No. 13171

Supreme Court of Illinois

McAxley

VS.

Carter

71641

Ho. week

Supreme Court-Milliam H. Carles Lilliam & Milliam Cons. This was a Suit to Enforce a Michanies Lieu whom a Lot- studing. The appellees claimed to recever under how contracts me for the Erection of the walls of a divelling house and the other for a barrel-both on the Jame lot. There is no controverse, here with regard to the barn and The record Thows the amount which it was agreed was due for the barn. The Errors assigned all Illate to the Evidence ran unstruction integer to the Contract for the house. I. On the brial in the Court below, after proving and giving in Evidence The contract officifications under Which the house was built and Showing the Atte house was built under the Contract, the teppelless produced a Certificate purporting to be made by Word Boyung low, The Laperintendent If said building, and proved that The Certificat our in the hand by him offered the same his twiclence. The appellant Officier toits advission and

the Court overred the objection & allowed the fagure to be read in widonce. The first error a esigned questions the corrections of this puling of the Court: The Objection was a general one So that no merely Jornal objection can be urged in this court, and the July question is whether the Superinlew ruli Certificate on proof of its Execution was profuer Evedence in the Case. To determine this question let me ask the attention of the Court to the lerus of the Contract office fications gura la cordence, By the Contract the appellers agree to do the work "in a careful, skilful and workman-Record 69. like manner to the full and complete fatesfaction of Work Boying low or his assistant, Superintendent, and the appellant agrees to pay the summer sepon the performance of the work to the full and complete satisfaction Man Bayengton bufuranten Eut, part to be pair as the works for gresses upon certificates, and the Contract Provided the said Lu-Mean 70. perintendrat flall certify in writing that they are rutitled thereto" By the Specifications made part of The Coubract The Contractors are required

lo dubuit-as to the work done to necent 72. the judgements of the Spermendent. I. M. Boy inglow or his assistant and declared to be Superintendrulo of the 2. 72 Hilling Work for the owner", Their bluties are away other things To take care that the work is down as required by the Specifications L 26/2 blans, to give all certification the atte Coulractors may be 21/2 Entitled to and to fettle all deduce-2172 hous of dadditions to the Contract price which may grow out of allerations of the Designe, and to determine The amount of danage 2172. which may account from any Cause". The owner reserves things to add to or diminish from the contract 21.72 price the difference to be adjusted as provided above fire by the Superintendral) The owner being bound in all Cases to near ins the acts of his 24 73. fuperintendent.
1. It is obvious from these provisions that The appellers were bound to procure the certificale of the Superintendent = that this was a condition precedent to their right to recover. The artificate itself was the best-Evidence That the Superinlendent had certified To the claim of the appellers. I am Mable to see any valid objection which can be made to the rutroduce. how Whis Certificati.

2. The Certificate of the Superintendent was the Certificale of the appellants own agent twas admissable on the yround? The Superintendent is declared his (The twee's) Superintendent of he (In appellant) is bound to reaguinge 3 It may be objected that There is a vill upon the back of the Certificate which is not in the hand writing of the Infervelendant. this hill his referred to an the cendificale huntithe Certifications sufficiently clear x complete withoutist. The certifical Thous Efitself the amount allowed for Extra ante, for balance of contract price a amount de-ductive for damages. The fact that in addition it sefers to the Vill + weheated & crussed ont closes cannot possible, injure The appellant is rather for his hewifit. The appellant could hot have oufferred injury from That harmless File. It does not appear that any thing was allowed for the Veins for June strench alling to checked by the tuperentender. The Jury rendred a verdech for less than the Whole amount claimed & There is nothing to Thow that These there's well couse Fore them.

This Court will not reverse a judgment Then it is sovious that the Eppellant has sufferred no injury and by astimating the tenous due the Appeller, lating the amountageed whom for the bare the Court will The That there is no Evedence that The items complainer of were lateren into account or any thing allowed for their not to speak of the amount remeller by the appellers. Besides it is mude the special duly of the Superintendent to settle additions alterations of design se it ill be presume That There clears were meledred und Er Lucle adoltions and Ther full seem contified & is claud by the feetileon.

Il The Court properly refused to hernist the appellant to thow That during the progress of the worth the Supelees of defects to The Superintendents Certificate shows for Milliams by 130 itself that it was given cu fand 13 Ohio 79 Settlement, that he considered 4 hus 69 the guestion of damages racepter 5 vilin 526 the world recentified to the aurunt 13 26 147 Jually dece. Can the Eppellant Contradich this Certificatio? The third Ever assigned questions the vilies of the Court below in refusing defects stir holding the certificati The Superculendrich conducion. Muder this contract the appelles did wit undertaken to build to the letis faction of the appllant. Non did this underlates to build in a skilful owork mantitre manner. They underloote to build according to the judgments of the Superintendent. The fair corestination of the contract is they were to do the work in what the faperintendent should fan, was a stellful surtementilke Manner, The Superintendent might require their to do the work in what others would bey was not the proper manner & the would be bound in that case to follow

the desections of the Superintendent. Now the whole carrent of an thorities is that Where work is this To be done according to the judqueen or Estimate of a third person The judgment or Estimate of such personis corclusive cur caund he questioner Except for fraud. Then is no pretence of fraud in this case and the ruling of the Court below is correct unless the Certificate of the Superintendent is to be organded as of two cornseque -13 Phis 79 Whatever, The uniform currents? 1 William 107/130 authorities holding the Superintendents Certificati conclusion cu Lach cases 4 Texas 69 has been followed by this court in The Eleval Frugliet in Lynch Film 526, + flllvoy is Long whate 13 Dec 147. It has been uniformly held that in such cases the Suferstitute was the Unifice offerte whose desision wis to be particularly respective as he was the Judge released by the parties themselves and the francies well abid E by their own contract.

111. The 4th Ever assigned is that the appellant was not permitted to show that The Superintendent oscitted items En mislatur. I. Whether er not the Certificate could be impeached fir mis-latte seems baardly necessary to be considered as there was no asac on this fromt. The appellant did not let up any such thing In his tensure there is no witice or proline of any ruch Thing in any of the pleading. decided that such a certificate can who imprached for mislate. It is so held distinctly in the 3 Melilman withe care 59clm 626 already referred to Audit is difficult to Lee how that degree of conclusioness Uniformly given by the Court to a certificate of this think can be given if the question of mislatie is ofren. If one party Tung assail the decision of the Superintendent for mislater the other way and the Whole question may be gone into, and the judgement of the tribunal specially fixed upon by the parties would be treater as of no account whatever It cannot be that the Jury are to act as Chancellars & correct a supposed nustate without any usue henry made afron it-or any ration given to the opposite party.

It willblime Enough to consider when an assur is made by which it presented:

Whe Fustruction asked for was properly refused. It was not necessary that The Eppellees should have given notice to the appellant that they had procured Sail certificale. 1. The Contract did not require any notice, The money was due on completion of the work for now the Superintendent certifies in writing to the same. The money was due when the work was done the certificate given our notice or demand was necessary any hore than it wall be when a promissory hote became due, 2. In making the certificate the Superuleur acted as the agent If the appellant, By the Contract The appollant was bound to Ecoque The acts of the Super lulend wer, + the Superintendeur Was required to water out and deliver to the appeller, these Certificates. The giving of the Certificate and therefore the achof the appellant son Whathywar could be be called apor to show that we gave him Efelicial motive.

3, It is well settled That in case favor the tward is made many Bustain his action on the towerd without showing any notice to 1 Chit 1. 224 1 Sound I + 8 . 297 the other party The party is bound 7 Indian 286 la Carre rivitée of the award. In deciding a for the matters subanteed to him The Superintendent acted much in the capacity of an Unpire or arbitrator and in such case both parties would he bound to take notice ofhis actionis certificate, But it is certainly a such stronger case as regard of The appellant maximeh as he is declared to be "his the appellants / Suforintendrub't the appellantes bound to seenginge his acti. If bound to preorginge much more is he bound to laire hotice 18hily Pl. 328 If Boy inglis had been sound to pay on his giving his certificate, how much were when to hack we Extent his agent & Superintendent. The doctrine in regard to the question is considered very fully in the case of Douglass in Howland 24 neudrice 35 the cases are collected in 2 Alu. Lecuting cases 54.

No our is bound to give notice to another of that - which that other person may otherwise inform himself." 5 200 cop 606 14 Coun 4.79. hillier case appellant had only a there person who is the worn ho when head be given! Hammond es lieburges aden, 14 Com 486. A large number of lenthoreties and citio in this case in Superfort of the above proposition Thank be seen that the case after is a much Minger case these thes. The Contrad had by Wellerley required harjungton to give the certificate, made it a flash of his duty of Superintendral for the owner to give the certificate, he was bound to receiving all his acts the any point of view Mauly was not whiteel loan where.

Supreme Court of Illinois,

April Term, 1859.

HENRY McAULEY,

Appellant,

WILLIAM H. CARTER and HENRY MILLER,

Appellees.

Appeal from Cook.

POINTS AND AUTHORITIES FOR APPELLEES.

VAN BUREN, THOMPSON & BISHOP for Appellees.

I.

The Superintendent's certificate was properly received in evidence.

1. By the contract the appellees agreed to do the work to the satisfaction of Wm. W. Boyington, Superintendent, and the appellant agreed to pay on the execution of the work to the satisfaction of the Superintendent on the certificate of the Superintendent.

Record, pp. 69, 70.

The certificate, with the proof of its execution was the best evidence that the appellees had fulfilled their agreement.

2. By the contract the Superintendent was made the agent of the appellant, who was "bound in all cases to recognize the acts of the Superintendent."

Record, p. 73.

II.

The evidence of notice of defects was properly rejected, and the certificate properly held conclusive.

The appellees were not required to build to the satisfaction of appellant. It was enough if they performed the work to the satisfaction of Boyington. There being no allegation of fraud on the part of the Superintendent, his approval and certificate were conclusive.

Canal Trustees vs. Lynch, 5 Gilm. 526; McAvoy vs Long et al., 13 Ill. 147.

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Henry Maile William H. Carler Trequent for appelles Find May 16,1659 Lalland The W. Thompson

Supreme Court of Illinois, April Term, 1859. HENRY McAULEY, Appellant, Appeal from Cook. WILLIAM H. CARTER and HENRY MILLER, Appellees. POINTS AND AUTHORITIES FOR APPELLEES. VAN BUREN, THOMPSON & BISHOP for Appellees. I. The Superintendent's certificate was properly received in evidence. 1. By the contract the appellees agreed to do the work to the satisfaction of Wm. W. Boyington, Superintendent, and the appellant agreed to pay on the execution of the work to the satisfaction of the Superintendent on the certificate of the Superintendent. Record, pp. 69, 70. The certificate, with the proof of its execution was the best evidence that the appellees had fulfilled their agreement. 2. By the contract the Superintendent was made the agent of the appellant, who was "bound in all cases to recognize the acts of the Superintendent." Record, p. 72. · 1f. The evidence of notice of defects was properly rejected, and the certificate properly held conclusive. The appellees were not required to build to the satisfaction of appellant. It was enough if they performed the work to the satisfaction of Boyington. There being no allegation of fraud on the part of the Superintendent, his approval and certificate were conclusive. Canal Trustees vs. Lynch, 5 Gilm. 526; McAvoy vs Long et al., 13 Ill. 147.

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Me aulen of the State of Illemois of the april Ican 185 4 Arny Mcauley appellant appeal from the Circuit William A. Curter & Honry Miller. Appellers It is hereby Phipulated and agreed by and between the Parties to the above Entitled cause that the Finnerift of the Record tice apignment of Errors and other profus becoming to be filed. may be filed in muil Supreme leour at any trin on or before Monday the 25th clay of April 1859, and that Said Course may be heard at the print Som of said Court the land appellers hereby maining all objections to the appellants the filing the fram cuft of the Record & other propers in sain Com of Dair befrem Courte provided The Jame are filed by the 35- Must-as above Specified, The Said appellers Werving no right to have said come heard I disposed If white present-Zem Man Court. Chicago afr. 21.1839. Hoyn miller Adelis Thompson, Brolis ollys for appleces.

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SUPREME COURT.

HENRY McAULEY,
Appellant,
VS
WILLIAM CARTER and
HENRY MILLER, Appellees,

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April Term, A. D. 1859.

