

12968

No. _____

Supreme Court of Illinois

Reynolds

vs.

Ely et al

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division,

No. 110.

Ely
vs
Reynolds

12968

George Ely
Alfred Ely
as

William H. Reynolds
Francis E. Rigby
Francis E. Rigby Jr

Supreme Court of the State
of Illinois. Third Grand
Division. April T. A.D. 1860

May it please your Honors.

The Ennos appraunt on the
Record on which the plaintiffs in Ennos
rely are of such a nature as hardly
warranting any citation of authorities.

The proceedings in this
case are wholly Statutory and we
claim that the plaintiffs below
who are the defendants in Ennos in this
Court have not brought themselves
within the requirements of the
Statute commonly called the
"Mechanics Lien Act."

This Statute allows the
Lien only in those cases where the
time of completing the contract shall
not be extended for a longer period
than three years nor the time of
payment for ^{beyond the} longer period of one
year from the time stipulated for

the completion thereof. This Lien being in derogation of the Common Law every Petition must show that the Contract which it seeks to give this Lien complies with this and all other requirements of this Act.

1st

The Petition of said defendant in Error William H Reynolds. Especially in so far as it relates to the sum of \$25 Extra Work Money sets forth that said Reynolds performed this amount of work at the request of Ely. That it was worth so much money viz \$25. Very plainly this Contract does not comply with the provision of this Statute above quoted.

Neither the time of completing the Contract nor of payment was specified.

The decisions made by your Honors on this provision are too recent and numerous to require any citation.

The Judgement as far as can be known. Embraces this Claim for Extra Work as well as the Claim arising from the written Contract between Ely and Reynolds

2^d

The Petition of said Reynolds sets forth that said Alfred Ely had a Mortgage on said premises on which he the said Reynolds claims a Lien as Mechanic amounting June 1st 1858 prior to the date of his contract to the sum of 1300 \$.

Section 17. of the Mechanic's Lien act provides. That "The Creditor may cause the right of Redemption on whatever other right or estate such owner had in the Land at the time of making the Contract the sold. and the proceeds of sale applied according to the provisions of this Chapter."

Section 20. of the same act provides in substance That the Lien of the Mechanic shall have priority to the extent of the additional Value given the Land. And that the previous Encumbrances shall be preferred to the extent of the Value of the Land at the time of making the Contract. And that the Court shall ascertain by Jury or otherwise as the Case may require What proportion of the proceeds of any sale shall be paid to the

several parties in interest."

Under Section 17. The Petitioners could have sold only the interest of George Ely in the premises namely his right of redemption

Under Section 20. Even if in any case the interest of the prior encumbrance in the premises can be sold. The first duty of the Court is to ascertain "the value of the Land at the time of making the Contract" also the value of the "Building Erected and Materials furnished" and then from these data "What proportion of the proceeds of any sale shall be paid to the several parties in interest."

In this case all the right and interest of Alfred Ely a bona fide prior Mortgagee of this Land was sold and sacrificed for the benefit of these Mechanics' Lien. It is more any measures taken by the Court to ascertain the value of the Land at the time of the Contract. Now the value of the Building Erected and Materials. Now to distribute the proceeds of the sale among

the several parties in interest. The gross
injustice of such a decree is almost
sufficient proof of its illegality.

3^d

Alfred El is brought
before the County Publication. The
Object of the Petition is that the interest
of George El the Montgomer shall be sold.
The Relief granted by the Decree
is widely different.

Alfred El might well
not appear to the Court as no decree
affecting his interest in the Land
is prayed for. He appears to be a
merely nominal party to the Bill.

The Statute Sec. 9. makes
publication under order of the Court
equivalent to personal service. as
stated below there was no order of
Court in this case authorizing
publication of notice. Had there however
been such an order. the only reasonable
construction of this Section is that
the party so brought in by publication
shall be deemed before the Court
personally for the purposes and for the
relief only ~~for~~ expressed upon the
face of the Petition. Any other
construction would impose the burden

upon all persons made nominal parties to a bill, against whom no relief is prayed. To employ Counsel and watch every step of the case.

Again. The interest of Alfred E. the Mortgagee is derived from Manana Page E. who owns the fee of Paris Land. The Court might with the same propriety have sold the Interest of the Owner of the Fee as of her Mortgagee to satisfy his subsequent Lien of the Mortgagee.

4 $\frac{11}{11}$

The Affidavit of Daniel D. Driscoll as to the Departure of George E. from the State and as to the Non-residence of Alfred E. is founded upon information and belief.

The Proceedings under this act are by Section 4. Made conformable to proceedings in Chancery.

The Statute regulating Chancery proceedings Sec. 8. Provides "Whenever any Complainant shall file in the Office of the Clerk of the Court in which his suit is pending an affidavit showing that any Defendant resides or hath gone

out of the State" &c. The party may
be brought into Court by publication
&c. This Statute seems to

contemplate that the affidavit
shall be made by the complainant
alone and not by his agent. Certainly
the affidavit should be direct
and positive.

In the case of *Ozen vs Kent*
21 Ill. R. 80. *Yorn & Huns* in
constructing the Statute on attachments
have decided this point —

5th

The printers Certificate
does not state the last day of
publication as the Statute requires.

6th

We maintain there should in
every case an express order of the
Court permitting publication of Notice.

The Words of the Mechanics Lien
Act Sec. 3. are. "The Court shall
have power to make all orders
requiring Notice to be given by publication
in News-Papers that are or may be
authorized by proceedings in Chancery.
By Sec. 7. publication is equivalent
to personal service. And the
Statute thus making constructive

Equivalent Personal Notice requires
the Court to Exercise discretion as to
the cases wherein Publication shall
be permitted and shall in every case
pass a special order. In this case
there was no such order of the Court.

