

No. 14537

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~~2~~

No. _____

Supreme Court of Illinois

Rowley

vs.

James

71641 7

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 2

Reported

Burley
vs
Jones

1863

1863

14537

1/2

Supreme Court of the State of Illinois
Third Grand Division
George Jones Appear } Petition for
vs } Mechanic Lien
E. G. Phelps &
Curtis M. Rowley Opp'ts } Appeal from Lake

State of Illinois's LaSalle County
H. Smith being duly sworn says, that
Joseph S. Williams of Lake County Ill. is
Att'y for the Opp'tions in the above entitled
Cause & E. P. Ferry is Att'y for Appear -
That said Ferry & Williams
are partners in the practice of Law -
But that in this Cause said Williams
appears for Opp'ts & Ferry for Appear
being as I suppose a course commenced
before the formation of said Partnership
The Bill of Exceptions containing and
presenting the Evidence taken on trial
was not settled and signed till Monday
evening last the 15 Instant -
Said Ferry & Williams made
a deal on the said Bill of Excep-
tions in Chicago last Monday the 15
Inst and left them with me to get signed
by the Judge - I presented the same
to Judge Monier with a line from
Said Ferry & he signed & sent them

in the Spring of the 15th Inst or agreed
on by the respective Attys - he by the
Judge who tried said cause -
Mr Williams reports me in
pursuance of said Term to return,
this appeal this Term at October
if further time than is ^{presently} by law & rules
of Court to file the record -
Informing me that it was not possible
to get a copy of the record ready
to be filed within the time prescribed
Mr Williams further informs me that
said cause would not probably
be tried this Term for want
of preparation - I know the
appeal is not to him for delay
merely, but that it is held by Attys
for Appt that they have a good &
available defense - I helped Mr
Williams try this cause one
Term in the Circuit Court - and
the same was then under advice
sent by the Court and at the next
Term further proof was taken &
the case decided at which
Term I was not present -
I do not think a copy of the
record can be obtained ready for
filing sooner than last of May

week or fore part of week after
next — I had the occasion of
saw Mr. Williams on Monday afternoon
that he would procure the necessary
copy of Record for filing as soon
as it could be made by the Clerk
I suppose Mr. Williams & Hunt will
agree on a continuance — and this
extension of time is asked for no other
purpose than to get the necessary
copy of Record, and I believe
it will be obtained as soon as it
can be by reasonable diligence
Leland & Severance H. P. Smith
to before me this 17th
day of April 1861
L. Leland Clk.

32 291-77
E. G. Phelps ^{et al}
vs
George James
mo. for further
time to file record
affidavit

Filed Apr. 18, 1861
L. Veland
Clerk.

United States of America
State of Illinois Lake County

Pleas before the
Honorable George Manierre Judge of the seventh
Judicial Circuit of the State of Illinois
At a Circuit Court for the County of Lake
at said Circuit, begun and held at Mankakee
in said County, on the second day of June in
the year of Our Lord, One Thousand Eight
hundred and fifty six and of the independence
of the United States the Eightieth.

Present the Honorable George Manierre
Judge aforesaid, John F. Gygler Sheriff of
Lake County

Attest A. B. Cates Clerk

Be it remembered that heretofore to wit
on the Ninth day of October in
the year of Our Lord One Thousand Eight
hundred and fifty six, the said day
being a day in vacation between the June
Term aforesaid of said Court and the
October Term of said Court for the year
last aforesaid, a petition for Mechanics
Lien was filed in the Office of the Clerk
of said Circuit Court which said
petition is in the words and figures
following, to wit:

"State of Illinois Lake County"
"October Term 1856."

" To the Hon. George Manierre Judge of the Lake
 " County Circuit Court;

" Your petitioner George James would
 " respectfully represent unto your Honor; that
 " during the month of May in the year One thousand
 " Eight hundred and fifty six Your petitioner
 " was engaged in the business of Painter at
 " the Town of Waukegan, County of Lake
 " and State of Illinois;"

" That during the aforesaid
 " -said Month of May at Waukegan aforesaid
 " Your petitioner entered into a contract with
 " One E. C. Phelps then of said town of Waukegan
 " by the terms of which your petitioner agrees
 " to do painting for said Phelps on a House
 " and barn which the said Phelps had then
 " Erected on the following described lot,
 " to wit, Lot No. ten (10) in Block No. Eleven (11)
 " in the Original Town of Waukegan, County of
 " Lake and State of Illinois;"

" That in pursuance of
 " said contract, your petitioner did during the
 " said Month of May paint for said Phelps said
 " House and Barn for which labor the said Phelps
 " agreed to pay your Petitioner the sum of
 " Sixty dollars; that the said sum of Sixty dollars
 " is now due and remains unpaid, although
 " the time for the payment has long since elapsed;
 " And your petitioner further represents that
 " the time for the Completion of said contract
 " was not extended for a longer period than

three years from the making thereof, nor the time of payment beyond the period of one year from the completion thereof.

And your petitioner further represents that at the time of making said contract and at the time of doing said painting the said Phelps was the owner in equity of said lot; that prior to the making said contract for doing said labor by your petitioner with said Phelps, said Phelps had bargained with one Salew Stowell then of Waukegan for said lot no. ten, but had not received title to the same; That on the first day of April A.D. 1856, the said Stowell at the request of said Phelps, made, executed and delivered to one Curtis W. Rowley a Warranty Deed in fee simple of said lot that said conveyance to said Rowley by said Stowell was intended only to secure said Rowley for advances in money and materials made and to be made to said Phelps by said Rowley; That your petitioner is informed and verily believes that said Rowley advanced to said Phelps some portion of the Consideration money paid for said lot, or became security therefor and a large proportion of the materials used in the construction of the building erected thereon, and that said Rowley charged to said Phelps in his account, on the Books of said Rowley the said money and the said materials so advanced, and that the said deed from said Stowell to said Rowley was intended to be only a mortgage to secure said Rowley for said advances and said securityship.