This is a suit for a mechanic's lien. The petition was filed in the Cook County Circuit Court, Nov. 6, 1857, and sets forth that the petitioners entered into a written agreement with the defendant bearing date the 25th day of April, A. D. 1856 whereby they agreed to build, finish and complete in a careful, skilful and workmanlike manner, to the full and complete satisfaction of W. W. Boyington or his assistant superintendant, the mason work of a marble front dwelling to be erected on Michigan Avenue, so as fully to carry out the design of said work as set forth in the foregoing specifications (the specifications being attached to the contract) and the plans and drawings therein especially referred to, said plans, drawings and specifications being made part and parcel of the contract; and that the said McAuley, for and in consideration of the said Carter and Miller's furnishing all materials, and fully and faithfully executing the aforesaid, so as fully to carry out the design for the same as set forth by the specifications, and according to the true spirit, meaning and intent thereof, and to the full and complete satisfaction of W. W. Boyington, or his assistant superintendant as aforesaid, agreed to pay Carter & Miller therefor, \$3300, in the following manner: as the work advances, the superintendant is to make out estimates of the work and materials furnished and inwrought into said building, and upon the presentation of a certificate of 85 per cent. on said estimate, the said McAuley is to pay the amount, and the balance in full on completion of the contract; provided the said superintendant shall certify in writing that they are entitled thereto: And by their third amended petition they allege that they performed the work and furnished the materials according to the provisions of said contract, and fulfilled all the terms, conditions and requirements of said contract and specifications to be by them kept or fulfilled, and that said work was duly accepted; that there is due the petitioners on account of work done under said contract the sum of \$700, and that that

sum was duly certified to by W. W. Boyington, superintendant, previous to the commencement of this suit; and that they are entitled to the fur-41 ther sum of \$189 50 for extra work, and that this sum was duly settled, and certified to by said superintendant. In the specifications which set forth the particular manner in which the work is to be done are the following provisions: Duties of Contractor. He shall be strictly held to make such work, and to use such materials as hereinbefore described, and to work up the building to the given design, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions without reference to what the drawings may measure on the scale. He will be further held to submit, as to the character of the materials used and the work done to the judgment of the superintendant and fo procure from him all necessary interpretations of the design and all necessary certificates regarding his payments. Superintendants and their duties. W. W. Boyington or his assistant architects are declared to be the superintendants of the work for the owner. Their duties will consist in giving on demand such interpretations either in writing, language or drawings, as in his judgment the nature of the work may require, having particular care that any and all work done and materials used for the work, be such as hereinafter described, and in giving on demand any certificates that the contractor may be entitled to, and in settling all deductions of, or additions to the contract price which may grow out of all alterations of the design after the same are declared to be contracted: also determining the amount of damages which may accrue from any couse, and particularly, decide upon the fitness of all

But the contractor, if after having been directed as above to remove the same, should refuse or neglect to do so, shall not only suffer a deduction from the contract price of the difference in value of proper and improper work and materials, but shall also be liable for all damages of whatsoever nature or kind, that may result from such cause, the above provisions to apply in the same way to all materials or work used, made or fixed without the knowledge of the superintendent. The owner being bound in all cases to recognize the acts of his superintendant, not only as regards extra work, but also as to the sufficiency of the design.

materials used and work done. The contractor being bound in all cases to remove all improper work or materials upon being directed to do so by

All payments made upon the work during its progress, are on account of the contract, and shall in no case be construed as an acceptance of the work executed, but the contractor shall be liable to all the conditions of the contract until the work is accepted as finished and completed.

The answer of Henry McAuley admits the making of the contract, but denies that the petitioners did the work or furnished the materials to be done and furnished by them according to the conditions and terms of said contract and specifications. That the excavations were not made to the depth thereby required, but that the defendant was put to great trouble and expense in continuing and completing said excavations after said petitioners had left said work; that they did not level off the ground

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the superintendant.

about the walls, so as to turn the water from them; nor were said walls of stone laid in mortar mixed with proper proportions of best lime and clear coarse sand, nor was the footing of said walls built in the manner provided in said specifications, nor were the stone of which the same were composed settled in the earth as therein provided, nor were the cistern walls built as therein directed or plastered inside with two coats of water lime, nor were they made water tight, nor were they plastered as therein directed to prevent dampness; nor was the sand used for mortar clear beach washed sand as required by said articles, but a large part of the mortar used in said building was made of sand made from excavations made thereunder and was fine sand and unfit for such use; that the stone front of said building was not anchored as required by the specifications aforesaid, nor were iron anchors worked into the masonry and secured to the timbers as thereby required: that by reason of said defects the defendant has been greatly damaged, and that such damage will greatly exceed the amount of the several sums claimed by the petitioners: that the petitioners left the work before completing it and that defendant never accepted the work, but that the work was done on his land and connected with other materials and labor on the land, and defendant was compelled to appropriate it and could not reject it.

GENERAL REPLICATION.

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Decree that petitioners recover the sum found by the jury and that the premises described in the petition be sold by L. C. P. Freer, Esq., master in chancery for Cook County; that he advertise the sale for sixty-days and make a deed to purchaser.

BILL OF EXCEPTIONS.

O. L. Wheelock testified: am an architect; assisted in drawing the plans and specifications for the building referred to in the contract handed to me. Here were handed to the witness the contract and specifications above referred to. I know of the plaintiffs going in and putting up the walls of the building, under this contract and specifications upon the premises described in the petition.

Contract and specifications read in evidence.

The plaintiffs handed to the witness the following writing:

I hereby certify that I have examined the within bill, and checked such items as I was satisfied were correct and done under my supervision, and crossed out such items as I considered not correct. The charge for the barn and for hauling earth, &c., I had no supervision over and cannot certify them. In accepting this work upon the condition of the contract, I must deduct the sum of fifty dollars for damages to the front caused by not being suitably anchored to the wall of L. C. Clarke: the anchoring has since been done, but the blemish still remains.

I hereby certify, to so much of the within bill as amounts to And approve the contract of the house,

\$189 50

3300 00

By deduc	ting as aforesaid the sum of	50	00
		3439	50
I have drawn certificates to the amount of two thousand and six hundred dollars,		2600	00
		839	50
	Respectfully submitted,	TITO N	
	w. W. BOYING back of which were the following indorsements checks follows:		
Henr	y McAuley,		
220	To Carter & Mil	ler, Dr	
1856		1100	
	or sheet lead front and rear,	' 5	40
	nd September 4. D. Fender, carrying joist,		-00
"	" Altering window glass,		00
Oct. 27.	4½ Masons deafening floors, &c, \$3,	' 13	
	143 Fender leveling about yard and wheeling coal		=10
	325 hods of mortar, 10 ets for deafening,	' 32	50
	4 ft loupe 1-6 wide, 80 ft stone foundation additional		0.0
	back part, \$16	12	
	7065 bricks laid at \$12	6 84	
	Exeavation for addition,	'5 '16	
	1350 brick \$12 additional chimney, 137 yards of exeavation for barn 2		25
	1114 cords of stone \$16,	178	
	42,750 brick laid 11 1-2,	491	
	16 ft of cut stone for sills 70		20
		\$715	31
	Hauling 100 loads of earth to street front of buildings		00
1857.			
May 26.	3 day mason cleaning paint from front as ordered,	9	00
	97 feet stone wall foundation for fence,	15	52
	Digging trench and filling about same,	'1	20
	Amount of contract for house,	3300	00
	Interest to October 1, 4 mos.	27	36
		4281	49
The w	itness stated that he was acquainted with the hand v	vriting	g of
	Boyington, and that the signature to the above paper wa		
hand wri	ting. The figures and writing on the back of the paper	er are	not

in his hand writing. Plaintiffs offered to read in evidence the foregoing paper. Objection made and overruled and exception taken.

Here the plaintiffs rest and the defendant

1st. Calls witness and offers to prove that W. W. Boyington, on the 25th of November, 1856, at the request of defendant, McAuley, gave no-

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tice to the plaintiffs of defects in the building of the walls of the dwelling house and that those defects have not been remedied.

2nd. That the excavations under the building were not made of the depth required by the specifications.

3rd. That the ground about the building was not leveled off so as to turn the water as required by the specifications.

4th. That the stone of the footing of the walls was not set into the earth as required by the specifications, and that the sand used for mortar for the walls was not clear beach washed sand as required by the specifications.

5th. That the stone front of the building was not anchored as required by the specifications, nor were the iron anchors worked into and secured to the timbers as required by the specifications.

6th. That the stone front of the building was projected in consequence of the insufficient anchorage, and that thereby the front of the building was defaced, and that the walls in the south-east corner of the building, in consequence thereof, had settled and were still settling to the great injury of the rooms inside of the building.

7th. The extent of the damage sustained by defendant McAuley in consequence of the above defects. Evidence rejected by court and exception taken.

The defendant then offered to prove that the contract with respect to the house was not performed by the petitioners as required by the specifications in the following particulars: Seven fire grates not set, 12 stove pipe thimbles not put in, one range not set; that there was no pointing up under window sills around tin where the roof joins walls, that a portion of the wall between the front and rear part of the house was omitted, that the wall above and beyond J. L. Clarke's party wall was an eight inch instead of a twelve inch wall, thereby requiring a less number of brick and that in respect to the particulars last above named there should be deducted from the amount of the certificate of W. W. Boyington, given in evidence, the sum of one hundred and thirty-nine dollars and forty-four cents, and that the same were overlooked by said Boyington by mistake when he gave said certificate, but the Court over-ruled said evidence and each and every item thereof, holding that said McAuley was estopped by the certificate already given in evidence. Exception taken.

The defendant then gave in evidence their certificates, dated May 31, 1856, July 8, 1856, July 21, 1856, August 11, 1856, and September 22, 1856, all drawn by said W. W. Boyington, and amounting to \$2600, and are all in the following form:

\$300.

Chicago, May 31, 1856.

Mr. H. McAuley,

This is to certify that there is due to Messrs Carter & Miller, the sum of three hundred dollars for labor and materials furnished your building on Michigan Avenue, payable at sight at Chicago.

Yours Respectfully,

No. 1.

W. W. BOYINGTON,

Architect and Superintenden t

90 On each of which is indorsed the receipt of Carter & Miller, the petitioners.

This being all the evidence, the defendant's counsel then asked the court to give to the jury the following instruction:

To entitle the plaintifis to recover in this action for any balance which may be due them for doing work and furnishing materials under the written contract given in evidence in this cause respecting the dwelling house it is necessary that they should, before the commencement of this suit, have procured from the superintendant of said work mentioned in said contract, a certificate of the amount due them and have given notice to the defenbant that they had procured said certificate, and unless the jury shall believe from the evidence that the defendant was in some manner notified before the commencement of this suit, that such certificate had been procured, then the verdict in this case should not include the claim for work done and materials furnished under said written contract. Instructions refused and exception taken.

92 Motion for new trial made and overruled.

Errors assigned and points made by appellant.

- The court erred in receiving in evidence the certificate and the indorsements thereon purporting to be signed by W. W. Boyington, and set forth on pages 83 and 85 of record.
- II The court erred in refusing to permit the defendant, McAuley, to show that said Boyington, on the 26th of November, 1856, at the request of McAuley, gave notice to the plaintiffs below, of defects in the building of the wall in the dwelling house and that those defects had not been remedied.
- The court erred in refusing to permit defendant, McAuley, to prove the particular defects in the performing of the work by the plaintiffs on the dwelling house particularly set forth on pages 87 and 88 of record and the damages which resulted to the defendant therefrom.
- IV The court erred in refusing to permit the defendant, McAuley, to give evidence to the jury, that the contract read in evidence respecting the dwelling house, was not performed by the plaintiffs in the particulars set forth on page 88 of record and that the omisions there mentioned were overlooked by said Boyington by mistake.
 - The court erred in refusing to give the instruction asked by defendant and set forth on page 91 of record.
- VI The court erred in overruling defendants motion for a new trial.

lowel Appellant Henry Miller Appelled appers tout Wiled may 18.1859 Edeland Celerk Hoyne Meiller velenois Attys for Appelland

SUPREME COURT.

HENRY McAULEY,
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WILLIAM CARTER and
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April Term, A. D. 1859.

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sum was duly certified to by W. W. Boyington, superintendant, previous to the commencement of this suit; and that they are entitled to the further sum of \$189 50 for extra work, and that this sum was duly settled, and certified to by said superintendant.

In the specifications which set forth the particular manner in which the work is to be done are the following provisions:

Duties of Contractor. He shall be strictly held to make such work, and to use such materials as hereinbefore described, and to work up the building to the given design, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions without reference to what the drawings may measure on the scale. He will be further held to submit, as to the character of the materials used and the work done to the judgment of the superintendant and fo procure from him all necessary interpretations of the design and all necessary certificates regarding his payments.

Superintendants and their duties. W. W. Boyington or his assistant architects are declared to be the superintendants of the work for the owner. Their duties will consist in giving on demand such interpretations either in writing, language or drawings, as in his judgment the nature of the work may require, having particular care that any and all work done and materials used for the work, be such as hereinafter described, and in giving on demand any certificates that the contractor may be entitled to, and in settling all deductions of, or additions to the contract price which may grow out of all alterations of the design after the same are declared to be contracted: also determining the amount of damages which may accrue from any cause, and particularly, decide upon the fitness of all materials used and work done. The contractor being bound in all cases to remove all improper work or materials upon being directed to do so by the superintendant.

But the contractor, if after having been directed as above to remove the same, should refuse or neglect to do so, shall not only suffer a deduction from the contract price of the difference in value of proper and improper work and materials, but shall also be liable for all damages of whatsoever nature or kind, that may result from such cause, the above provisions to apply in the same way to all materials or work used, made or fixed without the knowledge of the superintendent. The owner being bound in all cases to recognize the acts of his superintendant, not only as regards extra work, but also as to the sufficiency of the design.

All payments made upon the work during its progress, are on account of the contract, and shall in no case be construed as an acceptance of the work executed, but the contractor shall be liable to all the conditions of the contract until the work is accepted as finished and completed.

The answer of Henry McAuley admits the making of the contract, but denies that the petitioners did the work or furnished the materials to be done and furnished by them according to the conditions and terms of said contract and specifications. That the excavations were not made to the depth thereby required, but that the defendant was put to great trouble and expense in continuing and completing said excavations after said petitioners had left said work; that they did not level off the ground

about the walls, so as to turn the water from them; nor were said walls of stone laid in mortar mixed with proper proportions of best lime and clear coarse sand, nor was the footing of said walls built in the manner provided in said specifications, nor were the stone of which the same were composed settled in the earth as therein provided, nor were the cistern walls built as therein directed or plastered inside with two coats of water lime, nor were they made water tight, nor were they plastered as therein directed to prevent dampness; nor was the sand used for mortar clear beach washed sand as required by said articles, but a large part of the mortar used in said building was made of sand made from excavations made thereunder and was fine sand and unfit for such use; that the stone front of said building was not anchored as required by the specifications aforesaid, nor were iron anchors worked into the masonry and secured to the timbers as thereby required: that by reason of said defects the defendant has been greatly damaged, and that such damage will greatly exceed the amount of the several sums claimed by the petitioners: that the petitioners left the work before completing it and that defendant never accepted the work, but that the work was done on his land and connected with other materials and labor on the land, and defendant was compelled to appropriate it and could not reject it.