But the parties plaintiffs in the Court
below have evidently proceeded under
the Chancery practice.

7th

We think Mariana Page
Ely whose interests are directly affected
by the sale of the interest of her
mortgagee Alfred Ely should have
been made a party to this suit.

All the above objections apply
to the original petition of William H.
Reynolds and with equal force to
the petition and decree of the Riglys
who interplead in this case.

There are these additional
objections to the decree in favor of
the latter parties. The defendants
below were brought into Court only
by constructive notice of the petition
of said Reynolds. Judgement is
rendered against them at the
suit of the Riglys. The Petition

of the Riglys does not mention the
Interest of Alfred Ely as Mortgagee
nor does it say any sale of his
Interest in this Land. While the
Decree in their favor orders a sale
of the Mortgage Interest of Alfred
Ely.

These objections seem to us
sufficient to authorize a reversal
of these decrees

All of which is respectfully
submitted to your Honors

F. S. Howe and
Shuman & Hales
Plaintiffs Exors Attornies

110
Argument for
Plaintiffs in Error

George Ely
Alfred Ely
vs

William H. Reynolds
Francis E. Rigby
Francis E. Rigby Jr

Tiled Mon 10. 1860
L. Leland
Clerk

F. S. Howe
Sherman & Hayes
Pliffs Attorneys

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the ~~Superior~~ Court of ~~Chicago~~ Cook County, before the Judge thereof, between William H. Reynolds, Francis E. Rigby and Francis E. Rigby Jr.

plaintiffs and George Ely and Alfred Ely

defendants; it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said William H. Reynolds, Francis E. Rigby and Francis E. Rigby Jr.

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

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 23^d day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

174

book

George Oly et al

No.

vs.

William H. Reynolds et al

SCIRE FACIAS.

FILED A. D. 186

Gleick.

Served by reading to the within
 named William H. Reynolds
 and Francis C. Reynolds by D. Steinhilber Esq.
 the 29th day of March A.D. 1860

Served by John C. May Esq.
 the 31st day of March A.D. 1860
 by D. Steinhilber Esq.

Pa. 4th

J. S. Howe



Adolphus Reynolds

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

To the Clerk of the *Superior* Court *of Chicago* ~~for the County~~ *of Cook* Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the *Superior* Court of *Chicago*, *Cook* County, before the Judge thereof, between *William H. Reynolds, Francis E. Rigby and Francis E. Rigby Jr.*

plaintiffs and *George Ely and Alfred Ely*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by *this* complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *23* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.

L. J. R. R. R. R. R.



George Ely et al

No. 2

vs.

William H. Reynolds
et al

WRIT OF ERROR.

FILED

March 23^d

A. D. 1860

L. Leland

Clerk.



Supreme Court of the State
of Illinois April Term
A.D. 1860. Sitting at
Ottawa

George Eg }
Alfred Eg } plaintiffs in Error
as
William H Reynolds }
Francis E. Rigby } Defendants in Error.
Francis E. Rigby Jr }

Will the Clerk of the Supreme
Court please to issue a Writ of Scire
Faciis in the above case returnable
to the above Term of said Court
in favor of the plaintiffs in Error and
against said defendants in Error &
obedient

Respectfully Yours &c

J. L. Howe
Sherman & Hales
Plaintiffs Attorneys.

George Ely
Alfred Ely
ms

William H Reynolds
et al

Donceipe

Filed March 23, 1860
L. Leland
clerk

J. S. Home
Shenman & Kules
Attorneys

Supreme Court of the State
of Illinois. April Term
A.D. 1860. sitting at Ottawa.

George Ely
Alfred Ely
vs

William H Reynolds
Francis E. Rigley
Francis E. Rigley Jr

We do hereby enter ourselves security for
costs in this Cause and acknowledge ourselves
bound to pay on Cause to be paid all costs which
may accrue in this action either to the opposite
Party or to any of the officers of this Court
in pursuance of the Laws of this State
Dated this Twenty First day March A.D. 1860

F. L. Howe
P. Sherman

110
George Ely }
Alfred Ely } Defts in Error
vs

Wm H Reynolds
et al
defts in Error

Bond for Costs

Filed March 23. 1860
L. Leland
Clerk

G.S. Horne
Shearman & Kules
Attorneys.

United States of America
State of Illinois, Cook County, ss.

Pleas before the Honorable the Judges of the
Superior Court of Chicago within and for the
County of Cook and State of Illinois at a
regular Term of the said Superior Court,
begun and holden at the Court House in the
City of Chicago in said County and State
aforesaid on the first Monday being the twentieth
day of November in the year of our Lord one
thousand eight hundred and fifty nine and of
the Independence of the United States of America
the Eighty first.

Present-

The Honorable John M. Wilson Chief Justice
of Superior Court of Chicago.

Wm. H. Higgins and Grant Goodrich, Judges
Carlos Hauer Presenting Attorney
John Gray Sheriff of Cook County.

Attest

Walter Kimball - Clerk.

Be it remembered that heretofore to wit on the twenty second day of August A. D. eighteen hundred and fifty nine came William H. Reynolds by Perry & Driscoll his Attorneys and filed in the Office of the Clerk of the Superior Court of Chicago aforesaid his certain Petition and Prayed in the words and figures following to wit.

"State of Illinois } Superior Court of Chicago
Cook County } September Term A. D. 1859.

To the Honorable the Judges of the Superior Court of Chicago.