That Your Petitioner is informed and sensibly believes that it was agreed by and between said Phelps and said Rowley, that said Rowley should hold the title as aforesaid, that said Phelps should erect and finish said buildings on said lot and that the said Phelps should make sale of said premises and out of the proceeds arising therefrom, should repay to said Rowley the advances thus made and interest thereon, and that thereupon said Rowley should convey to the purchaser said premises, and it was also agreed that if at any time said Phelps should pay to said Rowley the advances so made and interest, that then said Rowley should convey said premises to said Phelps.

And Your Petitioner further represents that he is informed and believes that about the first day of July A.D. 1856, said Phelps became pecuniarily involved so as to be unable to pay his liabilities, and that about said time said Rowley purchased of said Phelps all the interest of said Phelps in said premises and that a portion of the consideration of said Sale was, that the said Rowley should pay and satisfy all liens and demands which existed against said building, among which was the lien of your petitioner. And your petitioner further represents that the said Curtis M. Rowley well knew of the contract between said Phelps and your Petitioner and of the performance of the labor aforesaid, both at the time of the performance thereof and at

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the time of the conveyance from said Stowell to said Rowley, that the said Rowley also well knew that the said labor was upon said buildings erected on said Lot No. Ten; and that said Rowley also well knew at the time of receiving said conveyance of the lien which your Petitioner had in said lot by reason of the performance of the labor aforesaid.

Your petitioner therefore asks, that the said E. G. Phelps and Curtis M. Rowley may be made parties defendants hereto; and that they and each of them may be required to answer the same under oath, as fully and particularly as if they had been specially interrogated thereto. And your Petitioner further asks that a summons may be issued and served upon said defendants and that upon a final hearing of this cause, the said E. G. Phelps may be decreed to pay to your petitioner the aforesaid sum of money sixty dollars, and that a lien may be decreed in favor of your Petitioner upon said premises in accordance with the provisions of the sixty fifth Chapter of the Revised Statutes of the State of Illinois and that all and singular, the interest of E. G. Phelps at the time of said Contract and the performance of said labor in and to the above described lot and improvements therein situated may be sold and that out of the money arising from such sale the above mentioned debt and costs of this procuring may be paid.

And that your Honor will grant unto your Petitioner such other and further

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E. A. Phelps Es.
May 1856. "George James Dr."
Do painting House & Barn for agreement \$60.00
Waukegan Sept 1st 1856. "

And that after wards to wit on the Ninth day of October A.D. 1856 the same being a day in vacation after the June Term aforesaid Court in and for said County for the year last aforesaid a Summons was issued out of the Office of the Clerk of said Court, but in as much as said Summons is not now amongst the papers on file in this Cause and cannot be found the following transcript of the Clerk's Docket of the October Term for the Year A.D. 1856. of said Circuit Court is here entered which said Docket entry is in the words and figures following to wit:

No	Title of Suit	Date	Action
Ferry & C. 140	George James vs E. G. Phelps & Curtis W Rowley	Pet ⁿ filed & Sum ^t . is ^d Oct. 9/56 Ret ⁿ ? served on C. M. R. only aff ^t of N. R. filed Oct. 15/56 Notice published in G.	Petition for Mechanics Lien
Williams & Smith for Rowley			

United States of America
State of Illinois, Lake County, ss

Pleas before The
Honorable George Manierre Judge of the
Seventh Judicial Circuit of the State of
Illinois. At a Circuit Court for the County
of Lake in said Circuit begun and held at
Waukegan in said County on the thirteenth
day of October in the year of Our Lord
Our thousand Eight hundred and fifty
six and of the Independence of the United
States the Eighty first

Present the Honorable George Manierre
Judge aforesaid. John T. Gayles Sheriff of
Lake County.

Attest A. B. Cate Clerk

And that afterwards to wit. on the Fifteenth
day of October A.D. 1856. the same being
one of the days of the October Term of
said Court for the year aforesaid

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proceedings were had in said Court
which are entered of Record in the
words and figures following to wit:

" George James

" 140

" E. G. Phelps and Curtis M. Rowley



" Petition for Dickman's Lien"

" Now comes said
" Petitioner by Terry his attorney and thereupon comes
" Curtis M. Rowley one of the defendants above
" named by Williams his attorney, and by their
" agreement it is ordered that this cause be and
" the same is hereby continued, and that the said
" Rowley have until the first day of December
" next in which to plead, answer, or demur
" herein and on motion of the said attorney for the said petitioner
" to the petition of the said petitioner, it appearing
" to the Court that the summons heretofore issued
" in this cause has been returned not served upon
" E. G. Phelps the other of the defendants above named
" and also that an affidavit has been filed herein
" showing that the said Phelps does not reside in
" this State, it is further ordered that publications
" of notice of the pendency of this suit be made
" to the said Phelps in one of the newspapers
" printed in this County."

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United States of America
State of Illinois, Lake County

Pleas before the
Honorable George Manissee Judge of the Seventh
Judicial Circuit of the State of Illinois.

At a Circuit Court for the County of Lake
in said Circuit, begun and held at Waukegan
in said County on the twenty eighth day of
September in the year of Our Lord Our
thousand eight hundred and fifty seven
and of the Independence of the United
States the Eighty second.

Present the Honorable George Manissee
Judge aforesaid, Parnell Munson Sheriff
of Lake County.

Attest A. B. Jeter Clerk

And that afterwards to wit. on the twenty
ninth day of September A.D. 1857
the same being one of the days of the
September Term of said Court in and
for the said County for the year last
aforesaid. Proceedings were had in said
Court which are entered of Record
in the words and figures following
to wit:

" 43

George James

"Petition for Mechanics Lien."

" E. J. Phelps and

" Curtis M. Rowley

" Now comes said Plaintiff
 " by Ferry his Attorney and the said defendant
 " Curtis M. Rowley by Smith his Attorney
 " also comes, and enters his Motion for a
 " continuance herein, and the Court being
 " fully advised in the premises, it is ordered that
 " this cause be and the same is hereby continued
 " at the costs of the said defendants and that
 " the said Plaintiff have and recover of the
 " said defendants his costs and charges of
 " this term expended and that he have
 " Execution therefor."

United States of America }
 State of Illinois Lake County }

Pleas before the

Honorable George Manierre Judge of the seventh
 Judicial Circuit of the State of Illinois.

