs.
ROFINOT & RICE.

This case is the same as Cook vs. Vreeland, except that McGraw is not a party; and,

Under the 5th, It is no where alleged in the petition that the materials were in fact used in the building. 18 Ills., 318.

Under the 16th, The lien of McGraw is preferred, without any of the Defendants being party to the proceeding.

The 2d, That plea of Isaac Cook of the pendency of the Vreeland suit should have been allowed.

In completed was to the the Waste was to no aversunt that less than there years went have been a reason able time to complete the works—
When the rights of their pressured are invalued a strict compliance with the law-

Anited States of America State of Illinois, county of cook, s. s. State of Illinois, county of cook, s. s.
STATE OF ILLINOIS, COUNTY OF COOK, S. S.)
Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court Slouse in the City of Chicago, in said County, on the
Oursh Monday, (being the Mush anday) of
Oxter asake Blanch in the year of our Lord one thousand eight hundred and
Present, Honorable Descript Marcier Judge of the State of Illinois.
Present, Honorable July Manuer Judge of the 7th Judicial
Circuit of the State of Illinois.
Present, Honorable Denny Mancierro Judge of the 7th Judicial Circuit of the State of Illinois. S Carlos Manin States Attorney. Attest; M. Charles Cierk.
of John S. Wilson Sheriff of Cook County.
Attest; M. Church Cierk.

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We it Remembered that heretofore, to with: on the muith day of Lebruary as: 1854 Peter Rofinst and Thomas Rico, lete tioners by George at Ingalls Esy their Solicitor feles in the office of the Clark of the Circuit Cont within and for the County of Cook in the State aforesaid, their Certain heceps, with a Petition for a mechanics Lein, the same having been subsequently thereto, to wit; on the 12th day of Sund of sais year, amendes by adding the name of William I Burgess as a defendant therein, and refiles as amended, (amendments in in ned into) which Precipe and Petition are in the words and figures following towns Cook County Cercuit Petry Rofinst and Thomas, Rice Court - Of the march. Theodone D. Cook Space Crok, Horatio Derw as 1854_ N. Neald, Wilson metter, Incob. D Dibble Petition for a Mechi Sen. Sa. & Barbons, Newy P. Brewsto, Charles I Hozh Charles Notelwell Francis A. "The clerk will please Benson Ivel Durley, Dudley A. Farlin Milliam Jones Milton & Patrick, Strong your Summons in The Wadsworth, Sonis S. Mity, Newy W above sutitled cause to Belleutine. Oraneis a. Hoffmand the above named defin-Otto Velpele. dants to auriour letition files herein, returnably at the next march dum of this Coul. Des. a. higalls. Solicitor for Complainants To the Honor able the Circuit Comb of Coak Com The letition of letu Rofinsh and Thomas Rice of the City of Chicago County of book and State of Illiuris. Respectfully sheweth unto your

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your Honor that subsequent to the modering of

said Contract as aforesaid and on or about the twenty fifthe day of home as 1856- your lelitioners made a supplementat and further agreement with the said Coul in and by which your letitioners agreed to funish Eight Estra Moulded Mudon Caps for said dwelling, and the said Coul on his part agreed to pay for said extra midno Caps at and after the valu of eighteen dollars each, neaking therefor the sum of Que Hendred and forty Dollars (\$144, and ales two learbels for a door way was on or about the day last aforesaid agreed to be furnished by your letitioners as extra on said house, and the said Cook agreed on his part to pay therefor the sun of two dollars and fifty cents euch meading for both the sum of dive dollars \$5, making in the aggregate for the dressed stone to be fruithed meder said several loutracts the fund of seven hundred and muity nine dollars

And your Petitioners feather shows unto your Honor that on or about the first day of October asses by your petitioners made a feather agreement with said Cook in and by which the said lovok agreed so far to exactify to alter and secondify the said agreement herein before described in that you Petitioners should be released and discharged from funishing the Cut stone for the front steps of said develling, in consideration

whereof your letitioners agreed with the said book to abate from the price to be paid by the said book for laid Cut stone as aforesaid to your Petitioners, the sure of two hundres and fifty seven dollars and fifty cents (\$257 is leaving a balance of few huntred and forty our dollars and fifty Cents for said Cut stone so to be furnished for laid devilling as aforesaid and your petitioners further show unto your Honor that a pretion of Raid Runs of nuney were to be by the terms of said Contracts paid your petitioners on estimates as the work progressed, reserving fifteen for Cent until the Contract was finished, when the whole account should become du aux payable-And your petitioners further shows unto your Honor that Petitioner's said several agreements with the said Coul were verbal and not reduced to writing and your Petitioners further show unto your Honor that on or about the sixteenth day of knew ad 1886 they commenced the herformance of their said agreements with the said Coall in Confounty with the same and dilliquity prosecuted the ears work of furnishing the said Cut stone as aforesaid for said dwelling and have completed the same in the manner by their required in and by the termis of faced agreements, and your letitioners further show muto your Honor that the sun of Sive Hundred and Joty Our dollars and fifty cents so due your petitioners from the said theodore I Look, the sum of Three Hundred dollars has been

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faid your Petitioners on faid Cut stone so furnished as aforesaid, leaving a balance of two kundred and forty one dollars and fifty Cents mon remaining down your Petitioners from the said Theodone Or Coal on said agreements for furnishing said Cut stone as a foresaid.

And your Petitioners further show unto your Honor that the said Theodore I beath purchased the above described Real Estate of one Namison A. Huster of the City of Chicago, and that the said Auster gave the said Theodore Plooak, are agreement six writing whereby the said Auster in Consideration of Certain farments the made by the said book & the said Nuster the said book & the said Nuster agreed to make execute and delined adeed of said premises to said Conto—

And your Petitioners further show unto your Honor that a portion of the purchase meoney for said from - ises has been paid by the said Cont to the said has been south that a portion of the same still remains due and unpaid, not having yet faller due by the terms of said Contract-

And your letitioners furthe represent sente from
Honor that they are informed that Isaac Coast Horalis

A. Nealo. Mileon Metter, Jacob Debolh, Ira G. Barbon.
Newy P. Morerosta Charles S. Heigh. Charles N Stellevell
Francis H Benson, Irel Simly, Duelly H. Barlin,
Milliam Jones, Mitton S. Patrick, Strong Hadsworth,
Jonis J. Nitz, Henry a Ballentine, Chancis a Hoffman
and Olto Gelpeke. Claim to have some interest

aforesaid, and that a Late of said dwelling and the right. Estato and interest aforthe said Theodone It book in said Real Estate at the time of making Daid Contracts, may be ordered and decreed by this Honorable Court aux the proceeds of such sale be applied to the discharge of paid Jugment in pursuance of the Plateto in such Case meade and provided, and that the said defendants Isaac look Horatis A. Heals, Helson Mitthe, Jacob D Dibble, Ira C. Barber, Newy P. Brewston, Charle J. Horst Charles H Stetlewell, Grancis Ho Benson, Soll Bernly, Dudly H. Vanlaw, Helliam Somes. Millow S. Patrick Strong Hadsworth Jonis J. Nilz, William J. Burgess Henry al Vallentino, Janeis a Noffman and Octo Delpech, be forever barred and foreclosed of and from all claim and rulenest in and to the presuises and appointenances herewheford set forth and describer to the prejudice and injury of your lititioners and for such further and other relief as this Honorable Court shall deem need and proper to grant and gow petitioners will ever pray, of Dev. a. Ingalls Solution & letro D. Rofinst for Octitioners & Thomas Rice" County of Coult P. Petro D. Rofinsh and Thomas Rieo of Laid County being fuit duly Down according to law deprese and say that they have heard read the above and annexed letition by these severally subscriber, and know the contents thereof and

that the same is true of their own knowledge, except to to the matters therein states on their information and belief and that as to such mutters they believe them to be true, Dubscriber aux Swom to before Vetw H. Ropins my by the above named life & Thomas Rice " Ropins of Thomas Rice this ythday of Petruary ad 1857 Do. P. Preer. Martin in Chauna, Corn Co" ared thereupon afterwards, towil on the got day of debuung in the grad last aforesaid, the sais letitioners sues out of the office of the Clut of the Comb of oresair the Reoples with of summons in the words and figures following, towit: Drate of Illiens bounty of book, as, The People of the State of Illien's to the Shengs of Laid County, Dreeting! HE Communityon that you summed Theodore In broth Lace Cook, Noratio N. Heald Wilson Mittle Facol Ddibblo, ha Co Barber, Newy P. Brewstn, Charles & Hogh, Church Hotelwell Francis A Benson, Ivel Ourly Dudly A Varlan, Millian Jones, Milton D. Patrick Strong Wadsworth, Sonis & Hitz Henry a, Balleutino, Oraneis a Hoffman and Otto Delpeck if they shall be found in your County personally to be and appear before the Circlish Court of book County, on the first day of the next term thereof to be holder at the Court House in Chicago in said Comety, on the fiet Monday of Minch next, to answer unto Petro O. Rofinsh and Thomas Riev in Their certain Petition files in this Court, for a Mechanico Sern, And have you then aux there this with, with an

endorsement thereon, in what manner you shall have executed the fame-Seal I said Court, and the seal thereof, at Chicago aforesaid, this ninth day of Hebruary, a D. 1857. and on the 12 th day of February, in the year last a. foresaid, the Said defendants, Jacob D. Dilble, and Wilson Metter filed in the Court aforesaid, their appearance in writing, in Said suit, in the words and figures following, to witand now comes the said Wilson Metter and Jacol D. Dilble, two of the above named Defendants in this cause, by Shummay, Waite and Your, their at toneys, and enter their appearance herein, and waive dervice of process, on them herein_ Thumway, Waite & Town attys for Mettler & Dibble and afterwards to wit, on the 28th day of February in the year last aforesaid, the said sheriff returned Said writ into the Court agreeaid, endorsed as follows, to wit- Served this writ on the within named Isaac book and Theodore H. book, by delivering a copy hereof, to each of them, the 13th day of Hebruary 1857. als on the northin named Horatio M. Heald, Ira. C. Barter, Charles J. Hogt, Charles H. Stitwell, Francis H. Benson, Joel Guler, Judley H. Harlan, Strong Wadsworth, Louis J. Hitz, Francis a. Hoffman, and Otto Gelpeck, by de livering a copy hereof to each of them, the 19th day of 512718-17

February, 1837 the remaining defendants not found in my county, the 28th day of Hebruary, 1887. 13 Copies 6,50 John L. Wilson, Sheriff 13 Miles '63 By John H. Dart, Deputy 1 Return 10 \$13.75 Paid by Plats altyand afterwards, to wit, on the sixth day of March, in the year last aforesaid, the Said defendant, Isaac took by Harnsworth & Burgers, his attorneys, Itled in faid Cours his Olea to the Petition of Said Petitioners, which is in the words and figures following, to wit-The Olea of I save book, one of the defendants, to the Said Petition in this cause This defendant, by protestation, not confessing or ac knowledging all or any of the matters and things in the said Complainants petition mentioned and con tained, to be true in such sort, manner and form as the same are therein set forth and alleged for Rea to the whole of Said Petition, Says that before the com mencement of this suit, on the ninth day of Hebrua ry, in the year, eighteen hundred and fifty seven, one Henry Orceland exhibited his Petition in this Court, against the Defendants in this Cause, the Said Theo dore H. Cook, Harrison W. Husted; I sace book, Horatio M. Heald, Wilson Metter, Jacob D. Dibble cha C. Backer, Henry P. Brewster, Charles J. Hoyt, Charles W. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Harlan, William Jones, Milton S. Patrick, Thong Wadsworth, Louis J. Hitz,

Henry a. Ballentine, Francis a. Hoffman, and Otto Gelpeck, setting forth, among other things, bhat he, the Said Henry breeland had by and under contract made with Said Therdore H. book, done work and labor, and furnished materials in and towards the erecting of a building upon certain premises, which are the same building land and premises set forth in the Said Relition in this cause to the amount and value of \$ 20493 . and which had become due under Laid contract, within six months next preceding the filing of Said Petition, and praying, among other things, that a lien might be established on said Lands and from ises, in his favor for the said amount, and the same sold to satisfy the same as by the said petition now remaining pending in this Court, not dis missed or otherwise disposed of, will more fully and at large appear and this defendant insists that the said claim of the Said Henry Vreeland hath become by the filing of his Said Petition, a Lien and charge upon Said Lands and premises, and that all such Liens under the Statute, should be made against Said Lands and premises in the same suit to inter pleading and not otherwise -

all which several matters and things this defend ant doth over and plead in the Said Petition so fit ed by the Said Henry breeland, and now pending of this Court, in bar to the Said Complainant's present Bill-and demands the judgment of the Court, whith er he shall be put to make any further answer thereto

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and the said complainants, as to the said plea of the said defendant I save book, to the said complain ant's Relition, not confessing all a any of the matters and things in the said defendant I save book's answer to be true in manner and form as the same are there in set forth and alleged, doth dernur thereto, and for cause of Demurrer, showeth_ First. That the Said I save bosh hath not show or alleged in and by his said pleas that the Complain ants in this bause had any notice of the filing of the petition of Henry breeland, for a lien upon the frem ises described in Said plea-Second_ That the Complainants in this Cause are not bound in Law to interplead in the case of the Bete tion of Henry Orieland mentioned in the Said plea of the Said I saac book, as stated in Said plea, but or the contrary have a right under the Statute, to commence original proceedings, by petition and Jummons, as by Statute provided, regardless of suits of other persons Third - That Complainants in this Cause are not permitted by Loan to have their blaims adjusted an allowed against the premises in said petition describ ed, except by the commencement of a suit by the fil ing of a petition, and the issuing of a Summons, as to the Statute in such case made and provided_ and the Said Complainants further Say that the matters and things contained in the Said plea of the said Isaac book, in manner and form as there. in set forth, are not sufficient in Law to bar or

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preclude the Said Complainants from having or main taining their aforesaid suit, against the Said defend and I saac book, and that Said Complainants are not bound by Law, to answer said Plea and this the Said Complainants are ready to verify - Wherefore by reason of the insufficience, of said plea, in this behalf, the Said Complainants pray judgment, and their damages, by reason of the not performing of the Said several promises and undertakings in the Said Petition charged and alleged to be adjudged to them, &c.