GENERAL REPLICATION.

Decree that petitioners recover the sum found by the jury and that the premises described in the petition be sold by L. C. P. Freer, Esq., master in chancery for Cook County; that he advertise the sale for sixty-days and make a deed to purchaser.

BILL OF EXCEPTIONS.

O. L. Wheelock testified: am an architect; assisted in drawing the plans and specifications for the building referred to in the contract handed to me. Here were handed to the witness the contract and specifications above referred to. I know of the plaintiffs going in and putting up the walls of the building, under this contract and specifications upon the premises described in the petition.

Contract and specifications read in evidence.

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The plaintiffs handed to the witness the following writing:

I hereby certify that I have examined the within bill, and checked such items as I was satisfied were correct and done under my supervision, and crossed out such items as I considered not correct. The charge for the barn and for hauling earth, &c., I had no supervision over and cannot certify them. In accepting this work upon the condition of the contract, I must deduct the sum of fifty dollars for damages to the front caused by not being suitably anchored to the wall of L. C. Clarke: the anchoring has since been done, but the blemish still remains.

I hereby certify to so much of the within bill as amounts to \$189 50

I hereby certify, to so much of the within bill as amounts to And approve the contract of the house,

3300 00

By deduc	ting as aforesaid the sum of	50 00
		3439 50
I have dr	awn certificates to the amount of two thousand and	
six hundred dollars,		2600 00
		839 50
	Respectfully submitted,	
	W. W. BOYING	FTON.
	back of which were the following indorsements chess follows:	eked and
Hen	ry McAuley,	
	To Carter & Mil	ler, Dr.
1856		
June, F	or sheet lead front and rear,	5 40
	nd September 4. D. Fender, carrying joist,	15 00
"	" Altering window glass,	4 3 00
Oct. 27.	4½ Masons deafening floors, &c, \$3,	13 00
	14^{35}_{4} Fender leveling about yard and wheeling coal	20 1
	325 hods of mortar, 10 cts for deafening,	32 50
	4 ft loupe 1-6 wide, 80 ft stone foundation additional	
	back part, \$16	12 80
	7065 bricks laid at \$12	6 84 78
	Excavation for addition,	65 00
	1350 brick \$12 additional chimney,	16 00
	137 yards of excavation for barn 2	34 25
	1114 cords of stone \$16,	178 24
	42,750 brick laid 11 1-2,	491 62
	16 ft of cut stone for sills 70	11 20
		\$715 31
1857.	Hauling 100 loads of earth to street front of buildings	
May 26.	3 day mason cleaning paint from front as ordered,	9 00
	97 feet stone wall foundation for fence,	15 52
	Digging trench and filling about same,	1 20
	Amount of contract for house,	3300 00
	Interest to October 1, 4 mos.	27 36
		4281 49
The w	itness stated that he was acquainted with the hand	
	Boyington, and that the signature to the above paper wa	
	ting. The figures and writing on the back of the paper	
	nd writing Plaintiffy offered to read in evidence the	

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-19 of is in his hand writing. Plaintiffs offered to read in evidence the foregoing paper. Objection made and overruled and exception taken.

Here the plaintiffs rest and the defendant

1st. Calls witness and offers to prove that W. W. Boyington, on the 25th of November, 1856, at the request of defendant, McAuley, gave notice to the plaintiffs of defects in the building of the walls of the dwelling house and that those defects have not been remedied.

2nd. That the excavations under the building were not made of the depth required by the specifications.

3rd. That the ground about the building was not leveled off so as to turn the water as required by the specifications.

4th. That the stone of the footing of the walls was not set into the earth as required by the specifications, and that the sand used for mortar for the walls was not clear beach washed sand as required by the specifications.

5th. That the stone front of the building was not anchored as required by the specifications, nor were the iron anchors worked into and secured to the timbers as required by the specifications.

6th. That the stone front of the building was projected in consequence of the insufficient anchorage, and that thereby the front of the building was defaced, and that the walls in the south-east corner of the building, in consequence thereof, had settled and were still settling to the great injury of the rooms inside of the building.

7th. The extent of the damage sustained by defendant McAuley in consequence of the above defects. Evidence rejected by court and exception taken.

The defendant then offered to prove that the contract with respect to the house was not performed by the petitioners as required by the specifications in the following particulars: Seven fire grates not set, 12 stove pipe thimbles not put in, one range not set; that there was no pointing up under window sills around tin where the roof joins walls, that a portion of the wall between the front and rear part of the house was omitted, that the wall above and beyond J. L. Clarke's party wall was an eight inch instead of a twelve inch wall, thereby requiring a less number of brick and that in respect to the particulars last above named there should be deducted from the amount of the certificate of W. W. Boyington, given in evidence, the sum of one hundred and thirty-nine dollars and forty-four cents, and that the same were overlooked by said Boyington by mistake when he gave said certificate, but the Court over-ruled said evidence and each and every item thereof, holding that said McAuley was estopped by the certificate already given in evidence. Exception taken.

The defendant then gave in evidence their certificates, dated May 31, 1856, July 8, 1856, July 21, 1856, August 11, 1856, and September 22, 1856, all drawn by said W. W. Boyington, and amounting to \$2600, and are all in the following form:

\$300.

88.

Chicago, May 31, 1856.

Mr. H. McAuley,

This is to certify that there is due to Messrs Carter & Miller, the sum of three hundred dollars for labor and materials furnished your building on Michigan Avenue, payable at sight at Chicago.

Yours Respectfully,

No. 1.

W. W. BOYINGTON,

Architect and Superintenden t

90 On each of which is indorsed the receipt of Carter & Miller, the petitioners.

This being all the evidence, the defendant's counsel then asked the court to give to the jury the following instruction:

To entitle the plaintifis to recover in this action for any balance which may be due them for doing work and furnishing materials under the written contract given in evidence in this cause respecting the dwelling house it is necessary that they should, before the commencement of this suit, have procured from the superintendant of said work mentioned in said contract, a certificate of the amount due them and have given notice to the defenbant that they had procured said certificate, and unless the jury shall believe from the evidence that the defendant was in some manner notified before the commencement of this suit, that such certificate had been procured, then the verdict in this case should not include the claim for work done and materials furnished under said written contract. Instructions refused and exception taken.

Motion for new trial made and overruled.

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Errors assigned and points made by appellant.

The court erred in receiving in evidence the certificate and the indorsements thereon purporting to be signed by W. W. Boyington, and set forth on pages 83 and 85 of record.

II The court erred in refusing to permit the defendant, McAuley, to show that said Boyington, on the 26th of November, 1856, at the request of McAuley, gave notice to the plaintiffs below, of defects in the building of the wall in the dwelling house and that those defects had not been remedied.

The court erred in refusing to permit detendant, McAuley, to prove the particular defects in the performing of the work by the plaintiffs on the dwelling house particularly set forth on pages 87 and 88 of record and the damages which resulted to the defendant therefrom.

IV The court erred in refusing to permit the defendant, McAuley, to give evidence to the jury, that the contract read in evidence respecting the dwelling house, was not performed by the plaintiffs in the particulars set forth on page 88 of record and that the omisions there mentioned were overlooked by said Boyington by mistake.

The court erred in refusing to give the instruction asked by defendant and set forth on page 91 of record.

VI The court erred in overruling defendants motion for a new trial.

HOYNE, MILLER & LEWIS.

Durine Court Henry Mc Aules Appellant Teenry Miller Appelleed Hostrack of Record

Tilled may 18,1889 Leleiner Colerk

Hoyne, Miller velevois Attys for Appellans

Supreme Court of Illinois, April Term, 1859. HENRY McAULEY, Appellant, Appeal from Cook. WILLIAM H. CARTER and HENRY MILLER, Appellees. POINTS AND AUTHORITIES FOR APPELLEES. VAN BUREN, THOMPSON & BISHOP for Appellees. I. The Superintendent's certificate was properly received in evidence. 1. By the contract the appellees agreed to do the work to the satisfaction of Wm. W. Boyington, Superintendent, and the appellant agreed to pay on the execution of the work to the satisfaction of the Superintendent on the certificate of the Superintendent, Record, pp. 69, 70. The certificate, with the proof of its execution was the best evidence that the appellees had

fulfilled their agreement.

2. By the contract the Superintendent was made the agent of the appellant, who was "bound in all cases to recognize the acts of the Superintendent."

Record, p. 72

II.

The evidence of notice of defects was properly rejected, and the certificate properly held conclusive.

The appellees were not required to build to the satisfaction of appellant. It was enough if they performed the work to the satisfaction of Boyington. There being no allegation of fraud on the part of the Superintendent, his approval and certificate were conclusive.

Canal Trustees vs. Lynch, 5 Gilm. 526; McAvoy vs Long et al., 13 Ill. 147.

Melian DE-130. 13 Ohio 79 4 Terras 69

The evidence offered to show defect was properly excluded. It is immaterial whether or not there were defects or omissions in the work, provided it was done to the satisfaction of the Superintendent. The parties had made their own contract and the Court could not make another for them. They made the decision of the Superintendent final and conclusive, and it could not be contradicted or varied.

IV.

The certificate of the Superintendent could not be questioned for mistake.

- 1. There was no such issue.
- 2. Even if there had been such an issue this certificate could not be questioned on that ground. Canal Trustees vs. Lynch, 5 Gilm. 526,; 17 T. R. 639; 13 Ohio, 79; 1 Harr. 233.

V.

The instruction was properly refused.

- 1. No notice was required by the contract, and none was necessary.
- 2 Greenl. Ev., § 75, 76.
- 2. The Superintendent was made the agent of appellant, and the appellant was certainly bound to take notice of the acts of his agent.
- 3. If Boyington was no more than an arbitrator or umpire appellant was bound to take notice of his acts in giving the certificate.
 - 2 Greenl. Ev. § 75, 76.
 - 4. The bringing of the suit was a sufficient demand if any was necessary.
 - 2 Greenl. Ev. § 76.

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Record, p. 78

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Supreme Court | May rum ad 1859 Henry Marley appellants William H. Carter of Henry Miller appeller The action was beveright by the appellus against the appullant, upon a building cuchach to never a balance alleged the are them -By the terms of the wistlen austrach no andy was thay leaster & miller for north and meatinals in It dersiling House \$ 3300, as follows -85 pm cent on the Estimates of The west and ma-Uniala made by M. M. Brey ington your production of Contiguedes Therefore made of raid Buyington and The balance on the acceptation of the Southach president that Buying ter theauter Citize in writing that they were Entitled Therete. and it is made The duty of the cuchacture to process all meenany cartificates from M. Dr. Buyington uganding their hayments. du hage 43 g montes. - amich is made 1 to any y m. m. Buying tim to give in account any cartificates that It curhacter may be an little The 85 pm lent of the handa the price was study paid andit is only in respect to the final belause daniel that their is sery dispute the only Evidence ofthe It written central Mond & 12 Complements believe, touching

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Supreme Court-Henry Ma anley appellant Cartin r miller Brief for appellants The May 18. 1839 Lebeland. / Jugin Mich Lewis

SUPREME COURT.

HENRY McAULEY,
Appellant,
vs.
WILLIAM CARTER and
HENRY MILLER, Appellees,

April Term, A. D. 1859.

This is a suit for a mechanic's lien. The petition was filed in the Cook County Circuit Court, Nov. 6, 1857, and sets forth that the petitioners entered into a written agreement with the defendant bearing date the 25th day of April, A. D. 1856 whereby they agreed to build, finish and complete in a careful, skilful and workmanlike manner, to the full and complete satisfaction of W. W. Boyington or his assistant superintendant, the mason work of a marble front dwelling to be erected on Michigan Avenue, so as fully to carry out the design of said work as set forth in the foregoing specifications (the specifications being attached to the contract) and the plans and drawings therein especially referred to, said plans, drawings and specifications being made part and parcel of the contract; and that the said McAuley, for and in consideration of the said Carter and Miller's furnishing all materials, and fully and faithfully executing the aforesaid, so as fully to carry out the design for the same as set forth by the specifications, and according to the true spirit, meaning and intent thereof, and to the full and complete satisfaction of W. W. Boyington, or his assistant superintendant as aforesaid, agreed to pay Carter & Miller therefor, \$3300, in the following manner: as the work advances, the superintendant is to make out estimates of the work and materials furnished and inwrought into said building, and upon the presentation of a certificate of 85 per cent. on said estimate, the said McAuley is to pay the amount, and the balance in full on completion of the contract; provided the said superintendant shall certify in writing that they are entitled thereto: And by their third amended petition they allege that they performed the work and furnished the materials according to the provisions of said contract, and fulfilled all the terms, conditions and requirements of said contract and specifications to be by them kept or fulfilled, and that said work was duly accepted; that there is due the petitioners on account of work done under said contract the sum of \$700, and that that sum was duly certified to by W. W. Boyington, superintendant, previous to the commencement of this suit; and that they are entitled to the further sum of \$189 50 for extra work, and that this sum was duly settled, and certified to by said superintendant.

In the specifications which set forth the particular manner in which the work is to be done are the following provisions:

Duties of Contractor. He shall be strictly held to make such work, and to use such materials as hereinbefore described, and to work up the building to the given design, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions without reference to what the drawings may measure on the scale. He will be further held to submit, as to the character of the materials used and the work done to the judgment of the superintendant and fo procure from him all necessary interpretations of the design and all necessary certificates regarding his payments.