At a Circuit, for the County of Lake in said
 Circuit began and held at Waukegan in said
 County on the twenty seventh day of September
 in the year of Our Lord One thousand Eight hundred
 and fifty Eight and of the Independence of the
 United States the Eighty third.

Present the Honorable George Manierre Judge aforesaid
 and Parnell Munson Sheriff of Lake County.

And that afterwards to wit: on the twenty ninth day of September A.D. 1858, the said day being one of the days of the September Term of said Court for the year aforesaid an Answer of the said Curtis M Rowley was filed in the Office of the Clerk of said Court which said answer is in the Words and figures following to wit:

State of Illinois

Lake County Circuit Court

George James

vs.
E G Phelps and

Curtis M Rowley



The Separate answer of Curtis M Rowley one of the above named defendants to the petition of George James Petitioner

This defendant now and at all times, hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors uncertainties and imperfections in said Petitioners Petition contained, or unto so much and such facts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering says, That he admits that during the month of May A.D. 1856, the said Petitioner was engaged in the business of Printer, as in said petition set forth, but he has no knowledge, information or belief as to whether the said Petitioner entered into a contract with the defendant Phelps as

in said Petition alleged and set forth, or whether
 in pursuance of said Contract the said Petitioner
 performed labor upon the buildings in said petition
 described of the value set forth or whether said
 Phelps agreed to pay him the usual market price
 for the same at the time of the performance of such
 labor or within reasonable time thereafter or
 whether the labor if any was performed for said Phelps
 by said Petitioner was all or any of it performed
 upon the buildings in the last in said petition
 referred to or whether there is now any sum of
 money unpaid from said Phelps to said petitioner
 as in said petition set forth or whether there was
 any time agreed upon between said Phelps and
 petitioner for the completion or payment upon
 any contract between them except as hereinafter
 stated. But he admits upon information that
 the said Petitioner did perform some labor in
 painting for said Phelps upon said House and barn
 in said petition mentioned as a day laborer and
 without any special contract being entered into
 between said Phelps and said petitioner with reference
 to the same as to time, price, or payment for the same.
 And he expressly charges the fact to be that for the
 labor performed by said Petitioner for said Phelps
 it was agreed between them that the said petitioner
 was to receive his pay in Carpenter work of said
 Phelps, and that when he purchased the interest
 of said Phelps in said premises he called upon
 said petitioner to ascertain if he had any lien
 or claimed any upon said premises for the labor
 by him bestowed and performed by him upon said
 premises and he expressly stated unto this defendant

that he had none, that this defendant offered to provide for the payment of the same in the purchase of said Phelps if he had any, but this petitioner stated to this defendant that he had none.

And this defendant further answering said Petition says that he admits that said petitioner has correctly stated the interest of said Phelps in said premises and the different transfers and contracts between said Phelps and this defendant correctly and as the facts existed, but he expressly denies that when he purchased said Phelps interest in said premises that any portion of the consideration of said Sale was that this defendant should pay and satisfy all liens and demands which existed against the buildings upon said lot or the lien of said petitioner or any lien. And he says that he never had any knowledge of the pretended lien of petitioner or any other persons, and this defendant further answering says that he is informed and vividly believes and so charges the fact to be that the pretended lien of the said petitioner is wholly fictitious and fraudulent and he prays to be hence discharged with his reasonable costs.

"C. W. Rowley"

State of Illinois }
Lake County } ss

"On this 29th day of September A.D. 1858 before me personally appeared the above named Curtis W. Rowley and made oath that he has read the above answer

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subscribed by him and knows the contents thereof and that the same is true of his own knowledge except as to the matters stated to be on his information and belief and that as to those matters he believes it to be true." "A. L. Bates"
"Deputy Clerk"

And that afterwards to wit on the twenty ninth day of September A.D. 1858. the same being a day of the September Term of the Circuit Court in and for said County for the year aforesaid proceedings were had in said Court which are entered of Record in the words and figures following to wit:

" George James
" 14 vs
" E. G. Phelps and
" Curtis M. Rowley " "Petition for Mechanics Lien"

have come said petitioners by Ferry his attorney and it appearing to the Court that the said defendant Curtis M. Rowley has been personally served with process herein, and that due publication of Notice has been made, under and by virtue of an order of this Court to the defendant E. G. Phelps and it appearing that the said defendant Curtis M. Rowley has filed his answer herein and that the said defendant E. G. Phelps has not plead answered or demurred to said petitioners petition and thereupon said defendant E. G. Phelps, being three times solemnly called comes not nor any one

for him, but he herein fails and makes default
 whereupon it is ordered by the Court that the said
 petition be and the same is hereby taken as confessed
 by the said defendant E. J. Phelps, and afterwards the Cause
 being brought on to be heard upon the said petition
 taken as confessed by said defendant E. J. Phelps
 and upon the ^{said} answer of the said defendant
 Curtis M. Rowley and upon the proofs offered
 herein, and it being agreed by and between the
 said petitioner and the said defendant
 Rowley that this Cause may be heard by the
 Court without the intervention of a jury, and
 the Court having directed that the issue between
 the said petitioner and the defendant Phelps be tried
 by the Court without the intervention of a jury
 and thereupon this Cause being submitted to the Court
 without the intervention of a jury, and the Court having
 heard the evidence, and it appearing that the material
 allegations in said petition are true and the Court
 being fully advised in the premises, by
 virtue of the authority in it vested, hereby assesses
 the damages of said petitioner at the sum of Sixty
 Dollars. Whereupon it is ordered, adjudged
 and decreed by the Court that the said petitioner have
 and obtain of said defendant the said sum of
 Sixty Dollars. for his damages so as aforesaid
 assessed together with his costs and charges in
 this behalf expended, and that the same be
 and they are hereby adjudged a lien upon the
 premises mentioned and set forth in said
 petition herein to wit: Lot number Ten (10) in
 Block number Eleven (11) in the Original town of
 Littleport (now Waukegan) county of Lake and State

\$10.00

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of Illinois, and that he have execution therefor
And it is further ordered that a Special Execution
for a sale of the said premises be issued to satisfy
the said damages and costs.