The Petition of William H. Reynolds of said County, respectfully shows that Van H. Higgins in and by a certain Deed bearing date on or about the first day of December A. D. 1856, conveyed the North Twenty five (25) feet of Sublot No. one (1) of lot number Eleven (11) in Block number Twenty one (21) of Fractional Section fifteen Addition to Chicago, in said County of Cook, being situated in said County; to Marianne Page Ely who was then and now is the wife of George Ely, to have and to hold the same to the said Marianne Page Ely in fee simple; that the said George Ely and Marianne Page Ely, his said wife, on the first day of June A. D. 1858 made a Mortgage of said Premises to one Alfred Ely to secure the payment to said Alfred Ely in one year from the date thereof of the sum of \$1300. owing to the said Alfred Ely as therein represented by the said George; that the said George Ely has one child, by his said wife Marianne Page Ely now living;

That on the eighteenth day of February A.D. 1859 the said George Ely was the owner, and was possessed of an Estate in said lot of land above described, for and during his natural life; that at said time there was upon said premises a building in the process of erection, but unfinished and incomplete; that on the day last aforesaid, your Petitioner made a contract in writing of that date with the said George Ely to finish and complete the Carpenter and Masons work of said building, which contract is under the hands and seals respectively of your Petitioner and said George Ely a copy of which marked "A" is hereto attached and made a part of this Petition.

That your Petitioner agreed in and by said contract to overhaul in a thorough manner the said building as it stood at the date of said contract, and to make the work thereof perfect in every respect, before commencing any new work thereon, to find and provide good proper and sufficient materials, such as should be fit and proper for finishing and completing the Carpenter and Mason work on and for said building, and other works of said building mentioned in the Carpenters Specifications as drawn and specified in and by the drawings and specifications of and for said building made by F. V. Wadswick, the Architect thereof, and to finish & complete said work on or before the first day of May A.D. 1859 in a good workmanlike and substantial manner to the satisfaction and under the direction of the said Wadswick, the said Architect to be testified by his Certificate in writing for the sum and consideration of One thousand three hundred and sixty dollars.

That the said George Ely promised and agreed in and by said Stated Contract to pay your Petitioner for the work and materials to be done and furnished by him as aforesaid the said sum of One thousand three hundred and sixty dollars in the manner and at the times following viz.

On the 21st day of February A. D. 1859 \$ 160

On the 15th day of March A. D. 1859 .

provided the building aforesaid should then have been thoroughly overhauled and made perfect to the satisfaction of said Architect, the Chimneys built, floors laid, partitions put, outside Clap boarded, sash fitted and all ready for a Plastering, all of which your Petitioner avers was then done) \$ 200.

On the 15th day of April A. D. 1859, provided all the outside work is finished which your Petitioner avers was then done \$ 200

On the 1st day of May A. D. 1859 provided the said building is finished and completed to the entire satisfaction of said Architect \$ 200

And on the 29th day of June A. D. 1859 the balance that is to say, \$ 600.

Provided also that in each case of payment above specified to be due and payable a certificate under the hand of said Architect thereto should be first obtained, which your Petitioner avers, he obtained and presented to said Ely in each case and requested payment thereon.

And your Petitioner further states that at the request of the said Ely he did and performed upon said building other work not specified and stated in said Contract and the drawings and

specifications therein referred to, that the same was done & performed during the same time he was doing the work specified in said Contract that the same amounted to the sum of Twenty five dollars and consisted of the following viz:

Fitting up Closets with drawers	\$ 5 " 00
Making Division Arch	5 " 00
Making back Platform	3 " 00
Fitting around sink and Bathtub	5 " 00
Molding Shutters	5 " 00
Making Cupboards under the Stairs	2 " 00
	\$ 25 " 00

That the prices above charged are reasonable for the work done and that your Petitioner on the 21st day of June 1889 procured the Certificate of said Architect that the said charges are reasonable and exhibited the same to said George Ely and requested payment thereof.

Your Petitioner states that the said building is a Dwelling house, the front or main part being 24 feet by 36 feet, and the rear part being 16 ft 6 inches by 44 feet & 9 inches, and each part two stories high.

Your Petitioner further states that the said Marianne Page Ely, the said Wife of said George Ely, was fully informed and advised of the above Contract and the said work done thereunder and consented to and approved of the same.

And your Petitioner further states that he furnished all the materials and performed all the work in the manner specified in said Contract under the direction and to the satisfaction of said Architect the said F. W. Madokor and that the same was de-

done and performed on or before the first day of May A.D. 1859
to wit on the 21st day of April A.D. 1859.

And your Petitioner further states that the said payments
so due and payable on the 1st day of May A.D. 1859 and on
the 29th day of June 1859 respectively as above stated And also
the said sum of \$25 for extra work as aforesaid have not been
paid by the said George Ely or by any one on his behalf, but
they severally remain due and unpaid in any part Although the
said George Ely has often been requested to pay the same, And
your Petitioner states that the sums so due and unpaid as aforesaid
amount to Eight hundred and twenty five dollars besides interest
thereon.

And your Petitioner further says that he is informed and
believes that the said George Ely has left the State of Illinois, that
he has abandoned the said premises upon which said labor was
performed, that the several incumbrances and liens thereon amount
to more than the value of said premises, and that the Equity of
redemption in said Ely is of no value at all.