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But the contractor, if after having been directed as above to remove the same, should refuse or neglect to do so, shall not only suffer a deduction from the contract price of the difference in value of proper and improper work and materials, but shall also be liable for all damages of whatsoever nature or kind, that may result from such cause, the above provisions to apply in the same way to all materials or work used, made or fixed without the knowledge of the superintendent. The owner being bound in all cases to recognize the acts of his superintendant, not only as regards extra work, but also as to the sufficiency of the design.

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GENERAL REPLICATION.

Decree that petitioners recover the sum found by the jury and that the premises described in the petition be sold by L. C. P. Freer, Esq., master in chancery for Cook County; that he advertise the sale for sixtydays and make a deed to purchaser.

BILL OF EXCEPTIONS.

O. L. Wheelock testified: am an architect; assisted in drawing the plans and specifications for the building referred to in the contract handed to me. Here were handed to the witness the contract and specifications above referred to. I know of the plaintiffs going in and putting up the walls of the building, under this contract and specifications upon the premises described in the petition.

Contract and specifications read in evidence.

The plaintiffs handed to the witness the following writing:

I hereby certify that I have examined the within bill, and checked such items as I was satisfied were correct and done under my supervision, and crossed out such items as I considered not correct. The charge for the barn and for hauling earth, &c., I had no supervision over and cannot certify them. In accepting this work upon the condition of the contract, I must deduct the sum of fifty dollars for damages to the front caused by not being suitably anchored to the wall of L. C. Clarke: the anchoring has since been done, but the blemish still remains.

I hereby certify, to so much of the within bill as amounts to And approve the contract of the house,

\$189 50 3300 00

By deducting as aforesaid the sum of	50	00
	3439	50
I have drawn certificates to the amount of two thousand and six hundred dollars,	2600	00
	839	50

Respectful'y submitted,

W. W. BOYINGTON.

On the back of which were the following indorsements checked and marked as follows:

Henr	y McAuley, To Carter & Mille	er, Dr	
1856			
	or sheet lead front and rear,	' 5	40
August ai	nd September 4. D. Fender, carrying joist,	16	-00
"	" Altering window glass,	' 3	00
Oct. 27.	41 Masons deafening floors, &c, \$3,	13	00
000.211	1443 Fender leveling about yard and wheeling coal	22	10
	325 hods of mortar, 10 ets for deafening,	6 32	50
	4 ft loupe 1-6 wide, 80 ft stone foundation additional		
	back part, \$16	12	80
	7065 bricks laid at \$12	6 84	78
	Excavation for addition,	' 5	00
	1350 brick \$12 additional chimney,	' 16	00
	137 yards of exeavation for barn 2	34	25
	1114 cords of stone \$16,	178	24
	42,750 brick laid 11 1-2,	491	62
	16 ft of cut stone for sills 70	11	20
	-		
		\$715	31
	Hauling 100 loads of earth to street front of buildings,	12	00
1857.			
May 26.	3 day mason cleaning paint from front as ordered,	9	00
	97 feet stone wall foundation for fence,	15	52
	Digging trench and filling about same,	'1	20
	Amount of contract for house,	3300	00
	Interest to October 1, 4 mos.	27	36
		4281	49

The witness stated that he was acquainted with the hand writing of W. W. Boyington, and that the signature to the above paper was in his hand writing. The figures and writing on the back of the paper are not in his hand writing. Plaintiffs offered to read in evidence the foregoing paper. Objection made and overruled and exception taken.

Here the plaintiffs rest and the defendant

1st. Calls witness and offers to prove that W. W. Boyington, on the 25th of November, 1856, at the request of defendant, McAuley, gave no-

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tice to the plaintiffs of defects in the building of the walls of the dwelling house and that those defects have not been remedied.

2nd. That the excavations under the building were not made of the

depth required by the specifications.

3rd. That the ground about the building was not leveled off so as to

turn the water as required by the specifications.

4th. That the stone of the footing of the walls was not set into the earth as required by the specifications, and that the sand used for mortar for the walls was not clear beach washed sand as required by the specifications.

5th. That the stone front of the building was not anchored as required by the specifications, nor were the iron anchors worked into and secured to the timbers as required by the specifications.

6th. That the stone front of the building was projected in consequence of the insufficient anchorage, and that thereby the front of the building was defaced, and that the walls in the south-east corner of the building, in consequence thereof, had settled and were still settling to the great injury of the rooms inside of the building.

7th. The extent of the damage sustained by defendant McAuley in consequence of the above defects. Evidence rejected by court and exception taken.

The defendant then offered to prove that the contract with respect to the house was not performed by the petitioners as required by the specifications in the following particulars: Seven fire grates not set, 12 stove pipe thimbles not put in, one range not set; that there was no pointing up under window sills around tin where the roof joins walls, that a portion of the wall between the front and rear part of the house was omitted, that the wall above and beyond J. L. Clarke's party wall was an eight inch instead of a twelve inch wall, thereby requiring a less number of brick and that in respect to the particulars last above named there should be deducted from the amount of the certificate of W. W. Boyington, given in evidence, the sum of one hundred and thirty-nine dollars and forty-four cents, and that the same were overlooked by said Boyington by mistake when he gave said certificate, but the Court over-ruled said evidence and each and every item thereof, holding that said McAuley was estopped by the certificate already given in evidence. Exception taken.

The defendant then gave in evidence their certificates, dated May 31, 1856, July 8, 1856, July 21, 1856, August 11, 1856, and September 22, 1856, all drawn by said W. W. Boyington, and amounting to \$2600, and are all in the following form:

\$300.

Chicago, May 31, 1856.

Mr. H. McAuley,

This is to certify that there is due to Messrs Carter & Miller, the sum of three hundred dollars for labor and materials furnished your building on Michigan Avenue, payable at sight at Chicago.

Yours Respectfully,

No. 1.

W. W. BOYINGTON,

Architect and Superintenden t

On each of which is indorsed the receipt of Carter & Miller, the peti-

This being all the evidence, the defendant's counsel then asked the court to give to the jury the following instruction:

To entitle the plaintifis to recover in this action for any balance which may be due them for doing work and furnishing materials under the written contract given in evidence in this cause respecting the dwelling house it is necessary that they should, before the commencement of this suit, have procured from the superintendant of said work mentioned in said contract, a certificate of the amount due them and have given notice to the defenbant that they had procured said certificate, and unless the jury shall believe from the evidence that the defendant was in some manner notified before the commencement of this suit, that such certificate had been procured, then the verdict in this case should not include the claim for work done and materials furnished under said written contract. Instructions refused and exception taken.

92 Motion for new trial made and overruled.

Errors assigned and points made by appellant.

- The court erred in receiving in evidence the certificate and the indorsements thereon purporting to be signed by W. W. Boyington, and set forth on pages 83 and 85 of record.
- II The court erred in refusing to permit the defendant, McAuley, to show that said Boyington, on the 26th of November, 1856, at the request of McAuley, gave notice to the plaintiffs below, of defects in the building of the wall in the dwelling house and that those defects had not been remedied.
- The court erred in refusing to permit detendant, McAuley, to prove the particular defects in the performing of the work by the plaintiffs on the dwelling house particularly set forth on pages 87 and 88 of record and the damages which resulted to the defendant therefrom.
- IV The court erred in refusing to permit the defendant, McAuley, to give evidence to the jury, that the contract read in evidence respecting the dwelling house, was not performed by the praintiffs in the particulars set forth on page 88 of record and that the omisions there mentioned were overlooked by said Boyington by mistake.
 - The court erred in refusing to give the instruction asked by defendant and set forth on page 91 of record.
- VI The court erred in overruling defendants motion for a new trial.

V

Varione toourt Henn Mic Juley William Eleasters Henry Miller Appellees Yapple "Points Dilei ma 18,1859 Selemer

Hoyne, Miller Alewing Atty for Appellant

United States of America Pleas, before the Honorable George Manueru
STATE OF ILLINOIS, COUNTY OF COOK, S. S.) & Was, before the Honorable Delirge Planes
Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court Alouse in the City of Chicago, in said County, on the
Many (being the General, Ders day) of
The year of our Lord one thousand eight hundred and
1 11 0 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Present, Honorable lorge Mance of the said United States the Circuit of the State of Illinois.
Present, Honorable lorge Manuer Judge of the 7th Judicial
Circuit of the State of Illinois.
States Attorney. States Attorney. Sheriff of Cook County. Attest; Mr. Ohuck ('verk.)
John Gray Sheriff of Cook County.
Attest: Mm Church Cert

Do it Kimembered that herelofen, lo wit. on the Sight day of November in the year of Our Lord On thousand Eighthundred and fifty seven William Hader and Kenny miller Gelitioners by Mompson Sichop their Lolicitors feled in the Office of the Cercit aforesaid their cedain Petition with words and figures following to wit State of Stanies County of Cook of the Ronorable George Cook County.

The Relation of William & Carte and Menny Miller respectfully shows unto you Honor masons and are hartness dung business in the Oily of Chicago in the County of Cook of State of Ollenois under the name and firm of Carter & Miller. That Henry Melley any of April AN 1856 and on the god twenty fifth days of Velober 1856 the owner of a ced ain piece of land setuate in said Cely of Cheengo un described and known as the

So it Remembered that heretofen, to wit: on the Sight day of Thousander in the year of Our Lord On thousand Eight hundred and fifty seven William A later aw Kenny miller Gelitioners by Mompson Sichop their Lolicitors filed in the Office of the Court aforesaid their cedain Petition with words and Jegues following to wit State of Stenies.
County of Cook of the Bonerable George Stancine Sudge of the Cercuit Court of Cook County.

The Petition of William & Carles and Nenny Mille respectfully shows unto you Honor That your Petitioners are builders ? masons and are hartness during business in the Och of Chicago in the County of Cook of State of Ollenois under the name and firm of Carter + Miller. That Henry Muley of said City of Checago was on the 215th day of April AH 1856 and on the first of twenty fifth days of October 1856 the owner of a ced ain piece of land situate in said Cely of Theerigo were described and known as the

les 1

Sout one third 1/6/ of Lot numbered five 5) in Slock numbered nine (9) in the Canal Commissioners Dubolivision of Fractional Section number fifteen (15) in Dorouship Dro Thirty mine 39 Ant of Runge De fourteen 14/ Gast of the 30 Crincipal meridian said lot fronting on Michigan avenue and said premises being the same referred to in the contract and specifications hereinafter Inentioned and being the same fuenceis and land whom which your Citationers performed all the work furnished the malerials cow put up all the buildings heremafur stated. That on said 215 a day of April all 1806 your petitioners under the Company named. of Carter + Miller made and entered with a Contract in writing of which Contract the following is a copy, viz. These articles of agreement made and entered wito this Owney fifth day of April CLD 1856 Getween Mef Carter * Miller of the first fact building masons of the City of Cheoago and 10 Mc acley of the same place of the second hart-Mulnipeit that the paid Carles & exter or heir expeculors administrators and apignis for and in Consideration of the payment hereinafter to be made to them by the saw

3. 10 Maley or his executor do on their paut controles and agred to brild finish and Complete in a careful skilful and workmanlike manner to the full and Complete patiefaction of It Morgington or his apictant Superintendant and by and at the times mentioned in the foregoing specifications. The masony work of a marble front Dwelling that is to be erected où Michagan Cevenue in connection with Dickey King tothers as afinsaid so as fully to carry out the design of paid work as it is set forth in the fire young Specifications and the places and drawings Therein especially referred to gaid specification plans and drawing being hereby declared pail and parcel of this contract. Ind the said NOM Queley or his execution administration or apegnis for and in Consideration of the paid Cade + miller furnishing all materials and fully and faithfully sepeculing the aforesaid work to as July to carry out the design for the same as set fint by the specifications and decerding to the full and complete pales faction of to In Engingen or his apestant Superintendant a aforesaid and at the limes mederaid in the foregoing Specifications doct hereby agree to pay the

said Cure + Millow the fum of therty The Kundred Hollan in the following munner. a the word advances the Superentendant is to make out estimates of the win + malerial furnished and inwrought-into the building + when the Inexculation of a certificate of Eighty five 85 The cent on paid esternate the paid It Mcauley is to pay the amount of the balance in full on completion of the Contract, Throided the paid Dependentant shall ceitify in writing that they are sutitled charto. On Adnep Whereof the parties here have set their hands the day and year first alove written Signed (Culi & Miller That a Copy of the Specification mentioned and the said Contract is hereto anneged marked Thehedule Of "and is made a feat of this petition And your heletioner fucher show that immediately after making said centract

they proceeded to the performance of the dame on their hast and that they ded all the work and Jurnished all the

t.