And afterwards comes Curtis M Rowley said
defendant and prays an appeal herein to the
Supreme Court of this State which is granted
on condition that the said defendant file with
the Clerk of this Court on or before the first day
of January next a bond Executed according
to law in the penal sum of Two Hundred Dollars
with Ira Porter security, and it is further
ordered that the said defendant have the
first ^{day} of January next in which to file his bill
of exceptions herein."

And that afterwards to wit: on the Eighth day
of October A.D. 1858. the same being
one of the days of the September Term
of said Circuit Court in and for the
County of Lake for the year aforesaid
proceedings were had in said Court
which are entered of Record in the
words and figures following to wit:

George James
or
E. J. Phelps, vs
Curtis M Rowley
"Petition for Mechanics Lien"

Now comes said parties by their
respective Attorneys, and thereupon the
said defendants enter their motion to

set aside the decree and order heretofore entered in this cause, and after arguments of Counsel the Court not being fully advised in the premises takes the same under advisement."

And that afterwards to wit: on the Ninth day of October A.D. 1858. the said day being a day of the September Term of said Circuit Court in and for the County of Lake for the year aforesaid, proceedings were had in said Court which are entered of Record in the words and figures following to wit:

George James vs "Petition for Mechanics Lien"
 E. G. Phelps and
 Curtis W. Rowley

Now come said parties by their respective attorneys and the Court being now fully advised as to the motion heretofore entered to set aside the decree and order formerly entered in this cause. It is ordered that the said decree and order be and the same are hereby vacated and set aside, and that this cause be, and the same is hereby continued and taken under advisement."

United States of America
State of Illinois Lake County

Pleas before the

Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois

At a Circuit Court, for the County of Lake
in said Circuit, begun and held at Waukegan
in said County on the seventh day of February
in the year of Our Lord One thousand Eight
hundred and fifty nine and of the Independence
of the United States the Eighty third.

Present the Honorable George Manierre Judge
aforesaid and James J. Ragan Sheriff of
Lake County.

Attest A. B. Cates Clerk.

Be it remembered that heretofore to wit: on the
Fifteenth day of February A.D. 1859. the
same being a day of the February Term
of said Circuit Court in and for the
County of Lake, for the year aforesaid
proceeding were had in said Court which
are entered of Record in the Words and figures
following to wit:

George James

vs

E. J. Phelps and

Curtis W. Rowley

"Petition for Mechanics Lien"

"Now come said parties by their
respective attorneys and the Court being now fully advised
as to the Motion of the said defendants heretofore entered for
a new trial herein sustains the same"

United States of America }
 State of Illinois Lake County }^{vs}

Pleas before the
 Honorable George Manierre Judge of the Seventh
 Judicial Circuit of the State of Illinois
 At a Circuit Court for the County of Lake
 in said Circuit begun and held at Waukegan
 in said County on the Sixth day of February
 in the Year of Our Lord One thousand Eight
 hundred and Sixty and of the independence
 of the United States the Eighty Fourth.
 Present the Honorable George Manierre Judge
 aforesaid and John A. Ragan Sheriff of
 Lake County

Attest A. B. Kate Clerk

Be it Remembered that heretofore to wit on the
 Sixth day of February AD 1860 said day
 being one of the days of The February Term
 of said Circuit Court in and for the County
 of Lake for the year last aforesaid
 proceedings were had in said Court
 which are entered of Record in the words and
 figures following, to wit:

George James }
 vs }
 C. S. Phelps and }
 Curtis M. Pawley }

Now come said petitioners
 by Ferry his Attorney and on his motion

2.1 " it is ordered that this cause be and the same
" is hereby continued and that said petitioner
" have leave to file an amended petition herein
" by the first day of May next."

United States of America
State of Illinois Lake County

Plas before the
Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois
At a Circuit Court for the County of Lake
in said Circuit began and held at
Waukegan in said County on the twenty
fourth day of September in the year of
Our Lord One Thousand Eight hundred
and Sixty and of the Independence of the United
States the Eighty fifth

Present the Honorable George Manierre Judge
aforesaid and John J. Rogers Sheriff of Lake
County.

Attest A. B. Bates Clerk.

And that afterwards to wit; on the Twenty sixth
day of September A.D. 1866 said day being
one of the days of the September Term
of the Circuit Court in and for said Lake
County for the year last aforesaid pro-
ceedings were had in said Court, which
are entered of Record in the Words and
figures following to wit;

George James
 vs.
 E. G. Phelps and
 Curtis M Rowley

"Petition of Mechanics Lien"

"Now come said parties by their
 "respective attorneys, and by their agreement it is
 "ordered that this cause be brought on to heard
 "tomorrow morning."

And that afterwards to wit: on the twenty
 seventh day of September A.D. 1860.
 said day being one of the days of the
 September Term of said Court in and
 for said County for the year last aforesaid.
 proceedings were had in said Court
 which are entered of Record in the words
 and figures following to wit:

George James
 vs.
 E. G. Phelps and
 Curtis M Rowley

"Petition for Mechanics Lien."

"This cause having been hereto-
 "fore submitted to the Court for trial by agree-
 "ment of parties, and the Decree entered therein
 "having been set aside on application of defendants
 "and the cause continued under advisement for
 "further hearing and Consideration is now taken
 "up for such hearing pursuant to an order
 "entered of yesterday setting the same for
 "hearing. Whereupon Honable James, a Witness

sworn and Examined at the former hearing is again sworn and Examined, and the Court being now fully advised of and concerning the premises doth consider and find that all the allegations in the plaintiffs petition are fully proved by the evidence, and that the petitioner is entitled to a lien upon the premises described in the petition for the Work, labor and materials done and furnished upon the premises described in said petition for the Value thereof amounting to the sum of Sixty dollars, such work, labor, and materials having been done and furnished for and upon the said premises.

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It is therefore ordered, considered and decreed by the Court that the said petitioner have and obtain of said defendants the said sum of Sixty dollars for his damages, as as aforesaid assessed together with his costs and charges in this behalf Expended, and that the same he and they are hereby adjudged a lien upon the premises mentioned and set forth in said petition herein to wit: Lot number ten (10) in Block number Eleven (11) in the Original Town of Littlefont (now Frankegan) County of Lake and State of Illinois, and that he have Execution therefor and it is further ordered that a Special Execution for a Sale of the premises be issued to satisfy the said damages and costs.