Geo. a. Ingalls-Complainants Solicitor

and afterwards, to roit, at the March term of said Court, to roit, on the 9th day of april, in the year last aforesaid, the following proceedings among others, were had and entered of record in said cause, to noitand now come the Said Petitioners, by George a. Ingall, their Solicitor, and the Said defendant I save book, by Um. J. Burgess, his Solicitor, also comes, and the Court having heard bounded as to the demuner of the said Be titioners, to the plea of the said defendant Isaac book, by him herein pleaded, and having inspected his said plea and the demurer thereto, and being now fully advised of and concerning the grounds of Said demuner, finds that said defendants plea is insufficient in law to bar or preclude the Said Petitioners from having and maintaining their aforesaid action, the demurrer is therefore sustained -

and afterwards, to roit, on the 16 th day of aprily in the

year last aforesaid, the said defendant Isaac book, I his said attorney filed in said Court, his answer to the Retition of the Said Petitioners, which is in the roads and figures following to noit -The answer of Said Isaac book to the Petition in this Cause_ This defendant now and at all times hereafter saving and reserving to himself, all and all manner of benefit and advantage of exception to the Said Petition, for the many errors, uncertainties and other imperfections therein contained, for answer nevertheless to so much and such parts thereof, as he is advised is or are ma terial or neccessary for him to make answer unto, he an swering, says That he has no knowledge or information Save from Said bill of complaint, whether or not the Said complainants, and Said Theodore H. Cook, entered into a verbal contract for the said complainants to fue. nish the dressed stone for the building in said bill de scribed as therein charged, and therefore can neither admit a deng the same, but requires proof thereofand this Defendant further answering, says that he has no knowledge or information, Lave from Said bill of complaint, whether or not the said complainants and Said Theodore F. book made any such variation in the terms of Said contract, if any such was made, as is in and by Said bill charged, and can neither admit or deny the same, and leaves the complainants to their proofs_ and this Defendant further answering, Jays he has in

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and this defendant further answering, says that he did on the 23 th day of December, a D. 1856. and as he is informed and verily believes before the hier of Said petitioners so attached as aforesaid, file in the office of the clerk of the book bounty bourt of common pleas, his bill of complaint on the Chancery side of Said Courts to foreclose Said mortgage, making said Theodore F. Cook and N. M. Heald parties defendant thereto, that due personal service of process was had whon them in Said suit, to answer said bill, and such proceedings were afterwards had in Said eause in Said Court, that at the January Germ, a D. 1857. a decree was rendered directing the Sale of Said Lands and premises, to satisfy the amount of said mortgage indebted ness of \$ 8145 and cools of suit, as by the records and proceedings of sais Court, reference being thereto had, will more fully appear That afterwards, and on the 29th day of January a D. 185% L. C. Paine Freer, master in Chancer, in and for said county, under and by virtue of Said decree, did proceed in pursuance thereof, to offer Said Lands and premises for Sale, and the same were thereupon then and there duly struck off and sold to William J. Burgess, and he be came the purchaser thereof, of which said sale, Said Free duly made to Said Burges, a certificate, and filed in the office of the Recorder of Said county, a duplicate thereof, and reported said sale to the said Court of bon mon Pleas - as by the record of Said Court, and of Said Recorder's office, will more fully appearand this defendant insists upon the pendency of

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1887. William J. Burgefo, one of the defendants in

Said cause, entered his appearance therein, by an en-

doesement on the back of the Petition, in the words and

Jigures following, to soit -

I do hereby enter my appearance to the within bill as amended, the same as if served with process, to the June Special Ferm a D. 1887 - april 284, 1857.

And afterwards, to roit, at the april Term of said bout, to wit, on the 29 th day of april, in the year last afore Said, an order was made in Said cause, in the roads and figures, to wit-

Ordered on motion, that the said Petitioners have leave to file a Supplemental petition, making William &. Burgess, party defendant in the above entitled cause, and that this cause be continued to the next term of this Court

and afterwards, to roit, on the 12th day of June, 1857. Said Petitioners, by their Said attorney, filed in Said Court, their Supplemental petition in Said cause, which is in the words and figures following, to noit-To the Honorable, the Circuit Court of book County-The Supplemental Petition of Peter & Rofinst and Thom as Rice of book bounty in the State of Illinois, Complain ing, Respectfully show unto your Honor, that on the 94 day of February, 1857. your Petitioners exhibited Their orig inal Petition in this Honorable Court, for a Mechanics Lien, and making Theodore & Cook and others, defend anto in Said suit, that afterwards, to wit, on the day of AD. 1857. These Complainants were permitted by this Donorable Court, to file their Supplemen petition in this Cause, making William J. Burgers

party defendant in said bause, and your Petitioners

Thow unto your Honor, that since the filing of said original petition, your Petitioners have been informed that the Said William J. Burgers has or claims to have some interest in the Lands and hereditaments in Said petition described, but as your Petitioners are not fully advised of the nature of such pretended claim, wherefore your Petitioners pray that the Said William I. Burgess may be made a party defendant with the other defendants in Said Original petition, and that a Tummond may issue out of this Honorable Court, to the Said William J. Burges, commanding him to appear before this Honorable Court, to answer Said Orig. inal petition, as by the Statute in such cases made and provided and your Cetitioners pray judgment against the said William J. Burges, that he be forever barred and fore

and your Petitioners pray judgment against the said lovilliam I. Burgefs, that he be forever baned and fore closed of and from all claim and interest of, in and to the premises and appurtenances in Said Original petition described, to the prejudice or injury of your be titioners, and for such further and other relief as this

Honorable Court may deem meet and proper to gran, and your Petitioners will ever pray-

By Geo. A. Angalls, his Solicitor Thomas Rice,

By Geo. a. Ingalls, his Solicitor. I do hereby enter my appearance in this cause, the same as if served with process issued in this Cause.

June 12. 1857. W. 3. Burgess.

and afterwards, to poil, on the 22 m day of June, in 21 the year last aforesaid, the Said Petitioners, by their said Solicitor, filed their Replication to the answer of Isane book, in Said Cause, which is in the words and figwee following to wit-The Replication of Peter H. Rofinot and Thomas Rice to the answer of I saac book, one of the above defendants These Repliants saving and reserving unto themselves all and all manner of exceptions to the manifold in. sufficiences of the Said answer, for replication thereit, Say that they will over and prove their Said Petition to be true, certain and sufficient in the Law to be an swered unto, and bhat the Said Defendant's is untrue, uncertain and insufficient to be replied unto, by this Repliant - without this that any other matter or thing whatsoever, in the Said answer contained, avoid ed, traversed or denied, is true - all which matters and things, these repliants are, and will be ready to aver and prove as this Honorable Court shall direct, and hereby prays, as in and by their Said Petition, they have already prayed-Veter F. Rofinst and Thomas Rice, per George a. Ingalls, their Solicitor. and afterwards, to wit, on the 22 nd day of June, in the year last aforesaid; the Said defendant Poilliam 9. Burgers, filed in the Court aforesaid, his Slea to the amended Petition of the Said Petitioness, which is in the words and figures following, to wit The Olea of William & Burgess, Defendant, to the 1/2718-12

Bill of Complaint of Said Rofinot and Rice, in this cause, as amended This defendant by protestation, not confessing or ac. knowledging all, or any of the matters and things in the Said Complainants Said Bill as amended, to be true in such sort; manner and form, as the Same are therein and thereby set forth and alleged, doth plead thereunto, and for Plea saith; that hereto fore, to wit, on the 22 nd day of December, a D. 1856. Edward Lo. Comby and Thomas P. Bym filed in the book bounty bourt of Common Pleas, their certain Bill of Complaint or petition, and amendments thereto, filed on the 17th day of april, a D. 1887. by said petition, and amendments thereto-setting forth among other things, that on or about the 20th day of August, a D. 1886. Theodore H. Book of Chicago aforesaid, by a verbal contract of that date, employed said bonk and Bym to furnish gas pipe for a certain dwelling house then in process of erection, by Said Theodore H. book, on a certain piece of land situate in Said City of Chicago thereinafter described, that by the terms of Said verbal contract, the said bomb, and Bym were to receive for the materials aforesaid, as much as the Jame were

reasonably worth that the same were to be furnished

immediately thereafter, and paid for as soon and as fast as delivered and applied - That in pursuance of Said Contract, they furnished for Said House, and

applied in and towards the exection of the Same, on the 21th day of august, A. D. 1856. materials worth

the sum of sixty nine dollars and thirty cents which remained due and unpaid at the time of filing Said Petition_ That Henry Orceland, Benjamin F. Chang alexander H Heald, Levi H. Roaterhouse, Peter F. Profinot, Thomas Rice, John J. D. Cl, ibson, Frederick F. White, Ben. Jamin W. Raymond, Samuel D. Ward, William W. Boy ington, Otis L. Wheelock, Isaac book, Hozatio M. Heald, Horn A. Brannton, Wilson Metter, Jacob D. Dibble, Gra C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles W. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Parlan, William Jones, Milton S. Patrick, I trong Wadaworth, Louis J. Hitz, Henry a. Ballentine, Francis a. Hoffman, Otto Gelpeck, John Ofeik Charles Me. Graw, William J. Burgess and Lo. Sherman had, or pretended to have, and claimed some right, title or interest in said premises above described, either by way of mortgage, judgment or Mechanic's Lien, under the State ute, or in some other way and that the Said building was situated on the South twenty five feet of Sub Lot one, in Lot four, in Block twenty two, in fractional sec tion fifteen, Township thirty nine Moth, Range fourteen East of the third principal Meridian that at the time of making Said contract, Said Theodore H. book was, and at the time of filing that bile, still remained the owner thereof and praying among other things, that the lies of Said bomly and Bym might be established repon Said building and premises, upon which the same wa exected to the amount due them, for Said materials, and furnishing said gas pipe as therein aforesaid, and the Estate and interest of the Said Theodore F. Cook

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therein, declared liable to be sold to satisfy the same and that unless the same, and costs of suit be paid by Said book, or some other of the defendants therein named, that a sale of Said premises, or of whatever estate or interest Said Theodore H. Cook might have therein, might be made, and that the proceeds of such sale, or so much thereof as might be necessary, might be ap plied to the payment of said debt so due Said Comby and Bym, or for such other, or further relief as the na ture of the case might require, and that process might issue against the Said Henry Vreeland, Benjamin 3. Chase, alexander H. Heald, Levi H. Waterhouse, Peter F. Rof. inot, Thomas Rice, John J. D. Gibson, Frederick H. White, Benjamin W. Raymond, Samuel D. Ward, William W. Boy ington, Otio Lo. No heclocke, Isaac Cook, Horatio M. Heald, Wilson Metter, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H Benson, Joel Gurley, Dudley N. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry a. Ballentine, Than cis a. Hoffman, Otto Gelpeck, John Ofeiger, James Me. Unaw, William J. Burgess, and Lo. Therman, as by the said Petition Still pending in the County Court of Common Oleas, not dismissed, a judgment sendered thereon, or otherwise disposed of, reference being thereunto had, will more fully and at large appear -That Summons was duly issued upon Said Cetition, and duly served, among other defendants as well report aid Roginot and Rice as this defendant- That on the day of June, a D. 1887. the Said Rofinot and Rice filed

his answer to said Bill, setting among other things, the making of the same identical Contract with said Theo dore H. Book, the doing of the same identical work, and furnishing the same identical materials in, and toward the exection of the Same identical house, upon the same identical lands and premises, as in the petition in this cause, set forth and alleged which answer still remains of record therein, and to which the said bomby and Bym have filed their replication. and this defendant avers that the Said Theodore H. book, in Said Petition filed by Said Comby and Bym, named, is the Same identical Theodore H. book in the Petition in this cause, named, and not other or different- That the. Said Peter F. Rofinot and Thomas Rice, in the Laid Petition filed by Said Comby and Bym, named, and who hath answered the Same, are the same identical Peter H. Rofinst and Thomas Rice who hath filed the Petition in this Cause, and not other or different- and that the House, lands and premises in the Said Octi. tion filed by Said Comby and Bym, are the Same iden tical House, land and premises in the Said Petition in this Cause, mentioned, and not other, or different all which matters and things, this defendant doth over, and pleads the Said Petition So giled by the Said bomly and Bym, and now pending in the book County Court of Common Pleas, and proceedings thereis and thereon had and pending, in bar to Laid born plainant's present Bill - and demands the judgmen of the bourt whether he shall be put to make any

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book bounty Court of Common Pleas, with that of the Said Edward Lo. Conley and Thomas B. Byrne, but on the contrary have a right under the Hat ute, to commence original proceedings by petition and Summons as therein provided, regardless of Petitions fil ed and suits commenced by other parties in other Secondly- The Said Defendant William J. Burgess does not show in and by his said Olea filed herein, that these Complainants in their answer filed in the Cause of the said Comley and Byrn, in the said book bounty bourt of Common Pleas asked to have their claims adjudged at the same time with that of the Said Combey and Byrne, or that process was served whon these Complainants in Said case of Com ley and Byrne, before the filing of Complainants Petition in this Cause_ Third - The Plea of the Said Defendant William J. Burgess does not show that the Said Petition of Com legand Byrone, as originally filed on the 22 " day of December, 1856. prayed for a Lien whom the Lame Land or Lot, whon which these Complainants ask for a lien in this Cause. and the Said Complainants further say that the matters and things contained in the Said Plea of the Said William J. Burges, in manner and form as therein set forth, are not sufficient in Law to bar or preclude the said Complainants from having or maintaining their aforesaid suit against the Laid