materials to be by them done and furnished according to the provisions of paid Contract and that the paid building so brill ander said Contract has been accepted by said 10 mc Culey, Clas your petitioners further Show that they have received from the said H mcauley whom paid contract the sum of Sur Thousand and sig hundred dollar and that there is now dew them from said In cauley upon said Contract the sum of Devin Munder Adlaw balance due on said Contract & that said fum was due by said Contract on or about the 15th day of May 1857. and your petitioner further thou that the sound It maceley is adebted bother ai the further sum of Glov Hundus & Mirty Eight too Sollars for extra work done + materials furnished for additions and alterations growing out of alterations of the design of and additions to paid building referred to in said Contract and execepcations, said extra work and materials being done and francèled in funciones of said contract and a bill of the same being hereto anne mucho "ochedede B" und which is hereby referred to and made hant of this petition, Claro

the said work and materials so done and furnished have been accepted by said In cauly and that said eum ivas due + hayable about the fifteent day of may last. and your hetitioners further show that on or about the find day of Colober UN 1856 they made a contract with the paid A mo auley, whereby they agreed with the said of Luly to brild upon the memises hereinbefor desarbed the walls and foundation of a barn and to make the excavations becessary therefor, that the price agreed whom by and between the paid parties was to be two shellings her your for each yard of up caration and lipleen dollars a cord for each cert of clone furnished and laid, and cleven and one half dollars per thousand for the bricks furnished and laid by your petitioners for the building of said Marn, that the amount of expandion made under paid contract was one hundred otherty sever yands, and the amount of slove furnished and laid was Eleven ofourteen one hundred the cords was forty too axis seven hundred of fifty one Swen hundred and ififteen dolears and there

one cuts, and that all of said wire was done and materials furnished ander and in pursuance of sail Outract, and that said Contract has been kept and complied with by your petitioners and that said work has been accepted by said meanly and that your petitioners have been haid by said the auley the sum of Three Kundu dollars on account of said Contract and that there is how due and owing them from paid Mcauley for work and later done and malenale fremished in and about the brulding of paid barn under said contract the cush of Four Rundred and fiftein dellar and therty One Ceuls and that paid sum has been due since about the first day of may last. Clud Gow petitiones further show that the paid It me alley is udebled to them in the further sum of Two Mundier Hollais for extra com and later done and uplra materials furnisted by them lie and about the frection and completion of the reffered to under a contract made by their with the paid H me Cally on or about the Contract Cast mentioned your petetioners were to do said work + Calor ofewnish paid

materials and the said M mcauley was to pay them therefor as much as the pume should be reasonably worth, and your petitioners aver that the sume were werenably worth the sum of Sur Kunder Arlans

Your Petitioners Cherefore

Claim that the said Henry Mcauley is justly indebted to them as follows, viz:

Our balance of the Juice mentioned in the first mentioned Contract for marble front develling cefter deducting all payments made on said Contract & 700.00 For Comt Extra work under contract 2/38. 42 For valunce due on contract ferbarn 415.31 " Comt-Extra work on Contract Oct 25 200.00 That your Geldenness further show that the said Henry meauly refuses to hay to your petitioners the above mentioned sum or any pay the same show that as they are advised and verily believe they have a lien upon the primises hereinbefore describes and whom the paid buildings thereon wested for the sums to due them as aforesaid, and they ask the aid of this Monorable Court in the premises

and fray that such lien may be inferced and that a judgment or decree may be entered or made directing the sale of paid premises and of paid buildings and of all the right-little and wherest of the said Henry meanley in and to the same to pay the sum due to syour petitioners and that such other further or defferent order or decree may be made in the premises as to your Honor shall seem meet and as shall be agreeable to your petitioners further peay that a summons may four from this Court derecting the sheriff of Cook County to summon the said Henry me auley to be and appear at the term of this Court to be begun and Tuld on the Third Monday of november well thew and there to answer this petition and abide by the order of this Court in the premises and your Petitioners will ever pray Champson + Onhop & M. Carler Odrsfor Ostitioner 3 Henry Ailly State of Sterior Ses Country of Cura Ses The above named William 1 Carter & Henry Meller Georg severally duly floorn each for himself doct ray that he has

heard read the foregoing helition and knows the contents thereof and that the pame is true according to the best of his knowledge and Subscribed + sworm to before Me this Thirty Scipth day of M D Carter November ALD 1857 A D Carter LOD Molay Public Neury Other Schedule A
Specification for the Masonry of M. M. Cauleys
Develing. Copy Of Organization
Obschild Chicago Thecifications for the Macons. Work and Materials Required for the Exection and completion of a Stone front dwelling that In M me auly is about to have nected in the block on Michigan avenue between Van Guren & Opler Streets adjuning & Dack on the South whose building is already brected and the Kon 10 O Dickey on the ninh Special reference will be had by the Contractor to the following specifications and the accompanying design as made by Im Ir Toyington Architects and which consider of the following drawings, vy:

1

and all work done and material used for the work be luch as is hereinafter described and in giving on demand my certificales that the Contractor may be entitled to and in settling all deductions of or additions to the Contract Price which may grow out of allerations of the design after the pame is declared to be Contract ales determining the amount of damages which bray acone from any cause and to harticularly decide when the fitnes of all malerial used and work dene. The Centractor being brund in all cases to remove all improper werk or. materials upon being directed to to do by the Superintendants, But the Contractor of after having been directed as above to remove the pame should neglect or reques or neglect so to de shall not only suffer a deduction from the Contract price of the difference in value of proper and auproper work and materials but shall also be liable for all damage of whatevere nature or Kind that may result from such cause. The above provisions to apply in the pame way to all materials or work used made or fliped without the Knowledge of the Duperintendant

And it is hereby uppully knowled that ai case the Contractor Should feel agreeved by the decision of the Dupeuntendant an appeal may be laken from such decision to an arbitration chosen indefficently and whose decision in the matter shall be final and beneling on all parties. The owner reserves the right to alter or modify the design, and to add to or deminish from the Contract frice the difference to be adjusted as provides above The owner being bound in all cuses to recognize the acts of his Superistanducts not only as regards extra work but also the sufficiency of the design the andrewtor being in ho case responsible for any accident resulting to the work from any defective design which fact must be determined by an ambitration of three desinterested men chosen widifferently and if found that the damages resulted from a want of proper case on the heet of Contractor there and in that Ruch cases the damages add lof shall be paid for and Inade good by him, but if found that the accident or damage resulted from an unproper design then and ai such case all daneages shall be justained by owner; which is all cases said be real and in no case Construction damages

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13

to be allowed. The frayments made upon the wind during its progress are on account of the contract and shall in to case be Construed as an acceptance of the work executed, but two Contractor shall be liable to all the Conditions of the Contract until the work is accepted as finished and Completed Dyminisions of the Sulding as expresented by and figured on the drawings Height Ocesement day (Cellan) to be Tunciful do Occord de de Third de de Fruit do de Fifth do de This Building is retended to be first class in every harticular and must be finished Chronghout as hereinafter describes and augthing Shown by the drawings and hot hereinefter particularly reserved or desented, which is necessary to complete the masons worth of the building is to be done at the dost of the Contractor notionthestanding such ommission, Grade of building

Ook of first floor of joilet to be fixed to correspond to the Clarke House now

1

Encled on the block and all ofother 15 floors the same, Operations The entire area of the proposed building as required by plan to be dug out five feet deep below the Ratural surface Excavation for footings of wall to be dug sight-cuches below the first named executation, all other executations fordrains and cisterns and for foundation of piers and for vaults of water closels as required by plans also for areas of foundations of fleps. All the executated guith must be placed deposited in funt trear in proportion as it-may be most-keeded Centractor to properly level off the earth above the walls so as to him the water from the walls and refill the expoundeons for drain's after the same is fut in and properly fixed to the desection of the Superintendant. Kubble Hore Hork Ale walls shaded blue to be of flone of dimensions and heights figured on the drawings and composed of good quarry Stone laid in the best manner with Inortan mipes of proper propertions of best-lime and Olean course pand the whole to be well bedded and bonded together and well faced

on both sides. Dwarf walls to have slow foundations same kind of with a described above and the same to be three feet deep and average supleen wiches thick. Fooling of wall for bottom of trenches to be composed of large stone and will be 5'6" + 3'2" wide the first verience or layor must not be les than eight wiches thick by sip feel-Square surface, and must be well settled in the earth with a heavy customent of wood and laid in a morten made as above desembed. Dearing walls for the support of du front sleps au area to be furt at least three feet below the bottom of area and of sufficient thickness to suffer the steps or earth that may be put upon or against them. Cestern walks to be built as shown by plans, plastered wiside with two good Coars of from water line and made water light on all sides and bollow and the overhead to be plastered with concrete to prevent dampines from affecting the Servants from above. Walls of chear of the Cellar windows to be of stone for hight and theatref see pections oplans. all sand used for mistar must be clear beach washed und for everything about the building All proper holes left for drains die gas pupes as directed or shown by places

Cut Stone Our the quality and Kind reference will be had to the accompanying will and drawings where the same is plainly described and shown and must-all be properly set; and after the walls are finished, to be properly cleaned off and pointed up. all the dut stime work is to be furnished all Lewised + fitted for auchon and delivered on the ground at the place of building at the owner cost after the Stone are thus delivered the Contractor for the masonry is to take Change of the same + must-become responsible for any damages that may be done until the building is completed & accepted Snick Work All walls shaded red on the places are to be of bricks of the thickness and size marked on places laid in the best manner with solid head and bed joints and thoroughly slushed tolid. The side walls will be laid in Connection - 100 Dickey in the north fide and will be a party wall the south side is that of I & Clark and nowah except the portion intends and said Clarker wall. all necessary holes for joust or other limbers that may be necessary are to be cut in the Clarke wall for all the different floors

All brick used for facing the outside walls must be hard bunned all soft brick to be rejected from the worte. The fronts of the rear outside wall to be neatly structi Fire walls to expliced 4 wiches above the soof and caped with tia. Owners will purnish at the lime they are wanted in all cases when the worf is to be built of tin and composition a Sufficient amount of 2x 4 inch searling to surround the whole roof of building and which must be built in the fire walls by contractor in such manner as the lower side of the Juice will be plush with the top of the Tool bounds. Oll Chemneys to be bruit as shown of drawing and when the same pas through the deffered floors a Just cotion of four wiches is to be made on all sides and in no case allow less than sig wiches of brick work between the timbers of smoke flues all the flues to be smoothly plastered on the wiside and have slove Jupe thember with tin stoppers as devoted and be finished above the roof at least 12) wiches above the highest point, all spenings for fire grates to be anchored with bricks and all trimmers for the support of hearths will be burned with brick anches. Feasine lasts

to be worked in the joints of the brick of the brick of the outside walls of the different plones one to each 12 to Course, Contractor to execute all the masony and furnish the haterials necessary for setting Coal grates and hot air furnace and the Cooking range. Arms grating for areas.

Ofron auchors Her each of the piers and for at least weny lew feet of the dead walls to be carefully correct in the masonry and pleaned to the timber of each of the floors and roof. The Stone front will be auchored with strap curcher two to each block of stone, ligo 18 by I wich humed at each auch of fitted to the slove and well bound in the brick work. Ownber duchon will be all pin auchors made to wit ! I'm & wiches long of 1/8 round in the shank to be so wiches long properly welder coround he him and will be fastened to the limber with two spikes. There for the Stone Lintel of fronts to be uptro heavy and must be long enough to reach the second joist from the stone to be anchored. Obraho of 1/8x 1/2 Inon to be placed on the timbers of all the floor and woof where the pame lie after and meet on division wall, there straps

must be 20 wiches long umerican down auco

20 have 4 Spikes luch Maelering is not to be weludes Ale Chroughout the building to be of the best quality Plaster of Paris formich and all these cials work apoept which will be good two coal word. The first wat must be well & proportionality miged with Clear shoul lake pand, quick fine thair and the second coat or browning must be evenly laid offeated true to straight edge with equal plumb augles & corners I the last coat thoroughly pollished. Finally the whole job to be fully completed in a careful skillful and workmunlike manner and way material to be furnished therefor and anything shown by the plans relating to or is necessary to complete the masorly of the building and not herein Jourticularly reserved or described is to be howehstanding such ommission June Owner to give hopekion of the grounds on or before the first day of march CRISSE Contractor must agree to build the walls and Chemneys ready for roof on or before the finit day of Seplember 1856, and must sets the front steps as som as the same are furnished and clean down the

front and finish whole work as from as practicable after the above mentioned time Said work in no case shall be considered as finished anless the same is so reported to the Infumberdant and accepted Copin The none hereby agreeing to have aireadines all necepacy timber ties Ourpeuters work as drug may be wanted to that in no case the masony shall be hindered for the want of the same and will put on each floor of first in all the building within three days after the walls de made ready to receive the same and in case he should fail to do as their and in Ruel case he hereby agrees to extend the time for finishing said work in a pro rata proportion for such delay, and will also hay all damages resulting to the Contractor from such cause of delay. Crowded the Contractor shall at the time of such delay notify the Superintendant lie writing of the explent thereof and the damages to him arising therefrom and of required by owner must prove the dame Hamages And in order to seeme the executions the work in the manner and at the times specified A is hereby distinctly declared that the dawages auxing from the now fulfillment

of the contract as regards time shall be a fair vent of the premises for each and Eveny day to work remains confinished and which pum of damages shall be deducted from the Central price 2 Vayments To be made in the work as muy be hueafter agreed Ocheduli (8" Meury Malley Carter + Miller 19 1856 pine To Sheet lead front-Steam 5.00 Rug o Sept - " 4 days leader carrying joist-6.00 3.00 " Altering berdow cap. (ct-27 " 4/2 days teader wheeling coal olevlay about you 13.50 22/12 " 325 hod mortar a 10 clo 32,00 r 325 80 ft Stone foundation additional eize of buck post a \$16 12.80 84.78 11. 70h - lineks laid a \$ 12. 5.00 " Oxcavation for addition 16.20

1 1350 (nek additional Chimney of 2)

" Hauling 100 load carets to Street Thu 1 , 3 day, work Cleaning front ordered 1857 may 26

" 97 feet stow wall forendation for pura

" degging bruch sfilling about same 1.00 2/38.42

12.00

9.00

15.52

Movember le at 1957 there issued out of the office of the Clark 23 of said local Teople wit of Summons directed to the Sheriff of local locally + clothed in the words and Gigues Gollowing State of Illinois ? Country of look Jss The Beople of the State of Illinois, to the Sheriff of said bounty - Greeting:
The command you that you Summon Hongy Mc auley of he shall be found be your County husonally to be and appear before the livewith fourt of look lounty on the first day of the next term thereof to be holden at the looset Home in Chicago in Said County I Laster & Henry Miller in their Petilion Gor a Mechanics And you then and there this mit, with one Endorsement thereon, in what manner you shall have Executed the same Noteren Milliam & Church Clerk of on Said foral, and the Seal thereof, at Chicago afover aid, this Swith day of November as 1884 y L Church Cluk