And afterward, to wit, on the Fifth day of October A.D. 1880. said day being one of the days of the September Term of said Court a bill of Exceptions was filed in the Office of the Clerk of said Court, which said bill is in the words and figures following to wit:

" State of Illinois
 " Lake County Circuit Court
 " George James
 " vs
 " E. L. Phelps
 " Curtis W. Rowley
 " "Petition for Mechanics Lien."

" Afterwards to wit at a
 " Circuit Court held at the Court House in the
 " City of Mankato in & for the County of Lake
 " aforesaid On the 27th day of September
 " A.D. 1880. Before the Hon. George Manierre
 " Esquire Judge of said Court according
 " to the form of the Statute in such case made
 " & provided, at which day came the said
 " petitioner by his said attorney & upon the
 " trial of said Cause the said petitioner by his
 " Counsel to maintain & prove the said issue
 " upon his part, Called Horatio James who
 " being duly sworn testified as follows:

" I think that Rowley understood at the time
 " of the conversation referred to in my former
 " testimony now read to me, that James' claim
 " was upon the building, he knew that James
 " had worked upon the building and did not

deny in the conversation referred to that James had a claim upon the House, he wanted to assume the claim as stated in my former Examination but James (Plaintiff) would not consent to waive his claim upon the premises."

"The former testimony of the Witness shown to him as aforesaid is as follows,

"At the time Phelps & Rowley were trading a Schedule was presented to Rowley of the Claims against the House a Lumber Bill was mentioned in favor of Laddy & Griswold. I do not recollect the amount - a painting bill of Nichols & George James and a lime bill in favor of Dugdale I do not recollect the amounts. Rowley was about purchasing the House and he wanted all the claims that were against the House & the arrangement was that part of them were to be assumed & part not, I don't recollect which was which, Rowley wanted to assume George James debt for painting among the others. he would not consent to take Rowley as pay for same. Rowley deducted the amount he was to pay Phelps out of the amount he was to assume."

"Cross examined says, I was in Rowley's employ at the time. I understood that the list was a list of the liabilities against the House, claim of Plaintiff James - Dugdale & Nichols amongst them - Rowley wanted to assume George James account but owing to some agreement with Phelps, James declined - It was understood that James claim was on the building

I supposed that he was to look to Phelps for his pay. Rowley wanted to assume that debt he had a talk with James about it. James said he preferred looking to Phelps and getting his work from him as they had agreed on. Rowley said to George James that if he assumed the debt he should take it out of the purchase money. but George James preferred to take his debt from Phelps - at the time, Rowley did not deduct from the purchase money any of these claims not assumed by him, they were not deducted from the amount he was to allow Phelps. he wanted to deduct the amount going to James, out of the amount going to Phelps. James claimed that he had a claim upon the house. he declined having any arrangement made with Rowley for paying his claim. as he had a contract with Phelps by which he was to receive pay in work from Phelps. I think Rowley paid all of the debts that he assumed there.

Direct Examination resumed, George did not release or offer to release Phelps. A proposition was made to him to change his security by accepting Rowley. and this he declined doing. Rowley furnished the major part of the lumber to Phelps, and it was charged to Phelps on his books, at the time of this arrangement Rowley paid Phelps \$200. and after that Phelps vouched Rowley & Phelps were talking over the matter sometime before it was closed. Rowley & George James had conversation at several times. Rowley did not assume the debts at

27 " the time, but I do not know whether he has since
" agreed to assume them.

" Re cross Examined by defendants. I understood
" that Rowley assumed the debts. The debts he
" assumed he gave his due bills for. At the time
" trade between Phelps & Rowley was consummated
" \$200. was paid by Rowley to Phelps, they had then
" made up their account, Phelps was owing
" Rowley for Lumber, this \$200. was paid by Rowley
" to Phelps because he was to take the House
" Phelps performed the work on the House.

" Re direct, Examined - Phelps was owing Rowley
" \$2000. for Lumber on this House & other, & he
" was to take this House. Rowley held the title
" as security for the Lumber Bills. I do not think
" that there was any definite arrangement made
" about the Claims which were not assumed, but
" it was talked over that there were other claims
" against the House and that these claims were
" not assumed. My Brother the petitioner painted
" the House & Barn - I have no idea what the work
" was worth - the amount of his bill was stated at the
" conversation between Rowley & Phelps & him - It was
" spoken of as \$60. or \$70 for work on House & barn
" It was admitted that this House & barn were the same
" & standing on the premises mentioned & described in
" the Bill on Petition"

" Daniel Marsh being duly sworn testified
" as follows."

" James worked on the House in question
" 2 years ago last April - While I was at work
" for him, him he painted the inside. I saw him at
" work on House before I worked for him -

" I did not see him at work on the barn.
 " I worked for James a week on the House and he
 " was there at work."

" It was admitted by deft. that the work & materials
 " claimed in this suit were done on the premises
 " described in the petition herein, and that if
 " Petitioner is entitled to recover therefor under
 " the law & the evidence he is entitled to a lien
 " on the premises, and thereupon in order that
 " the evidence taken at the trial may be preserved
 " in the record, the defendant prays that this bill
 " of Exceptions be signed and sealed by the Judge
 " as of the day on which this cause was tried
 " which is done. Given under my hand seal

" this 27th day of September 1860.

" George Manierre *Elect*
 " Judge 7th Judicial
 " Circuit, Illinois"

And that afterwards to wit, on the Fifth day of
 of October A.D. 1860 said day being one of
 the days of the September Term of said Circuit
 Court in and for said Lake County for the
 year aforesaid, proceedings were had in said
 Court which are entered of Record in the
 words and figures following to wit:

29

George James
 vs
 "Petition for Mechanics Lien"
 E. G. Phelps and
 Curtis M. Rowley

"Now come said parties by their
 respective attorneys, and thereupon the said defendants
 enter their Motion for a new trial herein, and the
 Court being fully advised in the premises it is ordered
 that said motion be and the same is hereby overruled,
 to which decision of the Court, the said defendants
 except."

"And afterwards the said defendant Curtis
 M. Rowley prays an appeal herein to the Supreme
 Court of this State which is granted on condition
 that the said defendant enter into bond in the penal
 sum of One thousand and fifty dollars with Ira
 Porter surety, and file the same with the Clerk
 of this Court within twenty five days from this
 date."