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William J. Burgefs, and Said Complainants are not bound by Law to answer Said Pleaand this, the said Complainants are ready to verify - Wherefore by reason of the insufficiency of the Said Plea of the Said William 3. Burgers, in this behalf, the Said Complainants pray judgment and their damages by reason of the not performing of Laid Leveral promises and undertakings in the Said Octition charged and alleged. Geo. A. Ingalls, Solicitor for Complainants and afterwards, to wit, Movember 16th 1857. the Said defendant Ballentine, by J. Lo. March, his attorney, filed his appearance in writing in said cause, in the words and figures following, vizand now comes the Said Henry a. Ballentine by J. Leonard Marsh, his Solicitor, and enters his appearance in this Cause_ J. Lo. Marsh_ and on the same day and year last aforesaid, the Said Petitioners, by their Solicitor, filed in Said Cause their Replication to defendant's Burges' Plea, in the words and figures following, to wit-In the book bounty Circuit Court Peter H. Rofinst, 8 Mechanics Lien-Thomas Rice, Theodore H. Cook Replication of Complainents William J. Burges, et all to the plea of William J. Buggs These Blefiants Saving and rese

to themselves, now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insuf ficiences of the said plea of William 3. Burges, one of the Said defendants, for replication thereunts, say that they will aver, maintain and prove their Said Petition to be true, certain, and sufficient in the Land to be answered unite, and that the Said plea of the Said defendant is uncertain, untrue and insufficient to be replied unto by these repliants- without this, that any other matter or thing whatsoever in the Said plea contained, material or effectual in the Lan to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true- all which matters and things, these repliants are and will be ready to aver, maintain and prove, as this Honorable Court shall direct and pray, as in their petition they have already Geo. A. Ingalls, Solicitor for Petitioners E. Wan Buren of Counsel_ and afterwards to wit, on the 31th day of December in the year last aforesaid, the said defendant Bu

get filed his Petition in Said Cause, in the words and figures following, to wit-

The Petition of William I. Burgess in the above entitle Cause, one of the defendants therein, respectfully show eth to this Court That the Petition in this Cause i filed by Said Complainant, to establish a Mechanic

12765-16

Lien under the Statute, in favor of Said Complaine ants for work and labor done, and materials furnish ed by them, in and towards the erection of a certain building thereon, upon certain lands therein described as follows ing the South twenty, five feet of Sub Lot one, in Lot four in Block twenty two (22) in fractional Section difteen (15) Township thirty nine Moth Bange fourteen East of the third principal Meridian-

Meridian_ That the amount and value of the work done by Said Complainants have been found to a jury in this cause, to be two hundred and forty one dollars, and fifty cents, that a motion for a new trial hath been interposed, which hath not get been disposed of and this defendant, your petitioner further shows, that as he is informed, and believes, on or about the second day of October a D. 1856. the Said Defendant Theodore F. book, made, executed, duly acknowledged and delivered to the said I save book, a certain inden ture of mortgage, of that date, conveying the said Lands and premises above described, to Said bo Defendant Isaac book, in mortgage, to secure an indebtedness of eight thousand Dollars, due the Said Isaac book, which said indenture of Mortgage was duly filed for record in the Recorder's office of Said book bounty, on the second day of October A D. 1886. and entered in Book 27 of Mortage

on page 413. as by reference to said indenture, and the

records of Said office, as to the contents thereof, will

fully, and at large, appear

and this Defendant, your petitioner furthe and insists that as he is informed and believes, the hien of Said Mortgage upon Said Lands and fremises, attached and became vested, before the lien of Said complainants, or of any of his co-defendants, if any such they, or any of them, have under the Statute, for work and labor done, or materials furnished in or towards the erection of Said House or other improvements or buildings thereon, did attach, or accrue to them therefor thereon. and this Defendant, your petitioner, further shows that on the 23th day of December, A D. 1886. The Laid Isaac book filed in the office of the Clerk of the book County Court of Common Pleas, his thee of Complainty on the Chancery Side of that Court, to foreclose Said mortgage, making said Theodore H. Cook and H. M. Deald parties defendant thereto, that due personal service of process was had whon them in Said suit, to answer said bill, and such proceedings were after wards had in Said cause in that bourt, that at the January Germ thereof AD. 1857. a decree was rendered, directing the Sale of Said Lands and premises to sail isfy the amount of said Mortgage indebtedness, \$814 and costs of suit, as by the Said bill now remaining in the Said book bounty Court of Common Pleas, and the proceedings and decree thereon had, will more fu by and at large, appear, reference being thereto had, as to the contents thereof That afterwards, and on the 29th day of January a D. 1857. L. C. Vaine Preer

(12768-17)

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Master in Chancery in and for said bounty, under and by virtue of said decree, did proceed in pursuance thereof, to offer said lands and premises for sale, and the same were thereupon then and there duly struct off and sold to your petitioners and he became the purchasor thereof, of which Said sale, Said Theer duly made to Said Burgess, a certificate, and filed in the office of the Recorder of Said County, a duplicate there of, and reported said sale to the Said Court of Commo Theas, by whom the same was afterwards duly confiem ed, as by the record of said bourt, reference being the

to had, will more gully appear-and your Petitioner insists whom this, that if the Said suit to foreclose Said mortgage, was commenced before the lien of Said Petitioners, if any attached who Said premises then that the Said suit and decree and sale therein, is a bar to this suit, and he prays that he may have the same benefit therefrom, as though he had pleaded the same in bar of this suits and upon this point he prays the judgment of the Court_

and this Defendant, your Petitioner, further insists that in ease this Court shall order a sale of said property, then that your petitioner is entitled to be first paid out of the proceeds thereof, the amount of his said bid, and the interest that shall have ac crued thereon, at ten per cent per annum before in ther the Said complainant, or any of the bo defendants are paid, provided such sale shall take place to some

and afterwards, to wit, at the Movember Germ of said Court, for the year last aforesaid; to wit, on the 9th day of January a D. 1858. The following proceeding among others, were entered of record therein in said Cause, to wit_

On the Mineteenth day of December, last, came Peter It Rofinot and Ithomas Rice, the petitioners in this

cause, by George A. Ingalls, their Solicitor, and the said defendant Isaac book, by William G. Burgess, his Solice tor, and the said defendant William J. Burgels, in his own proper person, and on motion of complainants Solicitor, no objection being made, the issue on the place of the Said defendant William J. Burgess, to the petis tion of the Said Peter F. Rogenot and Thomas Rice were tried by the Court- and the same was according by submitted to the bourt for trial- and after the hearing of testimony, and the argument of Counsel, it was considered and adjudged by the Court, that the issues on Said plea be found for the said com plainant, and that the said plea be overruled, and on motion of Complainants Tolicitor, the Said defend ants Theodore F. Cook, Doratio M. Heald, Wilson Mettler, Jacob D. Dibble, Ira B. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis N. Benson, Joel Gurley, Dudley H. Farlan, William Jones, (Milton J. Patrick, Strong Wadoworth, Louis J. Dety, Henry a. Ballentine, Francis a. Hoffman, Otto Gelpecke, and William &. Burgess, being three times solemnly called, come not, now any one for them, Wherefore it was ordered by the Court, it appearing that the said defendants, had been duly served with process, on their appearance properly entered, that the default of the said de fondants be entered for want of an answer, to the Said complainants petition-Und this bause came on to be heard on the pe

lition amended and supplemental petition of the

complainants Peter 31. Rofinot and Thomas Rice and the answer of the Said defendant Grace book, and the replication of said complainants, and by agreement of parties, the issue presented by the pleadings is hereby submitted to the Court for trial, and the bourt, after hearing the testimons and as guments of Counsel, and being fully advised in the premises, finds the issue for the Said complainant, and finds there is due the Said complainants, on Their Said contract with the Said Theodore IR book, for labor and materials furnished and performed by the Said complainants in the brick House men tioned in Said complainants petition, over and above all payments, the sum of Two hundred and forty one Dollars and fifty cents- Thereupon the sais defendants move the bourt for a new trial of this Cause and afterwards on the 31 th day of December, came the said William J. Burges into open Court, and filed his petition in this cause and afterwards, to wit, at the January Special term of Said Court, to roit, on the 30 th day of January a.D. 1858. the following proceedings, among others in said Court, were had, and entered of said cause, to wit-And now this Cause came on to be heard on the application of Said Defendants for a new trial, and after argument of Counsel, it was ordered and ad judged by the Court, that the motion for a new trial in this Cause, be overeled, to which ruling of the Court, the said defendants except, and thereupon

it is considered, adjudged and decreed that the said Complainants Peter 3. Rogenot and Thomas Rice have a judgment against the Said Theodore F. Cook for the amount so found due at a former term of this Court, and being the Sum of Two Hundred and Forty one Dollars, and Fifty cents - and it is further order ed that the Said Complainants Peter F. Roginst and Thomas Rice have a Mechanics Lien whom the premise described in their petition filed in this Cause, The Said Real Estate and premises being described as follows I wenty five feet front and rear of the South Lide of Sub Lat One (1) of Lot Hour (4) in Block Gwenty two (22) in the Canal Frustees Subdinsion of Fractional Section Hifteen (13) Foundhip Thirty nine, Range Your teen East of the third principal meridian, and being in the bity of Chicago, in the State of Illinois, with the buildings thereon situated, for the said sum so found due the Said complainants Peter II. Rofinot and Thomas Rice as aforesaid, together with their costs and charges, by them in this behalf expended, and have execution therefor against the said described premises, and that said frem eses be sold to satisfy the same, as provided in the Sixty gifth Chapter of the Revised Statutes of the State of Illinois_ and it is further ordered and decreed that if refron

and it is further ordered and decreed that if refront the sale of said premises, the proceeds of such Sale of plied to the satisfaction of the Said Execution of the Said Peter F. Rofinot and Thomas Rice accordingle

their rights in common with other coequal and ctors, against the same premises, shall be insuffici cient to pay the same, that then the said theory Il book, against whom judgment has been render ed herein, for the amount of said indebtedness, pay to the said Peter H. Rofinot and Thomas Rice, Complainants in this Cause, the amount of such de ficiency, and that the said Complainants have an Execution, thereforand it is further ordered, adjudged and decreed that the Said Defendants Isaac Cook, Horatio M. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Nort, Charles W. Stilwell, Francis H. Benson, Joel Gurley, Dudley N. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Hen ry a. Ballentine, Francis a. Hoffman, and Otto Gelpecke be based of and from setting up any claim or lien upon Said premises, and buildings thereon situated, to the prejudice or injury of the Said lien and claim of the said Complainants Peter F. Rofinot and Thomas Rice - and it is further ordered that the further hearing of this bause, upon the petition of the Said defendant Burgess, filed on the 31 th day of December last, be continued until the next term of this bourtand afterwards, to nort, at the March term of said Court, to wit, on the second day of april; in the year last aforesaid, the following proceedings among other were had and entered of record therein, in said

(12760-25)

Cause to port and this bause having come on to be heard at a former term of this bourt, and the amount of I wo Hundred and Forty one Dollars, and Fifty cents has ing been found to be due the Said Peter H. Bofinol and Thomas Rice, and judgment having thereafter; and at a former term of this Court been duly rende ed on Said finding_ and the Said Defendant William & Burges hand ing filed his Petition herein for a portion of the pro ceeds of a sale of the premises, on which a lien is had in this Cause, and being described in the Petition of the Said Peter F. Rofinst and Thomas Rice, and this cause having this day come on to be heard on the Petition of the Said William 3. Burgess, and the Court having heard the testimony on the part both of the Said Noilliam J. Burgers, and the said Peter H. Roginot and Thomas Rice and the Bause having of the testimony, as aforesaid; and the Bause having of agreement of the parties res pectively, been submitted to the decision of the Court without argument of Coursel, and the Court has ing fully considered the same, and it appearing to the bourt from the testimony, that the said The odore F. Cook did on the Second day of of October, a D. 1856. execute a Mortgage on the premises, in the Petition of the Said Complainants Peter It. Rofinst and Thomas Rice, described, to Isaac book, for eight thousand dollars, and that the interest of the said Theodore I.

book in said premises, on the said Second day of October, a D. 1856. before the Execution of the faid Mortgage, was worth the sum of Thirteen Hundred and Littetwo Dollars, exclusive of the House, for which Stone were furnished by the Said Peter F. Roginol and Thomas Rice under their Contract, and also the barn which was being built by other parties who have a hen against the Same premises equally with the com plainants in this Cause, and at the same term of this Court and it further appearing to the bourt that the said Mortgage from the Said Theodore & book to the said Isaac book, was foreclosed by proceed ant, and Isaac book and Horatio M. Heald were De. fendants, and that the said Burgess became the purchaser at the Sale under Said foreclosure, and received a certificate therefor and it also appearing to the Court from the testimony, that the Said Peter 3. Rofinot and Thomas Rice had on the Said Lecond day of October, a D. 1856. performed labor and fur nished materials on their said Contract, with the Said Theodore & Cook, for the Erection of the Dwelling House on Said premises, amounting to the sum of Hive Hundred Dollars_ and it further appearing by the testimony so heard by the bourt, that the house for which the stone wa

Rice, upon the said Lot upon which a Lien is had in this Baise, and the barn also being erected on the