And afterwards to wit ! on the 14 day of November in the year last afre aid paid mit was returned into the lovery of our aid by said sheriff End or sed a Gollow to mit; Served by reading to the wiltin named Heavy Mc auley & ing him a copy of this writ the 14 day of Nov 1857

204 1 lofy 1 Service Hee: 50 15 1 mile od by Olts 1 Return alty will. Sheriff John & Wilson By Seth Taylor Deputy and afterwards to wit: on the 30" day of January at 1858 the Said defendant by Hoyne Miller & Lewis his alternay, Cfiled in the local aforesaid his ansner to the baid delition in the words and Gigines Gollowing to wit; book bounty, levelit bount Heury Mrc auley William Ho Warter + Henry Miller and the Said Henry Me auley for answer to the petition filed in Said Causel Daip that he admit that he is and mas at the time of the making of the Contract in Said petition mentioned the owner of the Real Estate therein described and he Gurther admits that on or about the 23 day of april as 1854 he made a Contract in writing with, Said Petitioner Ga doing the Mason rock a building them abouts lobe Exected by this defendant whood the Real Estate described in said petition and his presumes that Said contract is correctly set forth in said petition

But this defendant Expessly devices that said Complainants ded all the mork or fermi hed all the materials lobe by them done and furnished under and in pursuance of said contract, or that Said building has Ever been accepted by this de-Gendant as stated in said petition. This defendant further answering devices that there is due Grow this defendant to laid Complaihaut and Said Contract the Sun of Seven hundred Mallars or any ather Sum or that he is in debted to baid complain out in the sum of \$238 % (for Extra Work done and materials (fur mished for additions and after ations growing out of afteration of the deign of and all Letion to said Buil duig referred to in said Contract and specifications and the devices that said more and materials There Ever been accepted by him as stated in laid bill of Complaint! This defendant further ans nering says The admits that said cetitioners agreed with this defendant to build the walls and Goundation You a barn upon said premise but at what price the defendant is mable to state Grow his recollection not does he know the dimentions of Said Goundation and walls, and he does not therefore admit that there is due on account there of the sum of Journ hundred and fifteen dollars as stated in Said Petition I his defendant Gentler ans vering

denie that he is indebted to paid Setitioner in the sum of Two hundred Dollar in any sum Medern Gr Estra Work and labor done and estra Materials Gurnished by them in and about the Exection and Completion of the duelling Hour in the Contract Guit above mentioned referred to, or that he made any contract with said petitioner in Planet thereto on the 25 day October as 1856 and he denies that he is justly indebted to said petitioner You the said serval show his said petition specified This defendant Gutter ausming says that the work done or pretended to be doned by baid petitioner whom said dwelling House was not done in accordance with the terms of said contract and the plans and specifications attached thereto. That the Excavation are not made lothe depth thereby require red, but that this defendant was put to great houble and Capena in continuing and Completing Said Excavations after said complainants hail left said not that they did not level off the Court about the wall so as to turn the water from them, how were said wall, of stone laid in mortan mixed of hroper proportion of best line and clear course sand - nor was the Gooting of said wall built in the manuer provided in sald specifications nor

Sand _ Nor was the Gooting of said walls built in the manuer provided in sald specifications nor were the stone of which the same were composed settled in the Earth as therein specified, nor were the cistern walls built as therein directed or plastered inside with two coats of water line nor were they made

Natur tight nor new they plastered as therein dieted to prevent dampness nor was the sauch used for the Morton Clear beached washed Sand but all the morton used in said building has taken from the Excavations made there she de and mas quiv dead sand and unfit for such use That the stone front of said building was not auchored with Strap auchors nor new brow au-Chas worked in the macoury and secured to the the ber of Each of the Gloors and roof, and that in consequence there of that the portion of said mork done by said detitioner was in other Hispects very unperfectly done that by reason of the defect aforesout and the attendefect of said brook to said defendants hatte hein greatly damaged and that the amount of the dainage It sustained by wiw will greatly Exceed the whole amount claimed by said detiltoner, and said defendant Gurther Dough that Said Complainants left Said Mork nethout completing the same, that this de-Gendant new accepted said rock but that On Same to Gar as it was performed was performed In defendants land and connected with other Materials and lubor, and this defendant was Compelled to appropriate the same and could not reject it, but laid complainants neve duly notified Wir It Boy my ton before they had dis continued laid work, that the work done by them in

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28 missaid contract would not be accepted. and this defendant Gutter ans vering Says that was in Consideration that the said Petitioners Should Churnish all the materials and Gully and faithfully Execute the afores aid work to as fully to carry out the design for the same as set Gorth by the specifications bund according to the true Spirit meaning and intent thereof and to the Gill + Complete Satis faction of paid / Loy ing ton or his apiftant superintendent tat the times Mentioned in said specifications that he agreed defendant deries and Expressly Charges that said how was not so done and this defendant Gutter say that he was only to pray Go said onnk to pur cent thereon a said while progress to on Estimates made by the Superinten dent and the balance when said super intendent Sworld certify that said complainants new Entitled therelf and this defendant, derices that no Estimate have been made of the amount du said d'étitioner Except in respect Certificate been quiew as afores aid of the amount due to them as required by the terms of said Contracts Henry Mc anley Hoyne, Miller + Lewis for Defet 5that he has reced the foregoing curs mer and that the same is true except as to the maries states on information and beleif What as to thosem atter he believe it to be true Henry Mc Auley Tubscribe & Horn to be for Me this 30 day of Annuary AD 1858 M. S. Church and afternands to wit at the april deven of said lower to wit; on the 20 day of april as 1808 the Gollowing proceedings among athers mu had and Entered of Record therein to wit; William Hater and Houry Meller 10 VS Petition Mechanis Lien Henry Mc and Bishop their solicitors and on their Motion leave is given said petitioners to amend their petition of their filed herein.

To not; on the of day of June in the year last af me aid the said Vetilioners by their attorney, filed in the Said Vetilioners by their attorney, filed in the Sout afre aid their Certain

in the words and figures following to mit;
In the lucinit logue of look lounty 30. William & Carter & Petition to En Jone a
Benny Miller Mechanics Lieu

Benny McCauley

One de la les de la amend ment to the Petition in the above Entitled Care the Said William Ho Kanter and Henry Wille by leave of the local for this purpose first had and oblamed come and amend their petition by they here to fore Giled in Said fourt in said Cause by stiking out so much of said petition as relates to work done upon the Excavations wall and foundations for and of a barn, the hart struck out commencing on the lop of the I page of said petition and Ending with the 7th live from the top of the be page of the same and Miserting in place thereof the Gollywing to wit your d'elitioners Genther Show unto your Conor that on or about the Gist day of Browen ber al 1856 yozh d'etitioner made a contruck with the said Herry Mc auley by which your Petitioner agreed with Said Me alley that they would make the Eccavation necessary ign a barn to be built on the premises in your detition ers petition described and that theif would

furnish and lay the necessary stone, and brick for the building and Erection of a bown on Said premises Ga the Said Mcauly and in Cousideration of there agreements the said Mc auly agreed with your Petitioners that he would play their Golf such Excurations and Such materials & labor Gurpis hed and done in laying said stone and brick so much as the Same Should be reasonably worth when said mak was completed and your detitioners further show that said contract was a verbal one, and that reliquing topion the agreement of said ne auley they theme as above stated they went on and made the necessary Exca-Valvoiry for a Barn on said premises dud that they Gur mished and laid the necessaring Stow and brick for the building and Enchow of a barn ou said premise for the said Mcauly that the amounts of excavation made by their Vender paid contract was one hundred and thirty seven Cubic yards and that the same was reasonably worldt Iwenty Give cents of each fevery Cubic Gard amounting to the Pum of Thirty four dollars and twenty five cents, that they Gurmished and laid sixteen Geet of cut stone Gir hill Gor said barn and that the Same was Year on ably north seventy cents per Gast amoun trug to the sum of Cleven dollar and twenty

34.25

cents; that they furnished and lain Eleven to # 11.20(32) 14/1011 cords of Slow Go aid barn and that the Same was reusonably worth Sixteen dollars per Cord amounting to the sum of One hundred & Seventy Eight dollars and twenty form Cents and 1148 24 that they Gurnished and laid for said harm dorty her Thousand Swen hundred this ty bruks and that the Same mere reasonably watte Cleven Hone half dollar per thous and amounting tolker Sum of four hundred and chinety one dollar and sixty cents and your Petitioner Guther 1 491. 60 Thou that the said Excavation so made as afgreraid Alto Said Stone and brick Sofurnished Haid as aforesaid here all the Excavations, herelesury and all the Stone Horick necessary God the building & Erection of Said born and that the Said Elcavations Whe made & Said Stone + brick furnished blaid by the 4" day of May as 1857 and that on said 4th day of May as 1857 the Whole of the Money due to your hetitioners for Said nork, labor - material in and about said Exeau ations Maying said brick of Stone became due thay able by the terms of Said contract Exhibit "a" + made a part of this petition is a two +cornect account of the work done + materials of which by your Petitioners of n

said Mcauley as afore aid That said mork 33 Was done + Said Materials Gurnished as therein Set Goth in Erecting a Barn Ga Said Mc auly on the premises in your detitioner Petition Set Goth That the proces therein Charged are fair + fliet and what said work and materials new heurogably north and that the whole amount du for Said work & materials is Seren hundred and Gifteen dollars and thirty one cents, that no hart there of has been paid but that the mole together with interest thereon Luice the 45 day of May as 1857 is now justy due and payable. and your detitioner would amend the statement of the indebtedness of paid de-Gendant lothern let forth in their said petition by striking out the item "Ga balance due on Coutact Cfor born of 415.81 and inserting in place thereof the account hereto armered markers "Exhibit a Milliam It Carter x Henry Mitter By Thompson o Bishop Their attorneys "Eschibit a"
"Reary Me auley To faster + Miller & Mov 1.1856 de 137 y de of Excavation Gov Barn a 4 " "11/4/ conde of stone 41/1/2 70 +

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and your petitioner further amend their hetition by inserting at the Goot of the 4" Page of their detition the Gollowing and your detitioners Over that they have kept and fulfilled all the terms and Constitions of Said Contract So made by their with Said defendant as afresaid and that the said W 19 on ing ton the said Superintendent previous to the Com-Mencement of this suit certified in Writing that your petitioners were Extetted to the sum of Right hundred and thirty nine Dollars on account of work done & materials furnished Wide Said contract What Said Sum being hart of the sum claimed in this suit logether with milited since the 30 day of Or or em her as 1857 was at the Commencement of this Suit + Still is Wholly due and unhaids Kenry Miller 124 Thompson H Dishop Claintiffs attorneys and afterwards to wit on the 22' day of Ost January as 1839 the said Petitioners by their sais attorney files in the court aforeraid their ausualed Petition in Lais. Carred in the words and Ifegures following, to wit;

1

Tudge of the General Court of book State of Illieois the amended Petition of William A. Carlos and Henry elleller respectfully bleews sente your Honor That your petitioners were about the time & times of watering the Portracts herein after unentioned and each of them and hico littento le sur been brilding contractors and Masous Que partners doing business in the City of Chicago in the County of book thate of Illier's under the Name and firm of Carty & Miller -Hat Henry el ! July who is made Defendant in this built was on the 25th glay of experil AD 1856 and hince bitherto hath been the owner in fee of a culture lot or price of land literate in said City of Colicago thewar Outo described as the Gouth one third (1/3) of lot Numbered Five & in Block Sumbered Nice Die the Caual Commépioners beldivision of Fractional Jection Mules fifteen (5) lie Fourthis Number thirty Noise 39 North of Range fourteen (4) cast of the 3. Principal Meridiano Shir ferencies bling the same referred to per the Contract & Specifications herein after westioned & bling

the & here premises and land upon which your petitioners performed all the work fur = wished the chaterials and fut up all the buildings berein ofter Stated and referred to. ou or about the 25th day of April who 1856 your petitioners pur dir their Company Name of Carto Vellilles made a Contract in aciting with the said Henry Me auly for the building furnishing & completion of the eliasonary work of a charble front develling on the premies hereinly no described then oured by faid ale Quely which said contract is in the lords but figures following tout, There Articles of agreement made and letered wite this twenty fifthe day of Sprib AD 1856 Netween elleps Cartin & elliller of the first part building Masous of the City of Chicago and St. ele Cauley of the Same place of the Lecond part. Witnesseth that the Said Cartin & elillar or this executors administratory and offigues for and in considerations of the payment herein after to be us a de to them by the said &. ele? Quely or his executors do on their part contract and agree to build finish lete be anner, to the full and complete totifaction of Min W. Mayington Whis afistant Augerlitered out and by and at the times mentioned

he the foregoing Apreifications. The chasonary Work of a ellarble front Nevelling that is to be erected on eliclique ave in counction with Dickey, King & others as afouraid do as fully to carry out the design of said work as it is let forthe in the fere going Aprein colions and the below and drawings therein especially Referred to Alio specifications & places & drawings bling hereby declared part & parcel of this Contract. And the Vaid A. cle: Awly or his Couliderations of the said Carter & eliller furnishing Materials and fully Haithfully ere = cuting the afour aid work to as fully to carry out the delign for the same as let forthe by the Specifications and according to the true April turaning and intent there of and to the full and complete & stisfaction of We W. Boyington or his assertant Superintendant as afour aid Apreofications dotte berely agree to pay the vaid Carles and Miller the Sum of thirty three Hundred \$ 33,000 blollars in the following manner as the Work advances the Requiretandant is to reake out estimated of the work I waterials. furnished and juner ought with the building I upon the presentation of a certificate of eighty five (80) per cut ou said estimates the vaid A. eli! July es to pay the semount the balance