6
Therefore your Petitioner prays that the said George Ely and
Alfred Ely may be summoned to answer to this Petition and for
judgment against the said George Ely for the amount so due to your
Petitioner as aforesaid with interest thereon from the time the said
amounts became due respectively And that the said judgment may
be declared and adjudged to be a lien upon the interest and estate
of said George Ely in said premises above described, and the
buildings thereon; And your Petitioner prays that an order be
passed for a Sale of said George Ely's said interest and Estate

and for applying the proceeds of such Sale to the payment and discharge of your Petitioners said demand, pursuant to the Statute in such cases made and provided, and for such other and further relief as the said Court shall deem proper to grant And your Petitioner will &c

William H. Reynolds

By Perry & Driscoll his Attys "

Samlr. B. Perry

Plffs Solrs "

7
"A"

" Articles of Agreement made this Eighteenth (18th) day of February one thousand eight hundred and fifty nine (A.D. 1859) Between George Ely of the City of Chicago, County of Cook and State of Illinois party of the first part and W. H. Reynolds of the same place party of the second part.

First. The said party of the second part doth hereby for himself his heirs, executors and administrators covenant promise and agree with and to the said party of the first part his executors administrators or assigns that he the said party of the second part his executors or administrators shall and will for the consideration hereinafter mentioned on or before the first (1st) day of May next ensuing well and sufficiently erect and finish the new building now in course of erection on Wabash Avenue near DuSable Street in said City of Chicago, the building as it now stands to be overhauled in a thorough manner and the work made perfect in every respect before any new work is commenced on, agreeable to the several Drawings and specifications made by F. V. Wadsworth Architect and signed by

the parties hereto executed within the time aforesaid in a good workmanlike and substantial manner to the satisfaction and under the direction of the said Architect to be testified by a writing or certificate under the hand of the said Architect, and also shall and will find and provide such good proper and sufficient materials of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the Carpenter work and Mason work and other works of the said building mentioned in the Carpenter's Specification for the sum of One thousand three hundred and sixty ⁰⁰/₁₀₀ dollars.

And the said party of the first part doth hereby for himself his heirs executors and administrators covenant promise and agree with and to the said party of the second part his executors and administrators, that to the said party of the first part his executors or administrators shall and will in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part as specified well and truly pay, or cause to be paid unto the party of the second part his executors administrators or assigns the sum of One thousand three hundred and sixty ⁰⁰/₁₀₀ dollars of lawful money of the United States of America, in manner following.

On the Twenty fourth day of February instant \$1600.00

On the fifteenth day of March next (provided the building as it now stands, is thoroughly overhauled and

made perfect, to the satisfaction of the Architect, Chimneys built, floors laid, partitions set, outside clapboarded, gables

fixed and all ready for Plastering \$2000.00

On the 15th day of April next (provided also the outside work is finished)

\$ 200.00

On the 1st day of May next, provided the building is finished and completed to the entire satisfaction of the Architect

\$ 200.00

And sixty days after the 1st day of May next (A.D.

1889) to wit on June 29, 1889 the balance

\$ 600.00

Total \$ 1360.00

Provided that in each of the said cases a Certificate be obtained and signed by the said Architect

9 It is further agreed and understood between the said parties that no work on said building shall be considered "Extra" unless a written agreement is made out to that effect, and the price of such work agreed on and such agreement signed by both parties hereto

And whereas the Plastering of said building will interfere with the work of said Reynolds, in constructing the same, Now it is further agreed and understood between the parties hereto that the said Reynolds is willing and hereby agrees to allow the space of three weeks during and included in the time specified in the contract for the completion of the building, for the said Plastering to be completed; but if the time occupied in performing such work of plastering extend over and beyond the space of three weeks hereby granted for the same as aforesaid, then and in that case the number of days occupied over the said three weeks in the said Plastering is to be considered by the said City as so many days of grace, after the maturity of this Contract, in favor of said Reynolds.

And whereas the parties hereto have agreed, for their mutual protection, to insure the said building, now in process of construction

as aforesaid, against loss or damage by fire, in some responsible insurance office in the City of Chicago, or elsewhere. Now therefore it is hereby agreed between the parties that the said W. H. Reynolds pay \$1000.00 dollars of the cost and charges of such insurance, and the said George Ely pay the balance thereof, and in case of such loss of or damage by fire to said building or its contents then the said Reynolds and the said Ely are to divide between themselves pro rata the amount of such insurance, when the same shall be adjusted and paid to them by such insurance company, such pro rata division to be decided upon by three commissioners to be appointed as follows viz. One by the said Ely, one by the said Reynolds and the third to be elected by the two Commissioners already chosen.

And it is further further agreed by and between the said parties First. The specifications and the Drawings are intended to co-operate, so that any works exhibited in the Drawings and not mentioned in the specifications or vice versa, are to be executed the same as if it were mentioned in the specification and set forth in the Drawings to the true meaning and intention of the said Drawings and specifications without any extra charge whatsoever.

Second. The party of the second part grants the Architect the right to reject any work or materials that by him is thought not fit or suitable, or not in accordance with this specification and plans or drawings furnished and likewise the power to cause any unsound work to be altered at the Contractors expense or any work that is not executed according to the true intent and meaning of the specification and Drawings and to the directions which may be given from time to time by the Architect.

If the proprietor or Architect thinks proper to make any alterations whether in addition or omission or deviate in any manner from these Specifications or Drawings such alteration shall not make void this Specification or Contract, but the same to be valued by the Architect and one good competent Mechanic and either added or deducted as the case may be.

Third. Should the Contractor at anytime during the progress of the said works refuse or neglect to supply a sufficiency of materials or workmen the owner shall have power to provide materials and workmen, after three days notice in writing being given to finish the said works and the expenses will be deducted from the amount of the Contract.

Fourth. And that the Contractor may not feel himself in any way aggrieved he must take special notice that every circumstance appertaining to the well doing of the work will be most strictly insisted on to the fullest intent and meaning of this Specification and that no indulgence will be allowed, and if any difference of opinion should arise as to the quality or quantity of work or material or any other matter connected with the work the decision of the Architect will be final and binding.