12768-21

Same lot by other parties, and which said parties have an equal lien at the same term of this Court with the Complainants in this Cause, were on the first day of January, a D. 1857. worth the sum of den Thousand, and Hive Hundred Dollars, exclusive of the land - and whereas there were other Petitions filed by other parties against the same premises, upon which a lien is had by the Said Peter F. Rofinot and Thomas Rice, and on which Petitions, proper proceedings and a hearing was had on the same day of the finding for the Said Peter IP. Bofinot and Thomas Rice, and there after, upon which judgments were rendered nes peetively as well as upon the finding in favor of the Said Peter It Rofinot and Thomas Rice in this Cause and which said several judgments are equally a lien upon Said premises, with the judgment of the Said Peter &. Rofinot and Thomas Rice in this Cause- One of Laid Judgments being in favor of Henry Wredand, and be ing for the sum of Two Thousand, Six Hundred and \$2616,92 Sixteen Dollars, and Minety two Cents- also a judgment in favor of James Me il raw, for the sum of Three Hun \$395.39. died and Minety five Dollars, and thirty-nine cents, in the same case with that of Henry Orceland, the sai James Mrc. Graw having interpleaded in Said Cause also one judgment in favor of alexander H. Heald, and Levi H. Waterhouse, and being for the sum of One Sundred and Eighty One Dollars_ also one judgment in favor of William W. Boyington and Otis L. Wheelock, against the Same premises, for the sum of Three

Hundred Dollars - Also one other judgment in fr wor of the Said alexander A. Heald and Levi H. Water house, for the sum of Hour Hundred and Sixty Dol \$ 460.75 lars and Seventy five Cents- also one judgment in favor of Benjamin Rv. Raymond and Samuel D. Ward, and against the same premises, for the sum of I wo dundred and Eight four Dollars and fourteen \$284.14 Cents- also one judgment in favor of John P. D. Gilson and Frederick & White, for the sum of One Hundred Dollars and Seventy two cents - also one judgment in favor of Benjamin &. Chase, for the sum of Hove Hundred and fifth eight Dollars, and Sixty three \$ 358.63. Cerito-Now it is ordered, adjudged and decreed that Lo. G. Paine Freez Esq. Master in Chancery of book County in the State of Illinois, proceed to sell twenty-five feet front and rear off the South Side of Sub Lot One (1) in Sot Number Hour (4) in Block Number twen ty two (22) in the Canal Trustees Subolivision of Hac tional Section Fifteen (15) Fown Thirty nine (89) (North Range Fourteen (14) East of the third principal Meridian, being in the City of Chicago, with the build ings and appurtenances thereon setuated, being the same premises described in the petition of the Said Peter 3. Rofinot and Thomas Rice, and upon which a hen is had in this bouse, after publishing the hour, day and place of sale, for Twenty days immediately prior thereto, in some newspaper published in the City of Chicago, to the highest and best bolder for bash at Z12710-02

the hour and place appointed for such sale, and make proper conveyances of Said premises as such Master in Chancery, and as Special Commissions er hereby appointed, to the purchaser or purchasers there of, and apply and disburse the money arising from such Sale, as follows_ First to pay the Said Defendant William J. Burgefs, the sum of Thirteen Hundred and Light two Dollars, together with interest thereon, at the rate of six per bent per annum, from the second day of October, a D. 1856. to the date of such sale-provided the said Burgess shall not on or before the payment of Said money, part with his interest in Said prem ises, by the assignment of his bertificate, or otherwise and in case the said Burges shall have so parted with his interest, then the above amount to be paid by the Said Master, to the person or persons, who, at that time shall hold the legal interest acquired by the said Burges, by his purchase on the sale under the foreclosure of Said Mortgage- Gecond to pay all Costs of such sale Third to pay the balance of the money arising from such sale, on all of the Judgments hereinbefore enumerated, including interest on Said judgments and costs, the said judgments being all and equally, hens on said premises, pro rata accord ing to their respective amountsand it is further ordered and decreed that in case the proceeds of such sale shall be more than sufficient to pay all of said claims as hereinbefore particularly enu merated, that then the said Master is directed to pay

the balance or surplus of the money arising from such sale, into this Court, to await its further order and it is further ordered and decreed that the said William J. Burgess, his personal Representatives and as signs, be forever bassed from having and maintaining any claim against Said premises, except the payment of the said sum, as hereinbefore decreedand now on the order being made by the Count to enter the foregoing decree, comes the Said Complainant Peter It Rofinot and Thomas Rice, and except to so much of said decree as directs the payment to the said William I. Burges, out of the proceeds of the sale of said premi ses, the sum of Thirteen Dundred and Sixty two Dollars, with interest thereon, as stated in Said decree, prior to the parement of the claim of the Petitioners in this Cause, the Said Peter II. Roginol and Thomas Rice_ and the Said Defendants move the Court that the said sale be made with the same rights of redemption as are provided by law upon sales of real estate, upon executions at law, which motion the Court denies, and the Defendants exceptand the said Defendants pray the Court that the payment due A. A. Austed, as appears from his con track with Theodore F. Cook, and for Said premises, in evidence in this bause, on the 10 th day of June, 185% of twelve hundred and fifty three dollars, and seventy five cents, be first paid to him, out of the po ceeds of any sale of the premises, under the order of the Court, unless the same shall have been paid to

(12766-25)

him, by said &. 3. book, which motion the Court de nies, and the Defendants exceptand the defendants except to the decree of the Court, in this ease, and the Said William F. Burgels prays an appeal from the decrees and orders of the bourt, in this cause, to the Supreme Court, and it is allow. ed to him, on his filing a bond in the penal sum of five hundred dollars, to the Said Rofinst and Rice with Isaac book and Owen Mc. Carthy as his surely on or before the first day of June next, conditioned as the law directsand thereupon, on the day and year last aforesaid, the Said parties filed in the Court aforesaid, in Said Cause, their Stipulation, in the words and fig. ures following, to noit Peter F. Rofinst, and book bo. Circuit Court-Mechanics Lien-Thomas Rice Petition of William J. Burgels. one of the Defendants in this Theodore F. Cook William J. Burgel, etal Cause, to be paid part of proceeds of sale of premises, on which lien is had in this cause. and now comes the Said William & Burgels, in his own proper person, and the Said lets I. Rofinsh's chown Rice, by George a. Ingalls, his attorney, and it is stipulated between said parties, that it is admitted as proved the the Said Theodore F. book did execute a Mortgage to Isaac book, for Eight Thousand Dollars, on the second day of October, a D. 1886. and that said mortgage was

foreclosed, and Said premises purchased by the said Burgers, as stated in his said Petition, and the preduction of the records in that cause, is hereby waired and it is further agreed and stipulated between the Said parties, that the said Peter F. Roginol and Thomas Rice had on the Second day of October, 1856. performed work upon their Contract, for furnishing the but stone for the House on Said premises, to the amount of Five Dundred Dollars (\$500) and it was further proved on the hearing of the Pe. tition of William & Burges, filed herein, that Theodore Il. book made a bontract with Harrison N. Husted, for the purchase of the premises, upon which a lien is had in this Cause, a copy of which said agreement is filed in base No 8528. in this Court, and is made a part of this Stipulation, that the Said Theodore 3. book made the first payment on Said contract according to the terms thereof, and that from the time of the making of the Said Contract of the said Dusted with the Said Theodore H. book, to the second day of October, a D. 1886. the time of the making of the Said mortgage to the Said Isaac book, the said Lot upon which a Lien is claimed in this Cause, had increased in value, the sum of Three Hundred Dollars, and that Said Theodore F. book's interest in Said Lot, on the Said Second day of October, a D. 1856. was worth the sum of Thirteen Hundred and Sixte two Dollars and that the house and barn being e. rected on Said Lot, on the first day of January as

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46 185). were worth the sum of Ten Thousand Dollars, and Five Gundred Dollars, exclusive of the ground or W. J. Burgel-Ges. A. Ingalls, Solicitor for Complainant and afterwards, to wit, on the 29 th day of May, in the year last aforesaid, the Said defendant William I. Burges, filed in Said course, his appeal bond, in the words and figures following to roit-In the book 6 incent Court. Peter F. Rofinot, and Thomas Rice Mechanies Lien_ Theodore F. Cook, Isaac book, Horatio M. Heald, Wilson Mettlers Jacob D. Dilble, Ina C. Barber, Henry O. Brewster, Charles J. Hoyt, Charles H. Stitwell, Thaneis N. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton J. Patrick, Strong Wadsworth, Louis J. Ditz, Henry a. Ballentine Francis a. Hoffman, Otto Gelfrecke, and William J. Burges-Know all mon by these Presents, that we, William J. Burgess as prin pal, and Isaac book and Owen Me. Carthy as surelies, are held and firmly bound unto the Said Peter &. Rofinst and Thomas Rice, in the penal sum of

five hundred dollars, for the payment of which well and truly to be made, unto the Said Roginot and Rice, their heirs, Executors, administrators or assigns, we do bind ourselves, our heirs, Executors and admin ishators, jointly and severally, firmly by these Presents. Signed, sealed and dated this day of May, a D. 1858. Whereas in the above entitled cause, on the 24th da of March, a D. 1888. during the March Ferm a D. 1855. of Said Court, it was among other things, ordered adjudy. ed and decreed by said bourt, that certain real estate described in the petition in this cause, and in and to which the said Burgess claimed an interest, should be sold to satisfy the Sum of two hundred and forty one Dollars, and fifty cents, and costs, to be paid to the Said Rofinot and Rice, from which order and decree, the Said Burgers hath prayed an appeal to the Sur preme Court of this State-

Now therefore if the Said Burgers shall prosecute. his appeal with effect, and pay the amount of the judgment, costs, interest and damages rendered, and to be rendered in case the Said judgment or decree shall be afformed in the Supreme Court, then the above obligation to be void, otherwise to remain in Jule force and effect.

1. G. Burgess. Eseals

J. book Coals

Owen Me barthy Eseals

State of Illinois, county of cook.

I. WILLIAM L. CHURCH, Clock of the Circuit Court of Cook County, in the State aforesaid, do hereby cortify the above and foregoing, to be a true, perfect and complete copy of Mich fleading & hapen & proceeding has in a certain course Lately pending in said Court on the Common law side thereof, wherein leter & Rogered & Showas Rear were Petitioners - and

Okodore Blood Elal wine defendents

IN WITHESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Muty And day of Mare M. D. 1859

dus for Record \$ 12 00

My Church Clerk

on the Supreme Court April Term 1859 Modore F. Cook et al Oppeal from Cooks Rofinot & Rice and now come the appellants by W.J. Bruges Their Attorney aus say that in the neard proceedings and chain aforesaid of the said circuit court. There is manifell and matrical error appearing of record therew in this. I That the court owneled the demuner of Isaac Cook tothe her. That the cour overneled the plea of bace Cook to the her. 3 That the complainant amended his like by mattriy W. J. Brugepa party inthout han of the cour 4 That the supplemental bile against Prugep is difection in not making the other persons parties and should not han been allows toh fles I That the petition is defection in mobalitying when the continues down when the continues riguind I toh done that they wen toh fur nished within the years poin making the \$10468-06 contract that they were run in fact used in the bulding 5

6 That no order taken upon the supplement tal bill-That the court forms the issue upon the plea of M. G. Brugels for the complais nant I has the court therrupon ordered that The he to taken as confessed against him 12 That The court rendered a decen for Complaniant and directed a sale of sais pieruses. 13 That the coul directed the said lieus mentioned in its diere toh pard hor paying the said Brugels-14 That the could did not hold the proces drys and diene in the mortgap forces= such suit toha bas to the said suite-15 That the apportionment of the procuss of the sale of the hourses is not according & law 16 That the coul ordered the lieus of pusous not parties tothe end toh part enthout bringing them in any way befor the could in any new in the sub That the court rendend a diem for The complainants blow ulunces it theres han bun for the Diffusants dismussing Soud all -Whenfor and for duris other enon

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that the said picement procuring or
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M. Y. Porph
(mappets)

drace look tal. Peter Roperiotectal 3 and new Couls the defendants in Enos and Day that there is nomes in said used and proceedings and hence they pray that with Carls de By E. Van Binen 4. A Ingalls " Sturming Wanto Borns

IN THE SUPREME COURT,

APRIL TERM, A. D. 1859.

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

APPEAL FROM THE COOK CIRCUIT COURT.

VS.

Peter Rofinot & Thomas Rice,
Appellees.

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ABSTRACT OF RECORD.

Rofinot and Rice, on the 9th February 1857, filed in the Cook Circuit Court, a petition stating that on or about the 15th June, 1856, they being stone cutters, Theodore F. Cook made a verbal contract with them in which, in consideration of the payments to be made to them by said Cook, they agreed to furnish the dressed stone for a pressed brick front dwelling to be erected on a certain lot of land in Chicago, being twenty-five feet front and rear off the south side of sub lot, one (1), of lot No. four (4) in Block twenty-two (22), in the Canal Trustees' Sub-division of Fr. S. 15, T. 39, R. 14 E., 3 P.M.; said dwelling to be erected in conformity with certain plans and specifications drawn by Boyington & Wheelock, Architects, said Cook agreed to pay them therefor \$650.—Other contracts for extra work were made, making on the whole \$799. That on the 1st of October, 1856, a further modification of contract, the petitioners discharged from doing part of it, at a reduction of \$257 50, leaving a balance of \$541 50, which was to be paid as work progressed,

on estimates, reserving 15 per cent., until work completed, when the whole should be due. That about 16th June, 1856, they commenced the performance of their agreement, the furnishing of said cut stone for said dwelling, and have fully completed the same. That they have been paid \$300 on the cut stone furnished as aforesaid, leaving a balance of \$241 50, then due. That Cook purchased the premises of one Harrison H. Husted, who had given Cook an agreement in writing, whereby in consideration of certain payments to be made by said Cook to Husted, he agreed to convey the premises to Cook. That a portion of such purchase money had been paid, and a portion remained unpaid. That Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballantine, Francis A. Hoffman, & Otto Gelpcke, claimed to have some interest in, or lien on said premises, wherefore he prayed that they might be made parties Defendant with Cook, and a summons might issue against them.