And that afterwards to wit, on the Sixteenth
 day of October A.D. 1860, said day being a day
 in vacation after the September term of said
 Circuit Court in and for the County of Lake
 for the year last aforesaid an Appeal Bond
 was filed in the Office of the Clerk of said
 Court, but inasmuch as said Appeal
 Bond is not now among the files of the
 papers belonging to this case and cannot
 be found the following transcript of
 the Clerk's Docket of the September
 Term of said Court for the year

30

A.D. 1860. is here entered (which case in said docket entered
 said Bond was filed) and is in the words and
 figures following to wit:

No

Parties to suit

Date

Action

No. & C.

George James

2 plffs subpd. isd
 1st to plff of Shiff
 of De Kalb Co.
 filed Oct 1/60

Petⁿ for Mechⁿ
 Lien

vs

E. G. Phelps &

appealed to Supreme

Smith &

Williams

Carter, W. Rowley

Caused appeal Bond filed
 Oct. 16/60.

c And that afterwards, the Plaintiffs Costs
 in the cause were taxed at Thirty six Dollars
 and the defendants Costs at Two & 48^{cts} Dollars
 and the defendants Costs of September term A.D. 1857
 at One & 30^{cts} Dollars,

36^{cts}

\$ 2.48

\$ 1.30

State of Illinois }
Lake County }²⁰

J. J. W. Truesdell Clerk
of the Circuit Court within & for the
County and State aforesaid do hereby
certify that the above and foregoing is
a True Copy and Transcript from the
Records of said Court and of the papers
on file in ^{the} Case of George James vs.
E. J. Phelps and Curtis M. Rowley, in
my office.

In Testimony whereof
have hereunto set my hand
and affixed the Seal of
said Court at Waukegan
in said County this 25th
day of April A.D. 1861.

J. W. Truesdell
Clerk

up
The Plaintiff ⁱⁿ Error assigns the following
Errors to wit

ASSIGNMENT OF ERRORS.

1.—The Court erred in deciding the petitioner entitled to a *lien*, and in rendering a decree for the complainant. The decree is against law.

2.—In awarding execution and decreeing a sale of the premises, and not allowing or fixing *any* time for the payment of the money decreed to be paid before sale. By the terms of this decree, execution might have been issued on adjournment of Court, and the premises advertised and sold immediately.

3.—The petitioner by his petition does not bring himself within the statute upon which the same is predicated.

No time is alleged within which the contract or labor was to be performed, nor when the money therefor was to be paid.

Both *petition* and *proof* show that no time was specified by contract within which it should be performed.

No contract of any kind is alleged.

None is proved.

The petition is brought and rests upon an *implied contract*.

4.—The proof is insufficient to sustain the allegations of the petition.

Furthermore, there is a fatal variance between the proof and allegations.

H. P. SMITH, *Att'y for Pl'ff in Error.*

Filed: April 21, 1868,
d. Soland clk.

Joinder in Error

Curtis M Rowley Plff	v	George James Deft in Error
in Error	}	In the Supreme Court of Illinois at Ottawa April Term 1863 Error to Lake

Joinder in Error. - And hereupon Comes the said
 George James Deft in error by E. P. Perry his
 Attorney, and says that there is no error, either
 in the record and proceedings of said
 or in the decree (or in the verdict or the
 judgment or decree of said) and prays
 that the Supreme Court here may proceed
 to hear and consider as well the record
 and and proceedings of said as
 the matters of said above assigned
 and that the judgment and decree
 of said in favor of said him
 may be in all things affirmed and
 so forth

E. P. Perry
 Attorney for Deft in Error

Filed Sept. 21. 1863.
 D. Kellogg
 Clerk

George James

vs
Edy Phelps and
Charles W Rowley

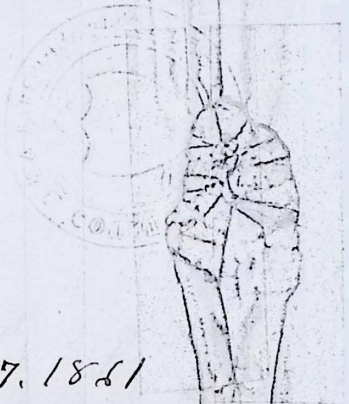
Dr Action for
Mechanics Lien

E. G. Phelps real
vs 271

George James

Appeal from Lake
Co. Circuit Court.

Record



Filed April 27. 1861
L. Leland
Clerk

"Gazette" Print—Waukegan.

In Supreme Court,
OF THE
STATE OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, 1863.

C. M. ROWLEY, *Plaintiff in Error*,
vs.
GEORGE JAMES, *Defendant in Error*. } ERROR TO LAKE.

H. P. SMITH, Attorney for Plaintiff in Error.

B R I E F.

This Petition was filed in 1856, under the Statute of 1845. The questions presented by the assignment of errors have each been heretofore decided by this Court. There is no difference in principle between this and those reported cases, which are relied upon for a reversal of the decree in this case. Argument, therefore, is deemed superfluous. The cases referred to, are:

Claycomb v. Cecil, 27 Ills.; 497. }

Link v. Iron Works, 24 Ills.; 551. }

Bradley v. Anderson, 24 Ills.; 110.

Philips v. Stone, 25 Ills.; 77.

Columbus M. M. Co. v. Downer, *ib*; 169.

Scott v. Keeling, *ib*; 358.

Cook, et. al. v. Heald, et. al., 21 Ills.; 425.

Same v. Vreeland, *ib*; 431.

Same v. Rafinot, *ib*; 437.

Senior v. Brebnor, 22 Ills.; 252.

McClerkin v. Lagon, 23 Ills.; 79.

Moser v. Mattstol, 24 Ills.; 198.