Fifth. The owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and expended in finishing and completing the same, (loss or damage by fire excepted) and as agreed upon heretofore.

In witness whereof the said parties to these presents

have hereto set their hands and seals the year first above
written.

In presence of }
D. W. Hadskirk "}

George Ely (Seal)

W. H. Reynolds " (Seal)

"State of Illinois }
County of Cook } ss

Superior Court of Chicago
September Term A. D. 1859.

William H. Reynolds }

(Seal)

George Ely and Alfred
Ely }

Petn to enforce Mech. Lien.

The Clerk of said Court will issue a
Summons in the above cause directed to the Sheriff of Cook County
on a Petition to enforce a Mechanics Lien returnable at the September
Term of said Court A. D. 1859.

12

Perry & Driscoll

To Walter Kimbale Esq.

Plaintiffs Attorneys.

Clerk.

Chicago 20th Aug^r 1859.

And thereupon accordingly on the said twenty second
day of August in the year of our Lord one thousand eight hundred
and fifty nine, there issued out of and under the Seal of said
Court a Proper Writ of Summons, which said Writ with the
Sheriffs return thereupon endorsed is in the words and figures
following, to wit.

"State of Illinois }
County of Cook } ss.

The People of the State of Illinois to the Sheriff
of said County, Greeting;

13 We command you that you summon George Ely and
Alfred Ely if they shall be found in your County personally to
be and appear before the Superior Court of Chicago of said County
of Cook on the first day of the next term thereof, to be holden at
the Court House in the City of Chicago in said County, on the
first Monday of September next to answer unto William H. Keating
in his Petition to enforce a Mechanics Lien filed in the said Court

And have you then and there this Writ, with an endorsement
thereon in what manner you shall have executed the same
Witness Walter Kimbale Clerk of our said Court—
and the Seal thereof at the City of Chicago aforesaid
this 22nd day of August A.D. 1859.

Walter Kimbale, Clerk."

Enclosed,

"The within named George Ely and Alfred Ely, not
found in my County the 3rd day of September 1859.

John Gray. Sheriff

By A. Nelson. Deputy."

And thereafter to wit on the thirty first day of August
A.D. eighteen hundred and fifty nine there was filed in the
Office of the Clerk of said Court a certain Affidavit of the non
residence of said Defendants, in the words and figures following
that is to say.

"State of Illinois
County of Cook

The Superior Court of Chicago.

William H Reynolds

(vs)

George Ely and Alfred Ely,

Daniel D. Driscoll being first duly sworn upon his oath says that the said Defendant George Ely as this affiant is informed and believes has gone out of the State and that due and diligent inquiry has been made for him and that he cannot be found to be served with the process of said Court And this affiant further says that the said Defendant Alfred Ely is not a resident of this State but resides as this affiant is informed and believes in the State of Massachusetts so that process of said Court cannot be served upon him And further says not.

Subscribed and sworn to

before me this 31st day of

Daniel D. Driscoll."

August A.D. 1859 . . .

Walter Kimball, Clerk

And thereafter to wit on the seventh day of November A.D. Eighteen hundred and fifty nine came Messrs Francis E. Rigby and Francis E. Rigby Jr; & filed in the Office of the Clerk of said Court, their certain Petition to become a party to a Mechanics Lien upon the proceedings aforesaid; Which said last named Petition is in the words and figures following, to wit,

State of Illinois }
Cook County. }

In the Superior Court of Chicago of the
November Term A.D. 1859.

William H. Reynolds }

(vs)

Mechanics Lien.

George Ely & Alfred Ely }

Your Petitioners Francis E. Rigby and Francis

13- E Rigby Jr of the City of Chicago, County of Cook and State of
Illinois Copartners in business as Painters, Paper Hangers & Glaziers
under the firm name and style of F. E. Rigby & Son respectfully
represent unto your Honors that they as such Copartners are
interested in the subject matter of the above entitled suit wherein
William H. Reynolds is Plaintiff and George Ely and Alfred Ely are
Defendants, as creators of the said George Ely as hereinafter set
forth, and are entitled to a lien upon the premises described in
the Petition of the said William H. Reynolds, therefore your Petitioners
pray that they may be made parties Plaintiff with the said
William H. Reynolds in the above entitled cause.

And your Petitioners further represent unto your
Honors that on or about the ninth day of December A.D. 1858
the said George Ely was the owner of an Estate for his natural
life in the premises described in the Petition of said Plaintiff
William H. Reynolds, to wit the North Twenty five feet of parcel
number one (1) of Lot number Eleven (11) in Block Twenty one
of fractional Section fifteen Addition to Chicago in the County of
Cook and State of Illinois in manner set forth in said Petition
of said William H. Reynolds and that there was on said ninth
day of December A.D. 1858 a two story frame Dwellinghouse
with an in process of erection on said lot by the said

George Ely, which said Dwellinghouse and is the same as the building referred to and described in the Petition of the said William H. Reynolds

And your Petitioners further represent that on or about the said Ninth day of December in the year of our Lord one thousand eight hundred and fifty eight the said George Ely made a Contract by parol with your Petitioners whereby your Petitioners undertook and agreed with the said George Ely that they would paint and glaze the said two story frame Dwellinghouse throughout, and furnish all the paints oils glass and other proper and necessary materials for the painting and glazing said building in a thorough complete and workmanlike manner and to have the same done and completed on or before the first of August in the year A. D. 1859. And that the said painting and glazing should be done according to the specification and plans of the Painting and Glazing of two Dwellinghouses erected on Nabash Avenue for said George Ely and Alfred Piskin and under the direction and supervision of P. V. Hadstick Architect of said building and to his said P. V. Hadstick's satisfaction, and that the said George Ely agreed to pay to your Petitioners for said painting and glazing the sum of Two hundred and fifty dollars as the work progressed upon the Certificate of the Architect, said P. V. Hadstick.