prevented by the said che: andry que that

your felitioned were ready to perform lach &

long particular li A bid freefications of melact

contained and that A sid work was duly a cepted, Hot by the terms of and contract the said el chilly agreed to pay your petition ers the seem of thirty three lundered dollars for said work in lu auner as let forth in A and contract that said Me huly has paid your petioners on account of said work the Seem of Ewenty his lundred blollars, that there is a balance of Leven beundred dollars due your petitieners on account of work done funder Vaid outract and bling a part of said contract price, that Tais here of lever hundred doll as was duly certified to by said W. W. Preguigton the said beforeintend aut fix A sid contract -Me entired previous to the Pormer cement of this built, that said all ! Duly has rightet byther with witerest price the 30 day of Nevember AD 1857 is now due & impaid, Wed your petitioners feether thus that puder Ruch Poulrack and Apraji cations herein before referred to the Vaid Beerry el ? Auby reserved the right to aller or wodify the deliger of aid Building and that he was liable under I aid contract to pay to your petitioners fir all extra Work and additions which wight from out of the alterations of the design, Hat your petition ers because whilled to the farther have of The lever died and eighty while dollars fifty cents

for extra work and additions growing out of such alterations a bill of which extra work is hereunto accused marked "Schraule M" that I si'd hum was duly bettled & certified to by the Vaid Referentendant, but that the vais It! Auly has sugheted & refused to pay the Jene Allas the James together with with with heice the 3 day of Nevereber AND 1857 is now due & supaid Quid is due per der & did contract for work done I resterials furnished in and for ending said develling House on I aid premises in their your petitioners further show but your honor that on or about the first day of Nevenber Asl 1856 your betitioners wade a verbal Poulrack with the said ele! Auby in and by which your Ictitioners agreed that they lovald in also the Mecessary excavations and furnish fund lay the necessary Hove and brick for a brick hove barne with stone foundation on Said premeris for said ell! Auley and in Ovalideration of these agreements the Taid Henry Me Guly agreed with your petitioners that he woold pay them for the labor qued bu aterials which should be done and furnished in and about tais Here so we che as the same should be reason ably worth toben requested on the completion of said work That relying on said agreement of the Vaid M. auly your petitivers Made the exactions and furnished and laid the Stone and Brick

for the building hus erection of a Warn on said premises for said ale auly and chat the work down & unaterials furnished persons A Did last purstioned soutrack levere re ason obly worth the sum of Seven been died built, less dollars and lixty auto, a bill of the items of which work is hereto preusered rearked The dule to of which the Taid Il! Auley has du Notice, which said been of leven hundred bud thirty his dollars feed listy cents was at the commencement of this buil and still is due hud suffaid and the This Sherry Mc Chuly he glects and refuses to pay the said sum or any Part-there of although often requested to to do and that said Sum has been due Suice the 15th day of May All 1857 and that the Samo has been withheld by our rune ason able huid vecations delay of payment and that your Petitioners are jutitled to juterest this on level Said 15th day of May A.D. 1854 your petitioners therefore elaine that the Taid Henry M. Auby is midebled bother for labor I waterials by them furnished for ending the buildings hereinbefore mentioned on the lot busin before described for the accounts following to with _ Amount of balance of contract price for home of to deducting payments & you For extra work under contract 189. 50 For execution & Walls of Ware to \$1624.10

Jogether with witwest on the gun out due on the Barn from May 15th 1854 Aus on the Remaining Sums from New 3. 1859. there on the besiresin ing busing from your Petitioners fresten show that as eting are advised and verily believe they have a lieu apor the lot berein before described for the amount to due them as oforesaid and that the amount due them from I aid ale? An ly be any be ascertained by and purder the direction of this here or able bout que that a few of gunt or decree he ay be entered or per a de ly this fourt directing the Nale of said premises and of all the right title and firewest of the Vaid Source oli! buly in and to the Jame or to unch there of as way be see cess any to pay the amounts due to your petitioners as ofensais and that levels often, further or different or der or divise pray be made in the premies as to your Hour Shall been weet & as thall be agreeable to equity -You & Carter Houpson & Wishop Henry Miller folk for Vetitioner } (Gelie dule A!) The eifications for the Masons Work and Materials required for the erection hur Completion of a Stone front develling that A. chi away is about to have predect in the

Block on Michigan avenue between Tan Burno 43 hud Tyles Thuts adjoining f. L. Clarke on the South whose brilding is sheavy greated and the How Dr. Y. Dickey on the North on Special reference will be had by the contractor to the following Specifications and the accompanying design as made by "will Begington Archibet and which consists of the following drawnigs on. Place of Foundations and lections " Wasement " First Floor " Hurd Front Clevation Duties of Contractor. De shall be strictly held to wake buch work, and to use kuch water - (als as here en after described and to work up the building to the given delign, and in all Cases where the drainings are figured, the figures levet be later by live as the given gleinentions leithout reference to what the ger anning by any bue a seure ou its A cale. De ville be further bela to Seebruit as to the character of the Materials used and the Work done to the judgement of the Lespecrie leu d'ant, ared le procene frem line all he cessary historfiretations of the blesique and all precessary certificates regarding his prequents Superintendents & their duties, W. W. W. Waying toro Whis apritant adultets are declared to be the

Superin lendents of the work for the owner, their duties will covert in guing on demand huch literpretations, cittus la language writing or drawing as in his judgment the Notice of the work way require having harbicular care that any but all work down and ell aterial used for the work be kuch Is is berein after described and hi giving ou demand any certificates that the Contractor way be butilled to and in bettling all deductions of or additions to the onetract price which may grow out of alterations of the Design ofto the vame is declared to be -Contract, also determining the amount of Hamages blick may accrue furn any course and particularly decide reper the fituess of all Material used and work done

Here book actor bling bound in all cases to lemove all himproper Work or materials when bling directed to te do by the huperinturdents being directed as above to seem ove the same should before or juglich to te do shall not only buffer a deduction from the bout act price of the difference his value of proper and himproper work mus Materials but shall also be liable for all blamages of wholsower mature or kind that he ay rebult fam fuch cause. Her above pro-

of the Experientendents. And it is berely expessely provided that in case the Bentractor should feel aggrieved by the decision of the Resperientement Que appeal may be taken from luch de cision to an arbitration chosen widefferently & whose decision be the protter thall be final & brieding on all parties in The ourse reserves the right to alter on Modify the Designo, and to old to ordininish from the contract price the deforme ge to be adjusted as provided above. The ourse being bound in all cases to recognize the acts of his Superinter dents not only as regards extra work but also to the kefficienty of the blediger, the Contractor being in ses case responsable for any accident resulting to the work from any defective delign which fact went be determined by an arbibration of three discuterested were chosen hidifferently and if found that the of our a get resulted from a want of proper care on the part of Boretractor there and in buch case the damages floss that be paid for and we are good by line but if found that the accidents or damage resulted frem que perproper derigeo thus and in huch case all damages that he bustained by oursers, which in all cases went Le real, and su us case constructive damages to be allowed all payments made when the work during

its progress are on account of the Contract sun Shall in us case be construed as an acceptance of the Work esce cuted, but the Continctor Mall he liable to all the conditions of the centract while the work is accepted as finished & completed Winere Siones of the building as represented by hus figured on the Bawings -Seights Naseinent Hory (leellas to be 8.6 Principal " 13.9 Le coud 4 Heid Heid & 10. 3 10 who rook Fifth This building is judended to be first class his every particular que puest be finished throughout as herein after described & anything Thour by the Drawnigs and not herein after particularly reserved or described which is be cessary to complete the eleasons work of the building is to be done at the Cost of the Contractor notwithst anding buch ornission Grade of Building Joh of first floor joist to be fisced to corredon the block and all other floors the Tame becauations The entire area of the proposed building

as required by blaces to be dug out five 47 feet deep below the Natural Surface. Occavations for footing of Walls to be dug light piches below the first usuned exavation all other exeavations for draws & cisteres and for foundation of Riers and for Yaulto of Mater closets as required by plans, also for areas and foundationes of steps all the execuvated earth puest be deposited he front and rear in proportion as it may be west beeded -Contractor to properly level off the earth about the walls so as to turn the water from walls and refill the excavations for drawing ofter the Dame is put in and propuly fixed to the discretion of the Reprintendent. Rubble Stone works. All evales shaded blue to be of stone of dimensions and beights figured on the laid in the best un anner with worton wines of proper proportions of best live and clean Coaise A and the whole to be well hedded bud bouded together and well faced on both lides - Devarf walls to le ave Stone formdations some kind of work as described above and the same to be three feet deep and average histen links thick ~

48 Footing of wall bottom of trenches love 3. 2" wide the first course or layer west not be less there eight in ches thick by him feet A su are surface, suid week the well settled in the earth with a heavy justiment of wood fued laid in a montar made as above described. Meaning walls for the Support of the pout steps and areas to feet at least three Leef below the bottern of area and of hufficients thickness to Rupport the steps or earth that Jury be feet when or afainst them ~ Cistere walls tobe built as shown by Ilaus, belastered fie side putte two good Cools of Water line and le a de water light on all hider and bottom and the overhead to be plastered with concrete to prevent dampuest peur offecting the dervents lover steves a Wall of areas of the Cellar live dows to be of stone, for height thickness see Sections les blans, all sand used for Mortan pust be clear beach washed sand for every thing about the building all tersper holes left for der aires & gas pipes as directed or Alower by Jelaus For the Juality and Rind Reference will

be had to the go companying fills and 49 drawings where the lawe is plainly glescribed and shown flud week all he ferspely let, and after the walls are finished to be properly cleaned off and pointed up. De the cut stone work is to be furnished all Lewised and fitted for auchors Jus delivered on the ground at the belace of building at the owners cost. after the Stone are thus delivered the contractor for the Masoury is to lake charge of the same and funt be come les frontible for any damage that may be done justit the building is completed and accepted. Brick Work all walls shaded red on the belows are to be of brick, of the thickness and hize we arked on below laid in the best unever with Solid head and bed joints and thoroughly sheshed tolid. The Lide walls will be laid li connection with A. Y. Weeky on the North Lide and will be a party wall -The South Side is that of f. I. Clark Dend low up except the portion that eschends begond laid Clarks wall m all we are any lever for joints & other timbers that may be necessary are to be cuts be the black wall for all the different floors All brick used for facing the outside

Walls went be hard burned, all soft hick to be rejected from the work. The joints of the lear outside will be weathy struck, Fine walls to extend 4 inches above the peop and copied litte tio. Owners will furnish at the time they are wanted, he all cases where the loof is to be of tie les confosition a Rufficient august of 2 x 4 lich Acoutting to surround the whole roof of building which went be built in the fin walls by Contractor lu luch puede per as the lower lide of the friece will be flush with the top of the roof boards by drawings and where the Tame passes through the different floors a projection of four piches is to be purde on all bedes, Jus lu les care allow less than lie viches of brick work between the timbers bustucke flues, all the flues to be senorthly plastice on the wiside and have store pipe thin bas with tim Stoppers as directed qued be finished above the roof at least 12 piches above the highest bout. All openings for find grates to be suchored with bricks and all be tirued with brick arches, be asound lath to be worked fir the joints of the brick of the outlide walls of the different Mories our to each 12 th source my

Contractor to execute all the masoury and turnish the chaterials necessary for Relting the boal grates and bots air furnaces and the Costing Range, wronglets drow grating for Thou buchers For each of the piers and for at least every tu feet of the dead walls to be carefully worked he the ell asony, and recured to the timbers of each of the floors and roof the stone front will be anchored with strape auchors two to each Block of Stone Size 1/8 by 1. inch turned at each end and fitted to the stone and well bound in the brick work in Thinker auchors will be all pin auchors wade to arts Fin & wieles long of 1/8 "lound iron, the Should to be to inches long properly welded around the pin and will be fastened to the timber with two spikes -Those for the Stone lintel of Fronts love escha heavy, and west be long enough to reach the second joist from the stone to be anchored. That's of 3/8 by 1/2" From to be placed on the timbers of all the floor & loof where the same lie whom and west on divisiono Walls there strapes hunt be 20 Vieles long, American ken, and here 4 Mikes each me plastering is with tothe picheded in all throughouts the building

lote of the best Enality, Waster of Paris finish and all three wat work, except which will be too coat work, The first coat west be well find proportionally buisced with clear though lake sand quick line and leair. And the second boot or browning west be every laid few floated true to a straight edge with leval plumb aughs and corners, and the last coats thoroughly Molished in Hierally to whole got to be completed in a careful, skillfood, and workenanlike manner, and every material to be fumber therefor, and everything shown by the places relating to, or is necessary to complete the sucreony of the builting, and not herewhefour fearticularly reserved or described, is to be done at the cost of the contractor notivillestanding Luch omission Vine - Owner to give possession of the ground on or before the first day of march as1886, Contractor must agree to buils the walls and Chinesep ready for roof on or before the first day of Replembor 1836. aut must set the front Steps as soon as the same are funched, and clean down the fever and finish whole work as some as practicable upon the above mentioned time dais work shall in no case be considered as Jeinshid unless the same is so reporter to the superintendent and accepted by him, The owner herely agreen