Stien v. Shultz, 23 Ills.; 647. }

To 3rd Error assigned

To 2nd Error assigned

To 4th Error assigned

C M Hamby ³² Officer
vs
George James Depew

Off Brief

For Court

Filed April 21, 1863

L Selma
ck

U.S. DEPT. OF JUSTICE
RECORDS DIVISION

RECORDS OF ILLINOIS

RECORDS OF ILLINOIS

Bowling
to

~~Justice~~ delivered the opinion of the Court.
 Mr. Chief Justice Catron, ~~del.~~ All of the errors are well
 assigned in this case. Neither the petition
 nor the proof makes out a case under
 the Statute of 1845, which controls this
 contract. No time was specified for
 the completion of the work, or the pay-
 ment of the money. Indeed, the petition
 is upon an implied contract. We
 have so often decided these questions
 that their further consideration is
 unnecessary.

The decree is reversed and the
 Sur remanded.

~~The whole Court concurred.~~

Decree reversed.

Rowley
to
Janus

Opinion
Louton

C. 12

Records
page 699
Company

"Gazette" Print—Waukegan.

Supreme Court,
OF THE
STATE OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, 1863.

C. M. ROWLEY, *Plaintiff in Error*,
vs.
GEORGE JAMES, *Defendant in Error*. } ERROR TO LAKE.

H. P. SMITH, Attorney for Plaintiff in Error.

B R I E F.

This Petition was filed in 1856, under the Statute of 1845. The questions presented by the assignment of errors have each been heretofore decided by this Court. There is no difference in principle between this and those reported cases, which are relied upon for a reversal of the decree in this case. Argument, therefore, is deemed superfluous. The cases referred to, are:

Claycomb v. Cecil, 27 Ills.; 497. } To 2^d Error assigned
Link v. Iron Works, 24 Ills.; 551. }
Bradley v. Anderson, 24 Ills.; 110.
Philips v. Stone, 25 Ills.; 77.
Columbus M. M. Co. v. Downer, *ib*; 169.
Scott v. Keeling, *ib*; 358.
Cook, et. al. v. Heald, et. al., 21 Ills.; 425.
Same v. Vreeland, *ib*; 431.
Same v. Rafinot, *ib*; 437.
Senior v. Brebnor, 22 Ills.; 252.
McClerkin v. Lagon, 23 Ills.; 79.
Moser v. Mattstol, 24 Ills.; 198.
Stien v. Shultz, 23 Ills.; 647. } To 4 Error assigned

To 3 Error assigned

32-11
C. M. Bunker Off in Sum
v.

George Jones Defendant

Off Brief

For Court

Filed Apr 21. 1863

Leland
Ck

"Gazette" Print—Waukegan.

In Supreme Court,
OF THE
STATE OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, 1863.

CURTIS M. ROWLEY &
~~E. G. PHELPS,~~ *Plffs in Error,* } *Go* ERROR FROM LAKE.
vs.
GEORGE JAMES, *Def't in Error.* }

PETITION FOR MECHANIC'S LIEN.

ABSTRACT OF PETITION, ANSWER, EVIDENCE AND DECREE.
PETITION FILED OCT. 9, 1856.

STATE OF ILLINOIS, LAKE COUNTY, }
October Term, 18 *56*.

To the Hon. George Manierre, Judge of the Lake County Circuit Court:

2 Your petitioner, George James, would respectfully represent unto your Honor, that during the month of May, A. D. 1856, your petitioner was engaged in the business of Painter, at the town of Waukegan, County of Lake and State of Illinois.

That during the aforesaid month of May, at Waukegan aforesaid, your petitioner entered into a contract with one E. G. Phelps, then of said Waukegan, by the terms of which your petitioner agreed to do painting for said Phelps on a house and barn which said Phelps had then erected on the following described lot, to wit: Lot No. 10 in Block No. 11, in the original town of Waukegan, County of Lake and State of Illinois.

2

That, in pursuance of said contract, your petitioner did during the said month of May paint for said Phelps said house and barn, for which labor the said Phelps agreed to pay your petitioner the sum of sixty dollars. That said sum of sixty dollars is now due and remains unpaid, although the time for the payment has long since elapsed.

243

That the time for the completion of said contract was not extended for a longer period than three years from the making thereof, nor the time of payment beyond the period of one year from the completion thereof.

4

That about the 1st day of July, 1856, said Phelps became pecuniarily involved, so as to be unable to pay his liabilities, and said Rowley purchased of said Phelps all his interest in said premises, and that a portion of the consideration of said sale was that the said Rowley should pay and satisfy all liens and demands which existed against said building, among which was the lien of your petitioner. That Rowley knew of the contract between said Phelps and your petitioner, and of the performance of the labor aforesaid, both at the time of the performance and at the time of the conveyance to him.

The remaining part of said Petition relates exclusively to the title and the Plaintiff in Error's interest in and to said premises, and the prayer.

ANSWER.

12

13

The answer of Rowley, *sworn* to, admits that in May, 1856, the petitioner was engaged in the business of Painter; but says he has no knowledge, information or belief, as to whether he entered into a contract with the defendant Phelps, as in said petition alleged,—or whether, in pursuance of said contract, the petitioner performed labor upon the building in said petition described of the value set forth,—or whether said Phelps agreed to pay him sixty dollars therefor, as alleged in said petition,—or whether there is any sum of money unpaid from said Phelps to said petitioner, as set forth in said petition,—or whether there was any time agreed on between said Phelps and petitioner for the completion or payment upon any contract between them, except as herein-after stated; but admits, upon information, that the petitioner did perform some labor in painting for said Phelps upon said house and barn, as a day laborer, without any special contract being entered into between said Phelps and said petitioner with reference to the labor, as to time, price, or payment for the same. And he expressly charges the fact to be, that for the labor performed by said petitioner for said Phelps it was agreed between them that the said petitioner was to receive his pay in carpenter work of said Phelps; and that when he purchased the interest of said Phelps in said premises, he called upon said petitioner to ascertain if he had any lien or claimed any upon said premises, and he expressly stated unto this defendant that he had none. That this

14

defendant offered to provide for the payment of the same in the purchase of said Phelps, if he had any, but said petitioner stated to this defendant that he had none. Admits that the interest of said Phelps in said premises, and the transfers and contracts between said Phelps and this defendant, are correctly stated in said petition—

14

But expressly denies, that when he purchased said Phelps' interest in said premises that any portion of the consideration of said sale was that this defendant should pay and satisfy all liens and demands which existed against the buildings upon said lot, or the lien of said petitioner, or any lien.