And your Petitioners further represent unto your Honors that your Petitioners did in pursuance of said Contract furnish Paint, Oils, Glass and all other necessary and proper materials for the painting and glazing of said building and did in a

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pursuance of the said Contract paint and glaze said house in a thorough complete and workmanlike manner according to the specifications and plans aforesaid and under the supervision and direction of the said P. V. Hadstick Architect, and to his entire satisfaction, and did in pursuance of said Contract do and complete said painting and glazing before the first of August A. D. 1859, to wit on the 23^d day of Aug. A. D. 1859 and within the time specified by said Contract between the said George Ely and your Petitioners.

And your Petitioners did on the completion of said painting and glazing of said House as aforesaid apply to said Architect P. V. Hadstick for a certificate that said painting and glazing had been done by your Petitioners according to said Contract and that the same was by them completed and finished.

And your Petitioners further represent that the said P. V. Hadstick did on the completion of the said painting and glazing of the said House under the Contract aforesaid did furnish and give to your Petitioners a final Certificate that the painting and glazing of said house was done and completed by your Petitioners according to the terms and conditions of said Contract and to the full and complete satisfaction of said Architect said P. V. Hadstick.

And your Petitioners further represents unto your Honors that there is now due and owing from the said George Ely unto your Petitioners for the painting and glazing of said house under said Contract and on said Contract the sum of One hundred and fifteen dollars over and above the sum paid on said Contract, and over and above all just credits and allowances

And that your Petitioners have presented said Certificate of said Architect to said George Ely for payment, but that the said Ely has refused from time to time to pay your Petitioners said sum and that he does refuse and neglect to pay the same unto your Petitioners.

And your Petitioners further represent unto your Honor that the said George Ely by the terms of said Contract should have paid said sum to your Petitioners as soon as the said painting and glazing was completed and the said Certificate of the said Architect furnished.

And your Petitioners further represents unto your Honor that said Mariamne Page Ely wife of said George Ely was fully informed and advised of the above Contract and the said work done thereunder and consented and approved of the same.

And your Petitioners further represent unto your Honor that they have been informed and believe that the said George Ely has departed this State and has abandoned said premises on which said work was done under said Contract and that the circumstances amount to more than the whole value of the premises and that the Equity of redemption is of no value at all.

Therefore your Petitioners pray that they may become parties Plaintiff in the above entitled cause To the end that the said claim of your Petitioners may be adjudicated upon by this Honorable Court on the hearing of the above entitled cause on the original Petition filed in this cause or at some day to be fixed by this Honorable Court And that your Petitioner may have a judgment therefor against said premises.

And your Petitioners further pray that a Decretal Order may be made by this Honorable Court whereby it may be ordered and decreed, that the said claim of your Petitioners may be paid out of the proceeds of the Sale of said premises when made in the above cause in proportion to and on an Equality with the claim set up in the Petition of said William H. Reynolds Plaintiff in this cause, and to grant unto your Petitioners such other and further relief as justice and equity may require. As in duty bound we ever pray.

F. E. Rigby

F. E. Rigby Jr."

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"State of Illinois

Cook County, ..

Superior Court of Chicago.

November Term A. D. 1859.

Personally comes Francis E. Rigby and says on oath that he is one of the Petitioners in the foregoing Petition by him signed that he has heard read the above petition by him signed and knows the contents thereof and that the same is true, except the matters and things therein set forth to be an information and belief and as to those things he believes it to be true.

Subscribed and sworn
to before me this 7th day
of November A. D. 1859 ..

F. E. Rigby."

Walter Kimball - Clerk."

And thereafter to wit on the Ninth day of November A. D. Eighteen hundred and fifty nine there was filed in the office

of the Clerk of said Court Publication Notice and Certificate in
said cause; Which said Notice and Certificate are in the words
and figures following, to wit,

"Mechanics Lien Notice."

State of Illinois } Superior Court of Chicago
Cook County } September Term A. D. 1859

William H. Reynolds

(u)

Petition for Mechanics Lien

George Ely and Alfred Ely

20 Affidavit of the residence of Alfred Ely
one of the Defendants above named, having been filed in the office
of the Clerk of the Superior Court of Chicago, which said Affidavit
sets out that the said George Ely has gone out of this State and
that due and diligent inquiry has been made for him and that
he cannot be found. Notice is hereby given to the said George Ely
and Alfred Ely that William H. Reynolds the Complainant filed his
Petition in said Court on the 22nd day of August 1859 and that
a summons thereupon issued out of said Court against said defendants
returnable on the first Monday of September next (1859) as is by
law required.

Now unless you the said George Ely and Alfred Ely shall
personally be and appear before said Superior Court of Chicago
of Cook County on the first day of the next term thereof to be
holden at Chicago in said County on the first Monday of September
1859 and plead answer or demurrer to the said Complainant's
Petition, the same and the matters and things therein charged

and notice will be taken as confessed and a decree entered against you according to the prayer of said Petition

Walter Kindall Clerk "

Perry & Driscoll, Comptrols Solr,

Chicago September 1. 1859."

21 "This certifies that the appended Notice William H Reynolds vs George & Alfred Ely has been published in the "Chicago Daily Democrat," a Newspaper printed and published in the City of Chicago County of Cook and State of Illinois four weeks consecutively commencing with the 1st day of Sept. 1859 and that I have received Five dollars for publishing the same.

John Wentworth, Publisher

By A. Reed."