They pray judgment against T. F. Cook, for the amount due them, and that such judgment might be a lien upon said premises with the dwelling house thereon, to the whole value of the dwelling house, and to the extent of the interest of said T. F. Cook, therein, at the time of making the contract aforesaid between him and them, and that a sale of said dwelling and the right, &c., of said Cook in said real estate at time of making said contracts might be decreed by the court, and the proceeds thereof applied to the judgment aforesaid in pursuance of the statute, and that the defendants, naming them, except T. F. Cook, might be forever barred and foreclosed of and from all claim and interest in and to said premises, to the prejudice of the petitioners, and for further and other relief.

Summons issued Feb. 9, 1857, against the Defendants named in the bill, returnable to the 1st Monday of March, 1857, and returned served upon Isaac Cook, T. F. Cook, Horatio N. Heald, Ira C. Barber, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, Strong Wadsworth, Louis J. Hitz, Francis A. Hoffman, Otto Gelpcke, others not found.

Wilson Mettler and Jacob D. Dibble enter their appearance Feb. 12, 1857.

Jones and Patrick and Brewster enter their appearance March 21, 1857.

10 Plea of Isaac Cook.

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8 Feb. 9, 1857. Summons issued to 1st Monday, March, 1857. Returned, served on Isaac Cook, Theodore F. Cook, Horatio N. Heald, Ira

9 C. Barber, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, Strong Wadsworth, Louis J. Hitz, Francis A. Hoffman, Otto Gelpcke.

Appearance of Wilson Mettler and Jacob Dibble, entered, February 12, 1857, by their Attorneys, Shumway, Waite & Towne.

Plea of Isaac Cook, filed March 6, 1857-sets up the petition filed by Henry Vreeland, before the commencement of this suit, on the 9th February, 1857, against the same parties, defendants, setting forth, among other things, that he, Vreeland, had by and under a contract made with said Theodore F. Cook, done work and labor, and furnished materials in and towards the erection of a building upon certain premises, which are the same building, lands, and premises, set forth in the said petition, in this cause, to the amount and value of \$2493 45, and which had become due under said contract within six months next preceding the filing of said petition, and praying among other things, that a lien might be established on said lands and premises in his favor, for the said amount, and the same sold to satisfy the same, as by the said petition now remaining pending in this court, not dismissed or otherwise disposed of, will more fully and at large appear, and insists that the said claim of said Vreeland' had become by the filing of their petition a lien and charge upon said lands and premises, and that all such liens under the statute should be made against said lands and premises, in the same suit by interpleading, and not otherwise; all which matters and things he averred; and plead the petition so filed by said Vreeland, and then pending in that court in bar of the said complainants' bill, and demands the judgment of the court if he should make any further or other answer thereto, and prays to be dismissed.

Plea sworn to, March 6, 1857.

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Jones and Patrick enter their appearance, March 21, 1857, by their attorney, O. R. W. Lull and Brewster.

Demurrer to Plea of Isaac Cook filed March 24, 1857—which was heard April 9, 1857—Court found plea insufficient, and sustained the demurrer.

15 Answer of Isaac Cook, filed April 16, 1857.

Demurrer to petition, by Isaac Cook, overruled by the Court.

Answer of Isaac Cook to petition of complainants, April 10, 1857, reserving, &c., answers and says he has no knowledge of the making of the contract mentioned in bill and attached thereto as "Exhibit A," and neither

admits or denies the same; believes it is signed by Theodore F. Cook, but does not know the hand writing of complainants; believes the petitioner has done work and furnished materials, but the nature, and extent, and value thereof does not know, nor whether he has complied with said contract or not; admits the making of the contract between said Husted and said Cook, for the sale and purchase of said lands, substantially as stated in the petition; states that on or about the 2d day of October, 1856, T. F. Cook made to him, Isaac Cook, a mortgage of that date, conveying said premises in mortgage to him, to secure an indebtedness of eight thousand dollars due him, which was recorded, October 2, 1856; that the lien of said mortgage upon said lands and premises attached and became vested, before the lien of said Heald & Waterhouse, if any; that on the 23d day of December, 1856, and before the lien of said petitioners, if any, so attached as aforesaid, the defendant, I. Cook, filed in the Cook County Court of Common Pleas, his bill of complaint in chancery, to foreclose said mortgage, making said Theodore F. Cook and Horatio N. Heald parties defendant thereto; that due personal service of process was had on them, to answer said bill, and such proceedings were afterwards had in said court in said cause; that at the January Term thereof, 1857, a decree was rendered, directing the sale of said lands and premises to satisfy the mortgage indebtedness of \$8145, and costs, as by record&c., appear; that afterwards, and on the 23d January, 1857, the said premises were sold, under that decree, to William T. Burgess, and a certificate of such sale issued to him, and sale reported to the court. Insists upon the pendency of said suit, and decree sale therein as a bar to this suit, and prays that he might have same benefit therefrom as if he had pleaded the same; insists that Burgess is a necessary party to the suit, and prays the same benefit therefrom as though he had pleaded the same. That it nowhere appears that the time for doing the work was not extended more than three years from making contract, and demurs to said bill for that reason.

Sworn to April 15, 1857.

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Appearance of Burgess to bill as amended entered April 28, 1857.

April 29, 1857. Leave given to plaintiff to file supplemental bill, making William T. Burgess party defendant.

June 12, 1857. Supplemental petition filed by Rofinot & Rice, states that on the 9th February, 1857, filed their original petition in that court for a mechanics lien, making Theodore F. Cook and others defendants. That afterward on the day of 1857, they were allowed by order of court to file a supplemental petition, making William T. Burgess a party defendant. That said Burgess has, or claims

to have, some interest in the premises described in the said petition, but as they were not fully advised thereof, they prayed that the said Burgess might be made a party, and a summons might issue to him to appear and answer, and for judgment against said Burgess that he might be forever barred and foreclosed of all claim, &c., in said premises, to the prejudice or injury of the petitioners, and for further and other relief.

Upon which supplemental bill is indorsed the appearance of said Burgess to it, June 12, 1857.

General replication to answer of Cook, filed June 22, 1857.

Plea of Burgess filed November 5, 1857, to the petition of Rofinot & Rice as amended. The defendant by protestation &c., doth plead, that on the 22d day of December, 1856, Edward L. Comly and Thomas P. Byrne, filed in the Cook County Court of Common Pleas their petition and amendment thereto filed April 17, 1857, setting forth that on or about the 20th August, 1856, Theodore F. Cook employed Comly & Byrne to furnish gas pipes for a certain dwelling house then in process of erection by said Cook, in the city of Chicago, for which they were to be paid what they were reasonably worth, to be furnished immediately thereafter, and paid for as soon as delivered. That in pursuance of that contract on the 21st August, 1856, they furnished for said house, and applied in and toward the erection thereof materials worth \$69.30, which remained due and unpaid at the time of filing said petition. That Vrecland, Chase, Alexander H. Heald, Waterhouse, Rofinot, Rice, Gibson, White, Raymond, Ward, Boyington, Wheelock, I. Cook, Horatio N. Heald, Mettler, Dibble, Barber, Brewster, Hoyt, Stillwell, Benson, Greely, Farlam, Jones, Patrick, Wadsworth, Hitz, Ballentine, Hoffman, Gelpcke, Pfeifer, McGraw, Burgess and Lycurgus Sherman, and Carlos S. Sherman had, or pretended to have, or claimed some right in said premises by way of mortgage, judgment or mechanics' lien, or in some other way, that said building was situated on the S. 25 feet of sub lot one in lot four in block 22 in fractional sec. 15, T. 39, N. R. 14, E., that at time of making contract, T. F. Cook was and still remains the owner thereof, and praying, among other things, that the lieu of said Comly & Byrne might be established upon said building and premises upon which the same was erected, to the amount due them as aforesaid, and the estate of said T. S. Cook, therein declared liable to be sold to satisfy the same, and that a sale thereof might be decreed, and for process against said Theodore F. Cook and the other persons claiming, &c. named above, as by the said petition amended still pending in the said court of common pleas not disposed of, would more fully appear. That summons was duly issued upon said petition, and among others served day of June, 1857, Rofinot upon said Rofinot & Rice; that on the

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& Rice filed their answer to said bill, setting up, among other things, the making of the same identical contract with said Theodore F. Cook, the doing of the same identical work, and furnishing the same identical materials in and toward the erection of the same identical house upon the same identical lands and premises as in the petition in this cause set forth and alleged, which answer still remained of record therein, and to which said Comly & Byrne had filed their replication, and the defendant avers that the said Theodore F. Cook in the petition of Comly & Byrne named is the same identical T. F. Cook in the petition in this cause named, and not other or different. That the said Rofinot & Rice in the said petition, filed by said Comly & Byrne, and who hath answered the same, is the same identical Rofinot & Rice, who hath filed the petition in this cause, and not other or different, and that the house, lands and premises in the Comly & Byrene petition named, are the same identical house, lands and premises in the petition in this cause named, and not other or different, all which matters and things he avered, and pleaded the petition, filed by said Comly & Byrne, and then pending in the said common pleas, and proceedings therein and thereon had in bar to said petitioners Rofinot & Rice petition, and demands judgment of the court whether he should be put to make any further or other answer thereto, and prays to be dismissed.

Sworn to November 2, 1857.

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27 Demurrer to Plea, filed June 24, 1857.

Appearance of Henry A. Ballentine, by his attorney, filed Nov. 16, 1857.

Replication to Plea, filed Nov. 16, 1857.

Petition of W. T. Burgess, filed December, 31, 1857, sets forth, that the petition in the cause of Rofinot & Rice vs. T. F. Cook, et al, is filed by Rofinot & Rice, to establish a lien under the statute in his favor, for work and labor done, and materials furnished by him, upon and towards the erection of a certain building, upon the south 25 feet of lot one, &c. That the amount and value of the work done by the complainant had been found, by a jury in the cause, to be \$

That a motion for a new trial had been interposed which had not been disposed of; states the same facts as to mortgage by T. F. Cook to Isaac Cook, that it had become a lien before that of the complainant's, and its foreclosure and sale to Burgess, thereunder, as are stated in the answer of Isaac Cook; that said sale had been reported to and confirmed by the court; that if the suit to foreclose the mortgage was commenced before the lien of the complainant, if any, attached upon said premises, then that suit and the decree and sale therein is a bar to that suit, and prays the same benefit as though he had pleaded the same in bar; that if the court orders a sale of the premises, then that he, Burgess, is entitled to be first paid out of the proceeds amount of his bid and interest thereon, be-

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fore either the complainant or any of his co-defendants are entitled to be paid anything, provided sale takes place before time to redeem shall have expired; but if premises are not redeemed, then that he, Burgess, is entitled to hold the same freed from any lien of the complainant, and he prays that such order may be made in the premises as will protect his rights.

On the 9th day of January, A. D. 1858, the following order made in the cause of Rofinot & Rice vs. Theodore F. Cook, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpeke, and William T. Burgess.—Mechanic's lien.

On the 19th day of December, came the petitioners by George A. In-

galls, their Solicitor, and the said defendant, Isaac Cook, by William T. Burgess, his Solicitor, and the said defendant William T. Burgess, in his own proper person, and on motion of complainant's solicitor, and no objection being interposed, the issues on the plea of the said defendant William T. Burgess, to the petition of the said Rofinot & Rice, filed in this cause and the replication, to the said plea, were tried by the court, and the same was accordingly submitted to the Court for trial, and after the hearing of testimony, by the Court, and the arguments of counsel, it was considered and adjudged by the court, that the issues on said plea, and replication, be found for the said complainant, and that the said plea be overruled, to which judgment, the said Burgess thereupon excepted, which was decreed to be entered of Record; and on motion of complainant's solicitor, the said defendants, Theodore F. Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlin, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpeke, and William T. Burgess, being three times solemnly called, came not, nor any one for them. Wherefore it was ordered by the court, it appearing that said defendants had been duly served with process, or their appearance properly entered, that the default of the said defendants last named, be entered for want of an answer to said complainant's petition, and this cause came on to be heard on the petition, amended sup plementary petition of the complainants, and theanswer of the said defendant Isaac Cook, and the replication of the said complainants, to the answer, and by agreement of parties herein, the issues presented by the pleadings are hereby submitted to the court for trial, and the court, after hearing the testimony and aguments of counsel, found the issues for the complainant, and found that there was due the said com-

Thereupon the said defendants move the court for a new trial of this cause and afterwards, on the 31st day of December, A.D. 1857, the said Wm. T. Burgess, came into open court, and filed his petition in this cause.

plainants on their contract with said T. F. Cook, for labor and materials furnished and performed by said complainants on the brick house mentioned in the petition, over and above all payments, the sum of \$241 50.