And says he never had any knowledge of the pretended lien of said petitioner, or any other person.

14

That this defendant is informed and believes, and so charges the fact to be, that the pretended lien of said petitioner is wholly fictitious and fraudulent, and prays to be hence discharged with his costs.

Signed, C. M. ROWLEY.

Sworn to before the Clerk of the Circuit Court of Lake County aforesaid.

EVIDENCE.

Horatio James testifies as follows:

24

I think that Rowley understood, at the time of the conversation referred to in my former testimony now read to me, that James' claim was upon the building; he knew that James had worked upon the building, and did not deny in the conversation referred to that James had a claim upon the house; he wanted to assume the claim, as stated in my former examination, but James (plaintiff) would not consent to waive his claim upon the premises.

25

25

The former testimony of this witness, shown to him as aforesaid, is as follows:

25

At the time Phelps and Rowley were trading, a schedule was presented to Rowley of the claims against the house. A lumber bill was mentioned, in favor of Ladds & Griswold; I do not recollect the amount. A painting bill of Nichols and George James, and a lime bill in favor of Dugdale; I cannot recollect the amounts. Rowley was about purchasing the house, and he wanted all the claims that were against the house; and the arrangement was, that part of them were to be assumed and part not. Don't recollect which was which. Rowley wanted to assume George James' debt for painting among the others. He (James) would not consent to take Rowley as pay for same. Rowley deducted the amount he was to pay Phelps out of the amount he was to assume.

Cross Examined:

26

I was in Rowley's employ at the time. I understood that the list was a list of the liabilities against the house. Claim of plaintiffs James, Dugdale and Nichols, amongst them. Rowley wanted to assume George James' account, but, *owing to some agreement with Phelps, James declined.* It was understood that James' claim was on the building. I suppose he was to look to Phelps for his pay. Rowley wanted to assume that debt; he had a talk with James about it. *James said he preferred looking to Phelps and getting his work from him as they had agreed on.* Rowley said to George James that if he assumed the debt he should take it out of the purchase money; but George James preferred to take his debt from Phelps. At the time, Rowley *did not deduct from the purchase money any of these claims not assumed by him. They were not deducted from the amount he was to allow Phelps.* He wanted to deduct the amount going to James out of the amount going to Phelps. James claimed he had a claim on the house. He declined having any arrangement made with Rowley for paying his claim, *as he had a contract with Phelps by which he was to receive pay in work from Phelps.* Think Rowley paid all of the debts he assumed.

Direct Examination resumed:

26

George James did not release or offer to release Phelps. A proposition was made to him to change his security by accepting Rowley; and this he declined doing. Rowley furnished the major part of the lumber to Phelps, and it was charged to Phelps on his books. At the time of this arrangement, Rowley paid Phelps \$200, and after that Phelps vamoosed. Rowley and Phelps were talking over the matter some time before it was closed. Rowley and George James had conversation at several times. Rowley did not assume the debts at the time; but I don't know whether he has since agreed to assume them.

Re-Cross Examined, by Defendant:

27

I understood that Rowley assumed the debts. The debts he assumed he gave his due bills for at the time the trade between Phelps and Rowley was consummated. \$200 was paid by Rowley to Phelps. They had then made up their accounts. Phelps was owing Rowley for lumber. This \$200 was paid because Rowley took the house. Phelps performed the work on the house.

Re-Direct Examined:

27

Phelps was owing Rowley \$2,000 for lumber on this house and others, and he was to take this house. Rowley held the title as security for the lumber bills. I don't think there was any definite arrangement made about the claims which were not assumed, but it was talked over that there were other claims against the house, and that these claims were not assumed. My brother,

27 the petitioner, painted the house and barn. I have no idea what the work was worth. The amount of his bill was stated at the conversation between Rowley, Phelps and him. It was spoken of as \$60 or \$70, for work on house and barn. It was admitted that this house and barn were the same and standing on the premises mentioned and described in the Bill or Petition.

Daniel Marsh, being sworn, testified :

27 That George James worked on the house in question two years ago last April. While I was at work for him he painted the inside. I saw him at work on the house before I worked for him. I did not see him at work on the barn. I worked for him a week on the house, and he was there at work.

It was admitted by defendant that the work and materials claimed in this suit were done on the premises described in the petition, and that if petitioner is entitled to recover therefor upon this petition and ^{will} ~~proceedence~~ ¹, under the law and the evidence, he is entitled to a lien on the premises.

The defendant Phelps is a non-resident.

Phelps did not appear.

15 Notice to him by publication and petition taken as confessed against him, for want of appearance.

Judgment and decree for the plaintiff, 27th Sept., 1860.

29 Motion for new trial made and overruled.

DECREE.

23 It is therefore ordered and decreed by the Court, that the said petitioner have and obtain of said defendants the said sum of sixty dollars, for his damages assessed, with his costs, and that the same be and they are hereby adjudged a lien upon the premises mentioned in said petition, to wit: Lot No. 10 in Block 11, in original town of Little Fort, (now Waukegan,) in the County of Lake and State of Illinois, and that he have execution therefor; and it is further ordered, that a special execution for a sale of the premises be issued to satisfy the said damages and costs.

ASSIGNMENT OF ERRORS.

30—

1.—The Court erred in deciding the petitioner entitled to a *lien*, and in rendering a decree for the complainant. The decree is against law.

2.—In awarding execution and decreeing a sale of the premises, and not allowing or fixing *any* time for the payment of the money decreed to be paid before sale. By the terms of this decree, execution might have been issued on adjournment of Court, and the premises advertised and sold immediately.

3.—The petitioner by his petition does not bring himself within the statute upon which the same is predicated.

No time is alleged within which the contract or labor was to be performed, nor when the money therefor was to be paid.

Both *petition* and *proof* show that no time was specified by contract within which it should be performed.

No contract of any kind is alleged.

None is proved.

The petition is brought and rests upon an *implied contract*.

4.—The proof is insufficient to sustain the allegations of the petition.

Furthermore, there is a fatal variance between the proof and allegations.

H. P. SMITH, *Att'y for Pl'ff in Error.*

32

Bowley
As

James

Abstract

Filed Apr 21, 1863

Leland C. M.