And afterwards to wit on the ^{twelfth} ~~fourth~~ day of November (being one of the days of the November Term of said Court aforesaid) the 12th day of the year of our Lord one thousand eight hundred and fifty nine, the following proceedings were had in said Court and entered of record in said Court, to wit,

William H. Reynolds

vs

Petition for

George Ely & Alfred Ely

Mechanics Lien.

On Motion leave is hereby given Francis E. Rigby and Francis E. Rigby Jr. to file their Petition herein and thereupon upon filing their Petition It is ordered that they do and are hereby made parties to Complaint to this proceeding."

And afterwards to wit on the nineteenth day of November (being
yet of the said November Term of said Court) A.D. eighteen
hundred and fifty nine the following further proceedings were had
in said Cause and entered of record in said Court to wit.)

"William H. Reynolds and
Francis E. Rigby & Francis E.
Rigby Jr.

vs

George Ely and Alfred
Ely

Petition for

Mechanics Lien

This day comes said Petitioners
by Perry and Spiccolo their Solicitors and file herein due proof
of Publication to said Defendants of the pending of the suit for
Mechanics Lien against them and on Motion it is ordered said
Defendants plead answer or demur to Petition instant and no
plea answer or demurrer being interposed by said Defendants
or either of them and being three times severally solemnly called
in open Court come not and fail to appear Wherefore it is ordered
their default be and hereby is entered and the Petitioners Petition
is taken as confessed against each of said defendants, want of
their appearance and answer.

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And afterwards to wit on the twenty third day of November (being
still of the said November Term of said Court) A.D. eighteen
hundred and fifty nine, the following further proceedings were
had and entered of record in said Court to wit.)

"William H. Reynolds

(u)

George Ely & Alfred Ely

Petition for Mechanics Lien

And now again comes said Petitioner by Perry & Driscoll his Solicitors and default of each of said defendants having been heretofore taken and entered of record and the Petition of the said Petitioner having been taken and confessed against each of said Defendants.

On Motion It is ordered that a Jury be empanelled to ascertain and determine the damages sustained by the said Petitioners herein by reason of the premises and the amount due to him from the said Defendant George Ely upon the Contract set forth in the said Petitioners Petition Whereupon come the Jury of good and lawful men to wit, M. P. Roach Lemmas Baker, G. W. Bliss, W. Wilburn, Isaac Cleveland, Rush Miner, Edwin Fuller, M. H. Sawyer, Nelson Jacob M. H. Eaton, Edward Evenden B. M. Watters who being duly elected tried and sworn to ascertain and determine and true assessment make of the damages sustained by the said Petitioners herein After hearing the allegations and proofs submitted by said Petitioner retire to consider of their Verdict and afterwards return into Court and say to the Jury find that the amount of Seven hundred and twenty five dollars as damages is due from the said Defendant George Ely and the further sum of Fourteen dollars is also due from the said Defendant George Ely to the said Petitioner as interest on the said sum making the sum of Seven hundred and thirty nine dollars.

"State of Illinois
Cook County . . . In Superior Court of Chicago;

William H. Reynolds

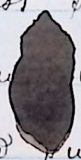
(vs)

George Ely and Alfred Ely

This cause coming on for hearing and
the default of the said Defendants having been heretofore entered
and the Petition of the said William H. Reynolds Petitioner having
been thereupon taken as confessed and a Jury having been duly
empannelled to ascertain and determine the damages sustained
by the said Petitioner herein by reason of the premises and the
amount due to him from the said Defendant George Ely upon
the contract set forth in the said Petitioner's Petition and as a
verdict having been rendered by the said Jury so empowered as
aforesaid - that the sum of Seven hundred and twenty five dollars
is due from the said Defendant George Ely to the said Petitioner
as damages and the further sum of Twenty dollars is also due
from the said Defendant George Ely to the said Petitioner as
interest on the said sum and the Costs of the said suit upon said
Petition And it appearing to the Court that the sum of Seven
hundred and thirty nine dollars including the said sum of Twenty
dollars interest is due to the said Petitioner for the work, labor
and materials by him as a Mechanic done performed and
furnished for the said Defendant George Ely upon a building
and in the erection and completion of said building upon the
premises described in said Petition and appurtenant thereto under
and by virtue of a contract with said Defendant George Ely.

Now on Motion of Daniel D. Driscoll of counsel for the said

Petitioner It is ordered and decreed by the Court that the said Petitioner do have and recover of the said Defendants the sum of Seven hundred and thirty nine dollars as the damages by reason of the premises and the Costs in said suit upon said Petition and that the said Petitioner have a lien as Mechanic against the property of said Defendants, in the said Petition described for the recovery of the amount so as aforesaid due to him and the Costs of said suit upon said Petition and that the right and interest of said Defendants in and to said premises in said Petition described be sold to satisfy the said sum so as aforesaid due to said Petitioner.

And it is further ordered adjudged and decreed that the said Petitioner have special execution for the said sum of Seven hundred and thirty nine dollars so recovered as aforesaid and Costs of suit upon said Petition against said Defendants directed to the Sheriff of Cook County wherein as  whereby the said Sheriff shall be commanded to make the said sum of money above mentioned and the Costs of the said suit by and upon the sale of the right title and interest of the said Defendants in and to the property described in the said Petition to wit the North Twenty five feet of Sublot number one of lot number Eleven in Block number Twenty one of Fractional Section number fifteen Addition to Blueidge in the said County of Cook and State of Illinois.