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

Title of cause. And now this cause came on to be heard on the appli-

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cation of said defendants for a new trial, and after argument of Counsel it was ordered by the court, that the motion for a new trial, in this cause, be overruled, to which ruling of the court the said defendants except, ard thereupon it is considered, adjudged and decreed that the said complainants, have a judgment against the said Theodore F. Cook for the amount so found due at a former term of this court, and being the sum of \$241 50, that the said complainants have a mechanic's lien upon the premises described in bill, as follows: twenty five feet front and rear off the south side of sub lot one (1,) of Lot four (4), in block twenty-two (22), in the Canal Trustee's sub-division of fractional section fifteen (15), Township thirty-nine, Range fourteen, East of the third principal meridian, and being in the city of Chicago, in the state of Illinois, with the buildings thereon situate, for the said sum so found due, the said complainants, as aforesaid together with costs and charges by them in this behalf expended and have execution thereof against the said described premises, and that said premises be sold to satisfy the same, as provided in the Sixty-fifth chapter of the revised statutes of the State of Illinois. And it is further ordered and decreed that if upon the sale of said premises, the proceeds of such sale applied to the satisfaction of the said execution of the said complainants according to their rights, in common with co-equal creditors against the said premises shall be insufficient to pay the same, that then the said Theodore F. Cook, against whom judgment has been rendered herein, for the amount of said indebtedness, pay to the said complainants, the amount of such deficiency, and that the said complainants have execution therefor. And it is further adjudged and decreed that the said defendants, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, Wm. Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, be barred of, and from setting up any claim or lien upon said premises, and buildings, thereon situated

to the prejudice or injury of said lien and claim of the said petitioners, and thereupon it is ordered that said cause stand continued to the next term of this Court for further hearing, upon the petition of said William

T. Burgess, filed therein, on the 31st day of December last.

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And afterwards, to wit, at the March Term of said Court, to wit, on the 2d day of April, A. D. 1858, the following proceedings, among others, were had and entered of record therein, to wit:

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TITLE OF CAUSE.—And this cause, having come on to be heard at a former term of this Court, and the amount of two hundred and forty-one dollars and fifty cents, having been found to be due the said petitioners herein, and judgment having thereafter, and at a former term of this Court, been duly rendered on the finding; and the said defendant, Wm. T. Burgess having filed his petition herein for a payment to him of a portion of the proceeds of a sale of the premises, on which a lien is had in this cause, and being described in the said petition of the said Rofinot & Rice, and this cause having this day come on to be heard, on the petition of the said William T. Burgess, and the Court having heard the testimony, on the part both of the said Wm. T. Burgess and the said Rofinot And after the hearing of the testimony as aforesaid, and the cause having been, by the agreement of the parties respectively, submitted to the decision of the Court, without argument of counsel; and the Court having fully considered the same, and it appearing to the Court from the testimony that the said Theodore F. Cook did, on the second day of October, A. D. 1856, execute a mortgage on the premises in said Rofinot & Rice's petition described, to Isaac Cook, for eight thousand dollars, and that the interest of the said Theodore F. Cook in said premises on the said second day of October, A. D. 1856, before the execution of the said mortgage, was worth the sum of Thirteen Hundred and Sixty two Dollars, exclusive of the house for which stone were furnished by said Rofinot & Rice, and also the barn then being erected by other parties, who have a lien against same premises, equally with complainants in this cause at same term of this court, under their contract; and it further appearing to the Court, that the said Mortgage from the said Theodore F. Cook to the said Isaac Cook was foreclosed by proceedings in Chancery, in which Isaac Cook was complainant, and Theodore F. Cook and Horatio N. Heald were defendants, and that the said Burgess became a purchaser at sale, under such foreclosure and received a certificate therefor; and it also appearing to the Court from the testimony that the said Rofinot & Rice, had on the said second day of October, A. D. 1856, performed labor and furnished materials on his contract with the said Theodore F. Cook, for the erection of the house on said premises, amounting to the sum of five hundred dollars; and it further appearing by the testimony so heard by the Court, that the house for which the stone was furnished by the said Rofinot & Rice, upon the said lot upon which a lien is had in this cause, and the barn also being erected on same lot by other parties, under another contract, under which a lien is also had, in case No. — in this court, were on the first day

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of January, A. D. 1857, worth the sum of ten thousand and five hundred dollars, exclusive of the land; and whereas there were other petitions filed by other parties against the same premises upon which a lien is had by the said Rofinot & Rice, and on which petitions a hearing was had on the same day of the finding for the said Rofinot & Rice, and thereafter, upon which judgments were rendered respectively, as well as upon the finding in favor of the said Rofinot & Rice and which said several judgments are equally a lien upon said premises, with the judgment in favor of the said Rofinot & Rice; one of said judgments being in favor of Henry Vreeland, and being for the sum of two thousand six hundred and sixteen dollars and ninety two cents; also a judgment in favor of James McGraw for three hundred and ninety-five dollars and thirty-nine cents, in same case with that of Henry Vreeland, the said McGraw having interpleaded in said cause; also one judgment in favor of Levi H. Waterhouse and Alexander H. Heald, against the same premises, for the sum of nine hundred and eighty-one dollars.

Also, one judgment in favor of William W. Boyington and Otis L. Wheelock against the same premises for the sum of three hundred dollars. Also, one other finding in favor of the said Alexander H. Heald and Levi II. Waterhouse, for the sum of four hundred and sixty dollars and seventy-five cents. Also, one judgment in favor of Benjamin W. Raymond and Samuel D. Ward, and against the same premises as in this cause, for the sum of two hundred and eighty-four dollars and fourteen cents. Also, one other finding in favor of John P. D. Gibson and Frederick F. White, for the sum of one hundred dollars and seventy two cents. Also, one judgment in favor of Benj. F. Chase and for the sum of five hundred and fifty-eight dollars and sixty-three cents. Now, it is ordered, adjudged and decreed that L. C. P. Freer, master in chancery of Cook county, in the State of Illinois, proceed to sell twenty-five feet front and rear off the south side of sub lot one (1), in lot number four (4), in block number twenty-two (22), in the Canal Trustees' subdivision of fractional section fifteen, town thirty-nine north range fourteen east of 3d principal meridian, being in the City of Chicago, with the building and appurtenances thereon situated, being the same premises described in the petition of said Rofinot & Rice, and upon which a lien is had in this cause, after publishing the hour, day and place of sale, for twenty days immediately prior thereto, in some newspaper published in the city of Chicago, to the highest bidder, for cash, at the hour appointed for such sale, and make proper conveyances of said premises as such Master in Chancery and special Commissioner hereby appointed to the purchaser or purchasers thereof, and the money arising by the said sale shall be applied as follows: first to pay the said defendant William T. Burgess, the sum of thirteen hundred and sixty-two dollars, together with interest thereon, at the rate of six per cent. per annum, from the second day of October, A. D. 1856, to the date of such sale, provided the

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said Burgess shall not on or before the payment of said money part with his interest in said premises, by the assignment of his certificate or otherwise and in case the said Burgess shall have so parted with his interest, then the above amount shall be paid to the person who holds the legal interest acquired by the said Burgess, by his purchase on the sale under the foreclosure of said mortgage; second, to pay all costs of such sale and third to pay the balance of the money arising from such sale on all of the judgments including interest and costs, the same being hereinbefore enumerated, and the same being all and equally liens on said premises pro rata according to their respective amounts. And it is further ordered and decreed that in case the proceeds of such sale be more than sufficient to pay all of said claims, as hereinbefore particularly enumerated, that then the said master is directed to pay the balance, or surplus, of the money arising from such sale, into this court to await its further order.

And it is further ordered and decreed that the said William T. Burgess and his assigns be forever barred from having and maintaining any claim against said premises, except the payment of the said sum as hereinbefore decreed.

And now on the order being made to enter the foregoing decree by the Court comes the said complainants, and except to so much of said decree as directs the payment to William T. Burgess, out of the proceeds of the sale of the said premises, the sum of Thirteen hundred and sixty-two dollars, with interest thereon, as stated in the foregoing decree, prior to the payment of the claim of the complainants, Rofinot & Rice.

And the said defendants move the court that the sale be made with the same rights of redemption as are provided by law upon sales of real estate upon executions at law, which motion the court denies and the defendants except.

And the said defendants pray the court that the payment due H. H. Husted, as appears from his contract with Theodore F. Cook, and for said premises in evidence in this cause, on the tenth day of June, 1857, of Twelve hundred and fifty-three dollars and seventy-five cents, be first paid to him out of the proceeds of any sale of the premises, under the order of the court, unless the same shall have been paid to him by said T. F. Cook, which motion the court denies and the defendants except.

And the Defendants except to the decree of the court in this case, and the said William T. Burgess prays an appeal from the decrees and orders of the court in this cause to the supreme court and it is allowed to him on his filing a bond in the penal sum of five hundred dollars, to the said

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Rofinot & Rice, with Isaac Cook and Owen McCarthy as his surety, on or before the 1st day of June next conditioned as the law directs.

And afterwards, to wit, on the same second day of April last, aforesaid, a certain stipulation and exhibit was filed in said court, and entered of Record which is in the words and figures following, to wit.

ROFINOT & RICE,

THEODORE F. COOK, WILLIAM T. BURGESS, Et al.

COOK COUNTY CIRCUIT COURT.

Mechanics' Lien.

Petition of William Burgess, one of the Defendants to be part of the proceeds of sale of premises on which lien is had in this cause.

And now comes the said William T. Burgess in his own proper person and Rofinot & Rice, by George A. Ingalls, their solicitor, and it is stipulated between the said parties, that it is admitted as proved that the said Theodore F. Cook did execute a mortgage to Isaac Cook, for eight thousand dollars, on the 2d day of October, A. D. 1856, and that said mortgage was foreclosed by proceedings in the Cook County Court of Common Pleas, and said premises purchased thereunder, by the said Burgess, as stated in his said petition, and the production of the record in that case is waived. And it is further agreed and stipulated between the said parties, that the said Rofinot & Rice had on the said 2d day of Oct., 1856, performed work on their said contract, for furnishing cut stone for the house upon said premises to the amount of \$500; and it was further proved on the hearing of the petition of William T. Burgess, filed herein, that Theodore F. Cook made a contract with Harrison H. Husted, for the purchase of the premises upon which a lien is had in this cause, a copy of which said contract is hereunto annexed, marked "A;" that said Theodore F. Cook paid the first payment on said contract according to the terms thereof, and that on the 2d day of October following, the time when the said Theodore F. Cook made his mortgage to the said Isaac Cook, and that from the time of the making the said contract of the said Husted with the said Theodore F. Cook for the sale of the lot on which a lien is claimed in this cause, to the time of the making of the said mortgage from the said Theodore F. Cook to the said Isaac Cook, the said lots had increased in value the sum of three hundred dollars, and that said Theodore F. Cook's interest in said lot, on the 2d day of October, 1856, was worth the sum of thirteen hundred and sixty-two dollars, and that the house and barn then being erected on said lot, on the 1st day of January, A. D. 1857, were worth the sum of ten thousand and five hundred dollars, exclusive of the land.

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W. T. BURGESS. GEO. A. INGALLS, Solicitor for Rofinot & Rice. Agreement between H. H. Husted and T. F. Cook for lands, dated June 10, 1856, provides that if Cook shall first make the payments and perform the covenants therein provided for him to make and perform, Husted agrees to convey to him in fee, clear of incumbrances, the premises, described in the petition. Cook agrees to pay him \$4250, as follows—in cash, \$1062.50, and the same amount on the 10th June, 1857, 1858 and 1859, with interest, payable annually; and also to pay taxes, &c. Time of payment made an essential part of the contract.

Appeal bonds from decree in favor of McGraw & Vreeland, filed May 23d, 1858.

ERRORS ASSIGNED.

- 1. That the court overruled the demurrer of Isaac Cook to the bill.
- 2. That the court overruled the plea of Isaac Cook to the bill.
- 3. That the complainant amended his bill by making W. T. Burgess a party without leave of court.
- 4. That the supplemental bill vs. Burgess is defective in not making the other persons parties, and should not have been allowed to be filed.
- 5. That the petition is defective in not alleging when the work was done-when the contract required it to be done-in not alleging that the

maturals work was to be completed within three years from making of contract. Or the fact will in the bulling of in often respects

6. That the petition of McGraw is defective in not making any other

- persons defendants than Isaac Cook and Theodore'F. Cook. we well to take in the Lunghamment of the That he prays for and obtains relief against them, without making them parties to his bill, taking and serving process against them, or otherwise bringing them into court.
- 8. That the court found the issue upon the plea of W. T. Burgess, for the complainant.
- 9. That the court thereupon ordered the bill to be taken as confessed against him.
- 10. That the Court refused to continue the cause upon the application of said Cook.
 - 11. That the Jury found, and the Court allowed interest.
- 12. That the Court rendered a decree for complainant, and directed a sale of said premises.
- 13. That the Court directed the said Liens mentioned in its decree to be paid before paying the said Burgess.
- 14. That the Court did not hold the proceedings and decree in the mortgage foreclosure suit, to be a bar to the said suits.
- 15. That the apportionments of the proceeds of the sale of the premises is not according to law.
- 16. That the Court ordered the liens of persons not parties to the suit to be paid without bringing them before the court in any way in the suit.

W. T. BURGESS.

For Appellant.

207-95 Peter Rofinst stal
abstract Filed April 20c 1889 Lebeland Olk

IN THE SUPREME COURT.

COOK ET AL.,
vs.
ROFINOT & RICE.

This case is the same as Cook vs. Vreeland, except that McGraw is not a party; and,

Under the 5th, It is no where alleged in the petition that the materials were in fact used in the building. 18 Ills., 318.

Under the 16th, The lien of McGraw is preferred, without any of the Defendants being party to the proceeding.

The 2d, That plea of Isaac Cook of the pendency of the Vreeland suit should have been allowed.

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IN THE SUPREME COURT,

APRIL TERM, A. D. 1859.

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

APPEAL FROM THE COOK CIRCUIT COURT.

VS.

Peter Rofinot & Thomas Rice,
Appellees.

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ABSTRACT OF RECORD.