Francis E. Rigby and
Francis E. Rigby Jr

(14) Petition for Mechanics Lien
George Ely and Alfred
Ely

27 And now again comes said Petitioners by
Dow & Fuller their Solicitors and defaults of each of said Defendants
having been heretofore taken and entered of record and the Petition
of said Petitioners who interpleaded herein with William H. Reynolds
having been taken and confessed against each of said Defendants
On Motion it is ordered that a Jury be empaneled to ascertain
and determine the damages sustained by the said Petitioners herein
by reason of the premises and the amount due to them from the
said Defendant George Ely upon the Contract set forth in the said
Petitioners Petition Whereupon come the Jury of good and lawful
men to wit, M. P. Roach, Leonard Baker, G. W. Wilson, W. Wilson,
Isaac Cleveland, Rush Miner, Edwin Fuller, M. M. Sawyer, Nelson
Scott M. H. Eaton, Edward Luerano and O. M. Watter who being
duly elected tried and sworn to ascertain and determine and true
Assessment make of the damages sustained by the said Petitioners
herein after hearing the allegations and proofs submitted by said
Petitioners retire to consider of their Verdict and afterwards return
into Court and say the Jury find that the amount of
One hundred and fifteen dollars is due from the said Defendants
to the said Petitioners as damages upon the Contract aforesaid.

"State of Illinois }
Cook County . . . } ss. The Superior Court of Chicago.

Francis E. Rigby and
Francis E. Rigby Jr } Petitioners who interplead &

(vs)
George Ely and
Alfred Ely . . . }

29 This cause coming on for hearing and the default of the said Defendants having been heretofore entered and the Petition of the interpleading Petitioners having been thereupon taken as confessed and a Jury having been empanelled to ascertain the damages sustained by the Petitioners herein by reason of the premises and the amount due to them from the said Defendant George Ely upon the Contract set forth in the said Petitioners said Petition and a Verdict having been returned by the said Jury so empanelled as aforesaid, that the amount of One hundred and fifteen dollars is due to the Petitioners as damages from the said Defendants and the costs upon their said Petition And it appearing to the Court that said amount is due to said Petitioner for work labor and materials by them as Mechanics done performed and furnished for the said Defendant George Ely upon a building on the premises in question and appurtenant thereto under a contract with said Defendant George Ely therefor.

Now on hearing Motion of M. H. Fuller of Counsel for the said Petitioners it is ordered adjudged and decreed by the Court that the said Petitioners do have and recover of the said Defendants the sum of One hundred and fifteen dollars as their damages by reason of the premises and the costs upon their said Petition and

The defendants in error in the case of the
that the said Petitioners have a lien as Mechanics against the
property of the said Defendants in the said Petition described for the
recovery of the amount so as aforesaid due to them and the costs
of their said Petition and that the right title and interest of said
Defendants in and to said premises in said Petition described be
sold to satisfy the same sum so as aforesaid due to said
Petitioners.

And it is further ordered adjudged and decreed that the
said Petitioners have execution for the said sum of One hundred
and fifteen dollars their damages as aforesaid and costs of suit
against said Defendants directed to the Sheriff of Cook County
wherein and whereby the said Sheriff shall be commanded to make
the said sum of money above mentioned and costs of the said suit
by and from the sale of the right title and interest of the said
Defendants in and to the property described in their said Petition
to wit the North Twenty five (25) feet of Sublot number one (1)
of lot number Eleven (11) in block number Twenty one (21) of
Fractional Section Fifteen Addition to Chicago in the County of
Cook and State of Illinois.

28
State of Illinois
Cook County . . . } *Seal*

31
I Walter Kimball Clerk of the Superior Court of Chicago within and for the County of Cook in the State of Illinois Do hereby certify the above and foregoing to be a full true and correct Transcript of the papers now on file in my Office, together with all orders, judgments and decrees, entered of record in said Court in certain Petitions for Mechanics liens in said Court wherein William St Reynolds was Petitioner and George Ely and Alfred Ely were Defendants and Francis C. Rigby and Francis C. Rigby Jr were Petitioners who interpleaded and the said George Ely and Alfred Ely were also Defendants.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County the Tenth day of January A.D. 1860.

Walter Kimball Clerk



George Ely
Alfred Ely
vs

Supreme Court of the State
of Illinois. April Term
A.D. 1860

William H Reynolds
vs
Francis E. Rigby
Francis E. Rigby Jr.

Before the Judges of the Supreme
Court of Judicature of the State of Illinois at the
Court House at Ottawa come the said
George Ely and Alfred Ely plaintiffs in Error
by F. S. Howe and Sherman & Kales their
Attorneys and say that in the Record and
proceedings aforesaid and also in giving the
Judgements aforesaid and rendering the Decrees
aforesaid there is manifest Error in this
Writ

First. That the said Petitions do not contain facts
and allegations sufficient to entitle the
Petitioners to a mechanic's Lien under the
Statute of this State.

Second. By the Record aforesaid it appears
that the said Petition of the said William
H. Reynolds nowhere shows that the time
of completing the contract set forth in
said Petition and especially that part of

said Contract described as Extra Work was not extended for a longer period than three years nor the time of payment for beyond the period of one year from the time stipulated for the completion thereof.

Third - By the Record aforesaid It appears that the said George Ely and Alfred Ely had no notice that the said Francis E. Rigby and Francis E. Rigby Jr had been made parties to the proceedings instituted against them the said plaintiffs in Error of the said William H Reynolds, either by service of writ of Summons or by publication of notice by direction of the Court. But the said Petition was taken pro confesso: and a decree was rendered thereon against the said Land of said plaintiffs in Error. nor did the said plaintiffs in Error appear in said proceedings.

Fourth. It does not appear of said Record that said George Ely and Alfred Ely had received any notice of the said Petition of the said Francis E. Rigby and Francis E. Rigby Jr.

Fifth. The Decrees rendered in said proceedings against the said Land of the said George Ely and Alfred Ely do not conform to the said Prayers of Relief