Rofinot and Rice, on the 9th February 1857, filed in the Cook Circuit Court, a petition stating that on or about the 15th June, 1856, they being stone cutters, Theodore F. Cook made a verbal contract with them in which, in consideration of the payments to be made to them by said Cook, they agreed to furnish the dressed stone for a pressed brick front dwelling to be erected on a certain lot of land in Chicago, being twenty-five feet front and rear off the south side of sub lot, one (1), of lot No. four (4) in Block twenty-two (22), in the Canal Trustees' Sub-division of Fr. S. 15, T. 39, R. 14 E., 3 P.M.; said dwelling to be erected in conformity with certain plans and specifications drawn by Boyington & Wheelock, Architects, said Cook agreed to pay them therefor \$650.—Other contracts for extra work were made, making on the whole \$799. That on the 1st of October, 1856, a further modification of contract, the petitioners discharged from doing part of it, at a reduction of \$257 50, leaving a balance of \$541 50, which was to be paid as work progressed,

on estimates, reserving 15 per cent., until work completed, when the whole should be due. That about 16th June, 1856, they commenced the performance of their agreement, the furnishing of said cut stone for said dwelling, and have fully completed the same. That they have been paid \$300 on the cut stone furnished as aforesaid, leaving a balance of \$241 50, then due. That Cook purchased the premises of one Harrison H. Husted, who had given Cook an agreement in writing, whereby in consideration of certain payments to be made by said Cook to Husted, he agreed to convey the premises to Cook. That a portion of such purchase money had been paid, and a portion remained unpaid. That Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballantine, Francis A. Hoffman, & Otto Gelpcke, claimed to have some interest in, or lien on said premises, wherefore he prayed that they might be made parties Defendant with Cook, and a summons might issue against them.

They pray judgment against T. F. Cook, for the amount due them, and that such judgment might be a lien upon said premiscs with the dwelling house thereon, to the whole value of the dwelling house, and to the extent of the interest of said T. F. Cook, therein, at the time of making the contract aforesaid between him and them, and that a sale of said dwelling and the right, &c., of said Cook in said real estate at time of making said contracts might be decreed by the court, and the proceeds thereof applied to the judgment aforesaid in pursuance of the statute, and that the defendants, naming them, except T. F. Cook, might be forever barred and foreclosed of and from all claim and interest in and to said premises, to the prejudice of the petitioners, and for further and other relief.

Summons issued Feb. 9, 1857, against the Defendants named in the bill, returnable to the 1st Monday of March, 1857, and returned served upon Isaac Cook, T. F. Cook, Horatio N. Heald, Ira C. Barber, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, Strong Wadsworth, Louis J. Hitz, Francis A. Hoffman, Otto Gelpcke, others not found.

Wilson Mettler and Jacob D. Dibble enter their appearance Feb. 12, 1857.

Jones and Patrick and Brewster enter their appearance March 21, 1857.

10 Plea of Isaac Cook.

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Feb. 9, 1857. Summons issued to 1st Monday, March, 1857. Returned, served on Isaac Cook, Theodore F. Cook, Horatio N. Heald, Ira
C. Barber, Charles J. Hoyt, Charles H. Stillwell, Francis II. Benson, Joel Gurley, Dudley H. Farlan, Strong Wadsworth, Louis J. Hitz, Francis A. Hoffman, Otto Gelpeke.

Appearance of Wilson Mettler and Jacob Dibble, entered, February 12, 1857, by their Attorneys, Shumway, Waite & Towne.

Plea of Isaac Cook, filed March 6, 1857—sets up the petition filed by Henry Vreeland, before the commencement of this suit, on the 9th February, 1857, against the same parties, defendants, setting forth, among other things, that he, Vreeland, had by and under a contract made with said Theodore F. Cook, done work and labor, and furnished materials in and towards the erection of a building upon certain premises, which are the same building, lands, and premises, set forth in the said petition, in this cause, to the amount and value of \$2493 45, and which had become due under said contract within six months next preceding the filing of said petition, and praying among other things, that a lien might be established on said lands and premises in his favor, for the said amount, and the same sold to satisfy the same, as by the said petition now remaining pending in this court, not dismissed or otherwise disposed of, will more fully and at large appear, and insists that the said claim of said Vreeland had become by the filing of their petition a lien and charge upon said lands and premises, and that all such liens under the statute should be made against said lands and premises, in the same suit by interpleading, and not otherwise; all which matters and things he averred; and plead the petition so filed by said Vreeland, and then pending in that court in bar of the said complainants' bill, and demands the judgment of the court if he should make any further or other answer thereto, and prays to be dismissed.

Plea sworn to, March 6, 1857.

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Jones and Patrick enter their appearance, March 21, 1857, by their attorney, O. R. W. Lull and Brewster.

Demurrer to Plea of Isaac Cook filed March 24, 1857—which was heard April 9, 1857—Court found plea insufficient, and sustained the demurrer.

15 Answer of Isaac Cook, filed April 16, 1857.

Demurrer to petition, by Isaac Cook, overruled by the Court.

Answer of Isaac Cook to petition of complainants, April 10, 1857, reserving, &c., answers and says he has no knowledge of the making of the contract mentioned in bill and attached thereto as "Exhibit A," and neither

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admits or denies the same; believes it is signed by Theodore F. Cook, but does not know the hand writing of complainants; believes the petitioner has done work and furnished materials, but the nature, and extent, and value thereof does not know, nor whether he has complied with said contract or not; admits the making of the contract between said Husted and said Cook, for the sale and purchase of said lands, substantially as stated in the petition; states that on or about the 2d day of October, 1856, T. F. Cook made to him, Isaac Cook, a mortgage of that date, conveying said premises in mortgage to him, to secure an indebtedness of eight thousand dollars due him, which was recorded, October 2, 1856; that the lien of said mortgage upon said lands and premises attached and became vested, before the lien of said Heald & Waterhouse, if any; that on the 23d day of December, 1856, and before the lien of said petitioners, if any, so attached as aforesaid, the defendant, I. Cook, filed in the Cook County Court of Common Pleas, his bill of complaint in chancery, to foreclose said mortgage, making said Theodore F. Cook and Horatio N. Heald parties defendant thereto; that due personal service of process was had on them, to answer said bill, and such proceedings were afterwards had in said court in said cause; that at the January Term thereof, 1857, a decree was rendered, directing the sale of said lands and premises to satisfy the mortgage indebtedness of \$8145, and costs, as by record&c., appear; that afterwards, and on the 23d January, 1857, the said premises were sold, under that decree, to William T. Burgess, and a certificate of such sale issued to him, and sale reported to the court. Insists upon the pendency of said suit, and decree sale therein as a bar to this suit, and prays that he might have same benefit therefrom as if he had pleaded the same; insists that Burgess is a necessary party to the suit, and prays the same benefit therefrom as though he had pleaded the same. That it nowhere appears that the time for doing the work was not extended more than three years from making contract, and demurs to said bill for that reason.

Sworn to April 15, 1857.

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Appearance of Burgess to bill as amended entered April 2S, 1857.

April 29, 1857. Leave given to plaintiff to file supplemental bill, making William T. Burgess party defendant.

June 12, 1857. Supplemental petition filed by Rofinot & Rice, states that on the 9th February, 1857, filed their original petition in that court for a mechanics lien, making Theodore F. Cook and others defendants. That afterward on the day of 1857, they were allowed by order of court to file a supplemental petition, making William T. Burgess a party defendant. That said Burgess has, or claims

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to have, some interest in the premises described in the said petition, but as they were not fully advised thereof, they prayed that the said Burgess might be made a party, and a summons might issue to him to appear and answer, and for judgment against said Burgess that he might be forever barred and foreclosed of all claim, &c., in said premises, to the prejudice or injury of the petitioners, and for further and other relief.

Upon which supplemental bill is indorsed the appearance of said Burgess to it, June 12, 1857.

General replication to answer of Cook, filed June 22, 1857.

Plea of Burgess filed November 5, 1857, to the petition of Rofinot & Rice as amended. The defendant by protestation &c., doth plead, that on the 22d day of December, 1856, Edward L. Comly and Thomas P. Byrne, filed in the Cook County Court of Common Pleas their petition and amendment thereto filed April 17, 1857, setting forth that on or about the 20th August, 1856, Theodore F. Cook employed Comly & Byrne to furnish gas pipes for a certain dwelling house then in process of erection by said Cook, in the city of Chicago, for which they were to be paid what they were reasonably worth, to be furnished immediately thereafter, and paid for as soon as delivered. That in pursuance of that contract on the 21st August, 1856, they furnished for said house, and applied in and toward the erection thereof materials worth \$69.30, which remained due and unpaid at the time of filing said petition. That Vreeland, Chase, Alexander H. Heald, Waterhouse, Rofinot, Rice, Gibson, White, Raymond, Ward, Boyington, Wheelock, I. Cook, Horatio N. Heald, Mettler, Dibble, Barber, Brewster, Hoyt, Stillwell, Benson, Greely, Farlam, Jones, Patrick, Wadsworth, Hitz, Ballentine, Hoffman, Gelpcke, Pfeifer, McGraw, Burgess and Lycurgus Sherman, and Carlos S. Sherman had, or pretended to have, or claimed some right in said premises by way of mortgage, judgment or mechanics' lien, or in some other way, that said building was situated on the S. 25 feet of sub lot one in lot four in block 22 in fractional sec. 15, T. 39, N. R. 14, E., that at time of making contract, T. F. Cook was and still remains the owner thereof, and praying, among other things, that the lien of said Comly & Byrne might be established upon said building and premises upon which the same was erected, to the amount due them as aforesaid, and the estate of said T. S. Cook, therein declared liable to be sold to satisfy the same, and that a sale thereof might be decreed, and for process against said Theodore F. Cook and the other persons claiming, &c. named above, as by the said petition amended still pending in the said court of common pleas not disposed of, would more fully appear. That summons was duly issued upon said petition, and among others served day of June, 1857, Rofinot upon said Rofinot & Rice; that on the

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& Rice filed their answer to said bill, setting up, among other things, the making of the same identical contract with said Theodore F. Cook, the doing of the same identical work, and furnishing the same identical materials in and toward the erection of the same identical house upon the same identical lands and premises as in the petition in this cause set forth and alleged, which answer still remained of record therein, and to which said Comly & Byrne had filed their replication, and the defendant avers that the said Theodore F. Cook in the petition of Comly & Byrne named is the same identical T. F. Cook in the petition in this cause named, and not other or different. That the said Rofinot & Rice in the said petition, filed by said Comly & Byrne, and who hath answered the same, is the same identical Rofinot & Rice, who hath filed the petition in this cause, and not other or different, and that the house, lands and premises in the Comly & Byrene petition named, are the same identical house, lands and premises in the petition in this cause named, and not other or different, all which matters and things he avered, and pleaded the petition, filed by said Comly & Byrne, and then pending in the said common pleas, and proceedings therein and thereon had in bar to said petitioners Rofinot & Rice petition, and demands judgment of the court whether he should be put to make any further or other answer thereto, and prays to be dismissed.

Sworn to November 2, 1857.

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Demurrer to Plea, filed June 24, 1857.

Appearance of Henry A. Ballentine, by his attorney, filed Nov. 16, 1857.

Replication to Plea, filed Nov. 16, 1857.

Petition of W. T. Burgess, filed December, 31, 1857, sets forth, that the petition in the cause of Rofinot & Rice vs. T. F. Cook, et al, is filed by Rofinot & Rice, to establish a lien under the statute in his favor, for work and labor done, and materials furnished by him, upon and towards the erection of a certain building, upon the south 25 feet of lot one, &c. That the amount and value of the work done by the complainant had been found, by a jury in the cause, to be \$

That a motion for a new trial had been interposed which had not been disposed of; states the same facts as to mortgage by T. F. Cook to Isaac Cook, that it had become a lien before that of the complainant's, and its foreclosure and sale to Burgess, thereunder, as are stated in the answer of Isaac Cook; that said sale had been reported to and confirmed by the court; that if the suit to foreclose the mortgage was commenced before the lien of the complainant, if any, attached upon said premises, then that suit and the decree and sale therein is a bar to that suit, and prays the same benefit as though he had pleaded the same in bar; that if the court orders a sale of the premises, then that he, Burgess, is entitled to be first paid out of the proceeds amount of his bid and interest thereon, be-

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fore either the complainant or any of his co-defendants are entitled to be paid anything, provided sale takes place before time to redeem shall have expired; but if premises are not redeemed, then that he, Burgess, is entitled to hold the same freed from any lien of the complainant, and he prays that such order may be made in the premises as will protect his rights.

On the 9th day of January, A. D. 1858, the following order made in the cause of Rofinot & Rice vs. Theodore F. Cook, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stillwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, and William T. Burgess.—Mechanic's lien.

On the 19th day of December, came the petitioners by George A. Ingalls, their Solicitor, and the said defendant, Isaac Cook, by William T. Burgess, his Solicitor, and the said defendant William T. Burgess, in his own proper person, and on motion of complainant's solicitor, and no objection being interposed, the issues on the plea of the said defendant William T. Burgess, to the petition of the said Rofinot & Rice, filed in this cause and the replication, to the said plea, were tried by the court, and the same was accordingly submitted to the Court for trial, and after the hearing of testimony, by the Court, and the arguments of counsel, it was considered and adjudged by the court, that the issues on said plea, and replication, be found for the said complainant, and that the said plea be overruled, to which judgment, the said Burgess thereupon excepted, which was decreed to be entered of Record; and on motion of complainant's solicitor, the said defendants, Theodore F. Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlin, William Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, and William T. Burgess, being three times solemnly called, came not, nor any one for them. Wherefore it was ordered by the court, it appearing that said defendants had been duly served with process, or their appearance properly entered, that the default of the said defendants last named, be entered for want of an answer to said complainant's petition, and this cause came on to be heard on the petition, amended sup plementary petition of the complainants, and theanswer of the said defendant Isaac Cook, and the replication of the said complainants, to the answer, and by agreement of parties herein, the issues presented by the pleadings are hereby submitted to the court for trial, and the court, after hearing the testimony and aguments of counsel, found the issues for the complainant, and found that there was due the said complainants on their contract with said T. F. Cook, for labor and materials furnished and performed by said complainants on the brick house mentioned in the petition, over and above all payments, the sum of \$241 50.

Thereupon the said defendants move the court for a new trial of this cause and afterwards, on the 31st day of December, A.D. 1857, the said Wm. T. Burgess, came into open court, and filed his petition in this cause.

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

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Title of cause. And now this cause came on to be heard on the application of said defendants for a new trial, and after argument of Counsel it was ordered by the court, that the motion for a new trial, in this cause, be overruled, to which ruling of the court the said defendants except, ard thereupon it is considered, adjudged and decreed that the said complainants, have a judgment against the said Theodore F. Cook for the amount so found due at a former term of this court, and being the sum of \$241 50, that the said complainants have a mechanic's lien upon the premises described in bill, as follows: twenty five feet front and rear off the south side of sub lot one (1,) of Lot four (4), in block twenty-two (22), in the Canal Trustee's sub-division of fractional section fifteen (15), Township thirty-nine, Range fourteen, East of the third principal meridian, and being in the city of Chicago, in the state of Illinois, with the buildings thereon situate, for the said sum so found due, the said complainants, as aforesaid together with costs and charges by them in this behalf expended and have execution thereof against the said described premises, and that said premises be sold to satisfy the same, as provided in the Sixty-fifth chapter of the revised statutes of the State of Illinois. And it is further ordered and decreed that if upon the sale of said premises, the proceeds of such sale applied to the satisfaction of the said execution of the said complainants according to their rights, in common with co-equal creditors against the said premises shall be insufficient to pay the same, that then the said Theodore F. Cook, against whom judgment has been rendered herein, for the amount of said indebtedness, pay to the said complainants, the amount of such deficiency, and that the said complainants have execution therefor. And it is further adjudged and decreed that the said defendants, Isaac Cook, Horatio N. Heald, Wilson Mettler, Jacob D. Dibble, Ira C. Barber, Henry P. Brewster, Charles J. Hoyt, Charles H. Stilwell, Francis H. Benson, Joel Gurley, Dudley H. Farlan, Wm. Jones, Milton S. Patrick, Strong Wadsworth, Louis J. Hitz, Henry A. Ballentine, Francis A. Hoffman, Otto Gelpcke, be barred of, and from setting up any claim or lien upon said premises, and buildings, thereon situated to the prejudice or injury of said lien and claim of the said petitioners, and thereupon it is ordered that said cause stand continued to the next term of this Court for further hearing, upon the petition of said William T. Burgess, filed therein, on the 31st day of December last.

And afterwards, to wit, at the March Term of said Court, to wit, on the 2d day of April, A. D. 1858, the following proceedings, among others, were had and entered of record therein, to wit:

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TITLE OF CAUSE.—And this cause, having come on to be heard at a former term of this Court, and the amount of two hundred and forty-one dollars and fifty cents, having been found to be due the said petitioners herein, and judgment having thereafter, and at a former term of this Court, been duly rendered on the finding; and the said defendant, Wm. T. Burgess having filed his petition herein for a payment to him of a portion of the proceeds of a sale of the premises, on which a lien is had in this cause, and being described in the said petition of the said Rofinot & Rice, and this cause having this day come on to be heard, on the petition of the said William T. Burgess, and the Court having heard the testimony, on the part both of the said Wm. T. Burgess and the said Rofinot And after the hearing of the testimony as aforesaid, and the cause having been, by the agreement of the parties respectively, submitted to the decision of the Court, without argument of counsel; and the Court having fully considered the same, and it appearing to the Court from the testimony that the said Theodore F. Cook did, on the second day of October, A. D. 1856, execute a mortgage on the premises in said Rofinot & Rice's petition described, to Isaac Cook, for eight thousand dollars, and that the interest of the said Theodore F. Cook in said premises on the said second day of October, A. D. 1856, before the exccution of the said mortgage, was worth the sum of Thirteen Hundred and Sixty two Dollars, exclusive of the house for which stone were furnished by said Rofinot & Rice, and also the barn then being erected by other parties, who have a lien against same premises, equally with complainants in this cause at same term of this court, under their contract; and it further appearing to the Court, that the said Mortgage from the said Theodore F. Cook to the said Isaac Cook was foreclosed by proceedings in Chancery, in which Isaac Cook was complainant, and Theodore F. Cook and Horatio N. Heald were defendants, and that the said Burgess became a purchaser at sale, under such foreclosure and received a certificate therefor; and it also appearing to the Court from the testimony that the said Rofinot & Rice, had on the said second day of October, A. D. 1856, performed labor and furnished materials on his contract with the said Theodore F. Cook, for the erection of the house on said premises, amounting to the sum of five hundred dollars; and it further appearing by the testimony so heard by the Court, that the house for which the stone was furnished by the said Rofinot & Rice, upon the said lot upon which a lien is had in this cause, and the barn also being erected on same lot by other parties, under another contract, under which a lien is also had, in case No. — in this court, were on the first day

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of January, A. D. 1857, worth the sum of ten thousand and five hundred dollars, exclusive of the land; and whereas there were other petitions filed by other parties against the same premises upon which a lien is had by the said Rofinot & Rice, and on which petitions a hearing was had on the same day of the finding for the said Rofinot & Rice, and thereafter, upon which judgments were rendered respectively, as well as upon the finding in favor of the said Rofinot & Rice and which said several judgments are equally a lien upon said premises, with the judgment in favor of the said Rofinot & Rice; one of said judgments being in favor of Henry Vreeland, and being for the sum of two thousand six hundred and sixteen dollars and ninety two cents; also a judgment in favor of James McGraw for three hundred and ninety-five dollars and thirty-nine cents, in same case with that of Henry Vreeland, the said McGraw having interpleaded in said cause; also one judgment in favor of Levi H. Waterhouse and Alexander H. Heald, against the same premises, for the sum of nine hundred and eighty-one dollars.

Also, one judgment in favor of William W. Boyington and Otis L. Wheelock against the same premises for the sum of three hundred dollars. Also, one other finding in favor of the said Alexander II. Heald and Levi II. Waterhouse, for the sum of four hundred and sixty dollars and seventy-five cents. Also, one judgment in favor of Benjamin W. Raymond and Samuel D. Ward, and against the same premises as in this cause, for the sum of two hundred and eighty-four dollars and fourteen cents. Also, one other finding in favor of John P. D. Gibson and Frederick F. White, for the sum of one hundred dollars and seventy two cents. Also, one judgment in favor of Benj. F. Chase and for the sum of five hundred and fifty-eight dollars and sixty-three cents. Now, it is ordered, adjudged and decreed that L. C. P. Freer, master in chancery of Cook county, in the State of Illinois, proceed to sell twenty-five feet front and rear off the south side of sub lot one (1), in lot number four (4), in block number twenty-two (22), in the Canal Trustees' subdivision of fractional section fifteen, town thirty-nine north range fourteen east of 3d principal meridian, being in the City of Chicago, with the building and appurtenances thereon situated, being the same premises described in the petition of said Rofinot & Rice, and upon which a lien is had in this cause, after publishing the hour, day and place of sale, for twenty days immediately prior thereto, in some newspaper published in the city of Chicago, to the highest bidder, for cash, at the hour appointed for such sale, and make proper conveyances of said premises as such Master in Chancery and special Commissioner hereby appointed to the purchaser or purchasers thereof, and the money arising by the said sale shall be applied as follows: first to pay the said defendant William T. Burgess, the sum of thirteen hundred and sixty-two dollars, together with interest thereon, at the rate of six per cent. per annum, from the second day of October, A. D. 1856, to the date of such sale, provided the

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said Burgess shall not on or before the payment of said money part with his interest in said premises, by the assignment of his certificate or otherwise and in case the said Burgess shall have so parted with his interest, then the above amount shall be paid to the person who holds the legal interest acquired by the said Burgess, by his purchase on the sale under the foreclosure of said mortgage; second, to pay all costs of such sale and third to pay the balance of the money arising from such sale on all of the judgments including interest and costs, the same being hereinbefore enumerated, and the same being all and equally liens on said premises pro rata according to their respective amounts. And it is further ordered and decreed that in case the proceeds of such sale be more than sufficient to pay all of said claims, as hereinbefore particularly enumerated, that then the said master is directed to pay the balance, or surplus, of the money arising from such sale, into this court to await its further order.

And it is further ordered and decreed that the said William T. Burgess and his assigns be forever barred from having and maintaining any claim against said premises, except the payment of the said sum as hereinbefore decreed.

And now on the order being made to enter the foregoing decree by the Court comes the said complainants, and except to so much of said decree as directs the payment to William T. Burgess, out of the proceeds of the sale of the said premises, the sum of Thirteen hundred and sixty-two dollars, with interest thereon, as stated in the foregoing decree, prior to the payment of the claim of the complainants, Rofinot & Rice.

And the said defendants move the court that the sale be made with the same rights of redemption as are provided by law upon sales of real estate upon executions at law, which motion the court denies and the defendants except.

And the said defendants pray the court that the payment due H. H. Husted, as appears from his contract with Theodore F. Cook, and for said premises in evidence in this cause, on the tenth day of June, 1857, of Twelve hundred and fifty-three dollars and seventy-five cents, be first paid to him out of the proceeds of any sale of the premises, under the order of the court, unless the same shall have been paid to him by said T. F. Cook, which motion the court denies and the defendants except.

And the Defendants except to the decree of the court in this case, and the said William T. Burgess prays an appeal from the decrees and orders of the court in this cause to the supreme court and it is allowed to him on his filing a bond in the penal sum of five hundred dollars, to the said

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Rofinot & Rice, with Isaac Cook and Owen McCarthy as his surety, on or before the 1st day of June next conditioned as the law directs.

And afterwards, to wit, on the same second day of April last, aforesaid, a certain stipulation and exhibit was filed in said court, and entered of Record which is in the words and figures following, to wit.

ROFINOT & RICE, vs.

THEODORE F. COOK, WILLIAM T. BURGESS, Et al. COOK COUNTY CIRCUIT COURT.

Mechanics' Lien.

Petition of William Burgess, one of the Defendants to be part of the proceeds of sale of premises on which lien is had in this cause.

And now comes the said William T. Burgess in his own proper person and Rofinot & Rice, by George A. Ingalls, their solicitor, and it is stipulated between the said parties, that it is admitted as proved that the said Theodore F. Cook did execute a mortgage to Isaac Cook, for eight thousand dollars, on the 2d day of October, A. D. 1856, and that said mortgage was foreclosed by proceedings in the Cook County Court of Common Pleas, and said premises purchased thereunder, by the said Burgess, as stated in his said petition, and the production of the record in that case is waived. And it is further agreed and stipulated between the said parties, that the said Rofinot & Rice had on the said 2d day of Oct., 1856, performed work on their said contract, for furnishing cut stone for the house upon said premises to the amount of \$500; and it was further proved on the hearing of the petition of William T. Burgess, filed herein, that Theodore F. Cook made a contract with Harrison H. Husted, for the purchase of the premises upon which a lien is had in this cause, a copy of which said contract is hereunto annexed, marked "A;" that said Theodore F. Cook paid the first payment on said contract according to the terms thereof, and that on the 2d day of October following, the time when the said Theodore F. Cook made his mortgage to the said Isaac Cook, and that from the time of the making the said contract of the said Husted with the said Theodore F. Cook for the sale of the lot on which a lien is claimed in this cause, to the time of the making of the said mortgage from the said Theodore F. Cook to the said Isaac Cook, the said lots had increased in value the sum of three hundred dollars, and that said Theodore F. Cook's interest in said lot, on the 2d day of October, 1856, was worth the sum of thirteen hundred and sixty-two dollars, and that the house and barn then being erected on said lot, on the 1st day of January, A. D. 1857, were worth the sum of ten thousand and five hundred dollars, exclusive of the land.

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W. T. BURGESS. GEO. A. INGALLS, Solicitor for Refinet & Rice.

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Agreement between H. H. Husted and T. F. Cook for lands, dated June 10, 1856, provides that if Cook shall first make the payments and perform the covenants therein provided for him to make and perform, Husted agrees to convey to him in fee, clear of incumbrances, the premises, described in the petition. Cook agrees to pay him \$4250, as follows—in cash, \$1062.50, and the same amount on the 10th June, 1857, 1858 and 1859, with interest, payable annually; and also to pay taxes, &c. Time of payment made an essential part of the contract.

Appeal bonds from decree in favor of McGraw & Vreeland, filed May 23d, 1858.

ERRORS ASSIGNED.

- 1. That the court overruled the demurrer of Isaac Cook to the bill.
- 2. That the court overruled the plea of Isaac Cook to the bill.
- 3. That the complainant amended his bill by making W. T. Burgess a party without leave of court.
- 4. That the supplemental bill vs. Burgess is defective in not making the other persons parties, and should not have been allowed to be filed.
- 5. That the petition is defective in not alleging when the work was done—when the contract required it to be done—in not alleging that the work was to be completed within three years from making of contract. It was a sure and in the middle of the contract of the contrac

work was to be completed within three years from making of contract. It was maturals were in the position of McGraw is defective in not making any other persons defendants than Isaac Gook and Theodore F. Cook.

That he prays for and obtains relief against them, without making

7. That he prays for and obtains relief against them, without making them parties to his bill, taking and serving process against them, or otherwise bringing them into court.

- 8. That the court found the issue upon the plea of W. T. Burgess, for the complainant.
- 9. That the court thereupon ordered the bill to be taken as confessed against him.
- 10. That the Court refused to continue the cause upon the application of said Cook.
 - 11. That the Jury found, and the Court allowed interest.
- 12. That the Court rendered a decree for complainant, and directed a sale of said premises.
- 13. That the Court directed the said Liens mentioned in its decree to be paid before paying the said Burgess.
- 14. That the Court did not hold the proceedings and decree in the mortgage foreclosure suit, to be a bar to the said suits.
- 15. That the apportionments of the proceeds of the sale of the premises is not according to law.
- 16. That the Court ordered the liens of persons not parties to the suit to be paid without bringing them before the court in any way in the suit.

W. T. BURGESS.

For Appellant.

Cook et als vs, Profind on abstract

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