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I have in readiness all necessary tumber aird Carpentus work as they may be wanted so that in no case the masony thall be hindered for the want of the same, and will put on each floor of wists on all the building within three days after the walls are much reary to receive the same, and in com he should fail toda so. then and in such case he herely agrees to extend the time for funishing such work in a pro vata proportion for such delay, and will also pay all duringers resulting to the con tractor from such curse of delay! Movided the contractor shall at the time of such delay notify the Duperentendent in writing of the Estent thereof, and the damages to him arising therefrom, and if required by owner must prove the Lanny Damages - and in order to seem the execution ofthe work in the manner, and at the times speci feed, it is herely distinctly dictared, that the durings arising from the non-fulfillment of the contract as segards the time shall be a fair new of the premises for each and every day the work remains sufursher and which sun of duringers shall be deducted from the contract force Payment To be made on the work as may be hereafter

"Schedule B" Henry M'auly Carte & Miller Dr June 1856. For sheet Sead Front & Rear \$5,40 aught Dept. " alterny Mindow leap 3,00 " 4/2 days Muson Deafering floor a 300 Och. 27 13.00 11 328 Hods Mork c for deafening 32,50 " So feet. 3 low foundation additional Sign 121, 80 " 7.065 / Bricks laid @ \$121 84.78 1 Excavation for addition 5,00 " 1850 Bucks a \$12 additional Chimny 16.20 May 26. 1887 " 97 feel stone wall forcedation for stone fence 10.52 " Degging dreamh ofelling about sum 1.00 189.70 Schoul 0"/ Henry M' Ruly Ja Courter o mille der \$34.25 May 15, 1839 To 137 gards Ex cavation for baun / 11 " 11.14 Cords of Stone @ \$16. 178.24 573.00 " 16 feet of cut stone @ 70 11.11 436.60

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And afterwards to wit' at the farmany Special term of said court to with on the proceedings among others, were had and entered of record to wit! "On motion of Shorepson and Pishop of coursel for said planiteffs it is ordered that they have leave to file an am-Ended Petition herein which is accordingly done = Whereupon it is ordered that the paid defendant be and he hereby is ruled to plead to said amended Petition by the 2nd monday of Hebrary next" of Howards to wit in the 17 day said defelldant filed in said court his consider to the amended Petition in soud cause in the words and figures following the wit; Henry Mcanley || William H Carter and Henry Miller the anew of Henry Milliam & Chilliam & Chilliam And the said Henry

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Mauley for answer to the ownended petition filed in said louise pays that he admits that he is and was at the time of the making of the contract in said ormended petition mentioned the owner of the real Estate mon - trisoned therein described and he further adm - its that on or about the 25th day of april a \$1856 he made a contract in writing with said petitioners for doing the mason work of a building then about to be Erect -ted by this defendant upon the real Estate described in said petition and he presume that said contract is correctly set forth an said petition but for the reason that this defendant has not the original cont ract or agreement now in his possession he will neither admit nor derry that the game is truly set forth in said amend: ed petition but will leave the said plain -tiffs to make proof Thereof. but this def-Endant deries that said petitioners did the work and furnished the materials to be done by them and furnished according to the provisions of said contract of that they Rept and fulfilled all the term considerations and requirements of said ; contract and specifications therein referred to be by them Rept and fulfilled as etated,

and alledged in said amended petition かア or that they were ready to perform Each and Every particular in paid specification contained or that said work was ever a ecepted by this defendant as therein alledged of that this defendant is justly indebted to said petitioners in the sum of seven hundred dollar ova ecount thereof or in any sum whatever or that said petitioners are entitled to the further sun of One hundred and Eighty mine dollars for Extra work growing but of alter = ations made in the design of earl building made by this defendant as stated and alledged in said petition. This defendant further auswering admits that said petitioners did make Exclavations for and furnished and laid @ quantity of stone and brick for the crection of a barn on said premises and he devices that the labour done performed and materials so furnished by said petitioners was reasonably worth The sum of seven hundred and thirty six dollars as stated and alledged in paid amended petition or any thing like that sum and the paid defendant furthers pays that said petitioners agreed to do said work and furnished said

materials for a specific paises and not for what the same should be reasonably worth as stated in said petition, This defendant further answering pays that the work done by said petitioner super said dwelling house was not done in accordance with the terms of said con tract and the plans and specifications altached thereto, that the Executations were not made to the depth thereby required but that this defendant was put to great trouble and expense and in continuing and completing paid Exeavations after said petitioners had left said north that they did not level off the avork about the walls as as to turn the water from them nor were paid walls of stone laid in mortan mixed with proper proportions of best lime and clear coarse poud nor how the forting of gaid walls built in the manner provided in said specific -= ations nor were the stone of which the fame were composed) settled in the earth as therein specified nor were the cistern walls built as therein directed or plas = tered ruside with two couts of water line nor were they made water tight nor were they plastered as therein directed to prevent dampness, nor was the sand used for

the montar clear beach washed sand as required by said articles but nearly all or a large part of the mortar used he said building was made of paid taken from Exeaudtions made thereunder and was that the stone front of said building was not anchored as required by the place -ifications ofward paid nor were iron auchon worked into the masonry and secured to the timbers as thereby required that the work done by said petitioners in said building was in other respects imperfectly done that by reason of the defects afore-- faid and the other defects of said work the said defendant hath been greatly sam-- a ged and that the amount of damages pustoined by him will greatly Exceed the whole ormanite of the several semis claimed by said petitioners in their said petition which said damage and supery this defendant prays may be set off against the several simo claimed of this defendant by said petitioners in their said petition and this defendant further pays that said complainants left said work without completing the same that this defendant never a ecepted said work but that the

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some so far as it was performed was performed on defendants land and con - nected with other materials and labor and this defendant was therefore compelled to appropriate the some and endd not refect it, pubscribed ald swom Henry Mcauley to before me this 17th to before me this 17th day of deby A D1859 Opplehmeh cere And for further answer the said defendants pays that said petitionersare indebted to him in the sum of twen = by one dollars for money paid by this for Carter and Miller and at their request for the purchase of ten cords of stone on or about the first day of april A D1857 and also in the fulther sum of about muety five dollars for pound used by said petitioners in doing the work on the dwelling house of this defendant set forth in said hetition, and which was furnished by this defendant and the said definitionts prays that eaid summer may be set off against the clasin made by scrid hetitioness in this said Betition one this 19 day of orby 1859 Henry Mauley

Milley Melhurch cus

and afterwards. to wit' on the same day and year last aforesaid said Petitioner by their said attorneys filed in said could their replication to paid defendants answer in the words and frigures fowlling to int; Circuity Debuary Derm A D1859 William Holanter & Replications. Henry Ma auley These repliants Philliam Ho Canter and Henry Miller the said plantiff sorving and reserving unto themselves all and all manner of advantage of Exception to the manif = = old insufficiencies of the said onswer for replication thereunto pay that they with over and prove their said petition to be true certain and sufficient in the law to be ornewered unto and that the said oursever of the said defendant is mucestorin untrue and insufficient to be replied muto by these repliants with - out this that only other matter or thing whatsoever in the said answer conta-- ined material or Effectual in the law to be replied unto confessed and avoir - ded traversed or derived is true allowhich

matters and things there replicants are 62 and will be ready to over and prove as this Honorable Court shall direct and humbly pray as in and by the said petition they have already frayed Thompson and Brethop alty for Petitioners And afterwards. Hunti at the Debuary Our of said court to with on the 2/kl day of Hebrary A D1859 the following. proceedings aring others, were had and Entered of record therein, to unt; Portliam Ho Carley Alenny Moller Petition for Moch's Sein Henry Mo auley This day comes the said plaintiffs by Thompson and Orshop their attorneys brud the said defendant by Horne Milled & Lewis his attorneys also comes and ipue being formed herein it is ordered that la piny come. Whereupon come the Junors of a pury of good and lawful men to into William & Russell, JE Crandall. 6 les bl It Southerland, George Dendap, J.b. allen John Daverny, J. A. Reed Henry Meuching Syman Stathles M. M. Wulosh B. Watters The bring duly Elected tried and swom well and buty to try the issues frined herein

aforesaid and a true verdet give according to law and the Evidence and after hearing a part of the Evidence the same not bring closed and the how of adjournment having arrived it is ordered that said Jury have leave to soperate to meet the court at the coming In thereof thereof on wednesday morning And afterwards. to virt; at the same term of said court, to rist on the 23d day of delu any in the year aforesaid the following proceledings, ormong others in said court were had and entered of record therein to wit' William Ho Carter and Henry Moller Henry Marley I This day again come as well the said planitiffs, by Thompson and Sishop their attorneys do the good def Endant by Hoyne. While and Seins his attorneys and the purors of the pury afore said als come and the testimony in this Cause having been closed and the said Jury having heard the arguments of connect as wellow the part of the said planitiffs as of the said defendant and the instru ctions from the court retire to consider

of their verdect under the charge of a swom officer of the court, and afterwards come noto cloud and pay. We the gray find the ipues for the planitiffs and that the such of one thousand two hundred and righty mire dollars and forty six Cents runains due to them for worldone under the contracts incutioned in the Petition whow the premises therein descri-Therenpow the said defendants council moves the court for a new trial of this lause, And afterwards. to roit at the term last aforesaid to rist; on the fifth day of March on the year last aforesaid the following proceedings, oning others were hord and Entered offrecord therein, to wit! Philliam Ho Carter and Henry Morller Henry Mauley Petition for Mech's Sien This day again come the said parties by their respective attemey and the paid letitioners mor remit ten dollars which was alledged by paid defendant to have been had and received

by said Petitioners, and more on motion If Thompson and Sishop said Petitioner Loticitors. It is ordered adjudged and decreed that said Petitimers recover of said defendants the sum of twelve hum dred and seventy mine dollars and forty six cents. Together with their costs and charges by them about their suit Expended to be taxed and that all and Ingular the premises described in said Ostitioners ormended Petilion and described as ifallows to virt; The south One third (13) of Lat number five (5) in Block multered mie /9/ in the canal commis -sinors subdinsion of fractional section one mber fifteen (15) in Sourchip number thirty rime (39) North of range fourteen (14) fast of the 3d principal meridian or so much thereof as may be sufficient to pay the said amount of twelve hund: - red bud seventy mice dollars and forty fix cents and paid evets and charges with interest from the date of this decree provided said premises are susceptible of division without mying, be sold at public auction by great under the direction of & & Paine Free Egymanter in chambery for cook county) who is hereby appointed and constituted a

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commission for the purpose of making such sale that said commission give publice notice of the time and place of said sale by notice in a daily new spap-= Er printed and published his the city of Chicago at least sixty days previous to said pale and that the some be published at least ten days during the sound sixty days and that said comme ipipor Execute and deliver to the purchaser or purchasers a deed or deeds of said premises report paid fale and that out of the proceeds of said sale the paid commissioner retain his fees and costs and commissions report paid pale and pay to the Petitioners or their policitors the said amount found due said petitioners as afores aid together with their costs and legal interest on paid amount from the date of this decree or so much thereof as the said fun-chase money will pay and that her bring the suplies money brising from paid sale of any there be into coult to abide the fun the brder of this court paid premises to be sold subject to whatever claim Leonge Deville Jacob Phillard & John Djennings may here after be adjudged to have thereto a against paid petitioners, Whereupon the paid defendant

(M'auley) prays our appeal to the sufreme Coul of the State of Illinois which is granted by the court on condition, that The said blefendant executes and files with the clerk of this court his appeal Bond herein in the penal sum of One thousand two hundred and seventy mine dollars and six cents, conditioned according to law within twenty days from this date with I Dennings as Swety thereto. And that the said defen -dant have twenty days to file his till of Exceptions, herein,

. Und after monde do rit; On the 24 day of March 68 in the year last Oforer aid Said DEfendant by his altof Exception in the words and figures following brit; William Holan and Son Willer (55) Heury Me auley Be it remembered that on this the a day of February CAD1859 at the February Opicial Term of Said Court Said Cause came on lobe tried and the fracties, the plain tiffs and the Said HEury Mcauley appearing by their respective courses a Jury was duly Empan-Welled and Snown and the Plaintiff theo Eupon widtroduced as a With Ele Q & Wheelock Who being duly Snow tolfied a follows. I am acquainted with the Carties to this Suit, am an architect by profession, das-Sisted in drawing up places for the building ref-Erred to in the mitten Contract now Shown to The CAEre the contract and specifications set forth in the petition new hunded to the with Ess? This is the contract and specifications up du This which the brilding was put up. I know of the pl wintiff going on and putting up the walls of the buill aling under this fortiant and

Specification on the premises described in the 12 Super in ten de the nork though I saw it Some Times the following Virting There Articles of Agric Ement Made and En laced into this owenty fifthe day of Copiel CAD 1801. belive en Miles faite & Miller of the first part Building Masons of the lity of Thicing. and H. Mcauley of the Same place of the Second part Witness Eth That the Sald Laster & Miller orther Crecutor, administrators and assigns, for and in Consideration of the pay ment here inafter, made to their by the Said Ho Mc auley or his Executors do on their heut loutact and agree to Quild, Juish and Complete in a careful, skilful and morkinan-like manner tothe Gull and complete Satisfaction of new Boying tow or his africatant Superinters. dent and by and at the time mentioned in the Goregoing Specifications, The Masoury work of a Marsel Front dwelling that is lose Exected on Michigan avenue in Louner jon with Dickey, the de ign of said brook, a it is set forth in the Goregorly specifications, and the plans and drawvigs therein Especially referred to. Said Specifican and parcel of this Contract,

and the said Ho. Mc auley or his Executors ad minis trators or assigns for and in Consideration of the said laster & Miller Gurnishing materials and Gully and Faith Gully Executing the afores air book So as Efully locarry out the design for the same as sel Goth by the specification and according to the true spirit meaning and intent thereof, and lotte Gull and complete Satisfaction of Mh W Boy inglow or his afistant Superintendent as afore ail and at the time mentioned in the fine-Going specification, doth hereby agree to pay the baid laster + Miller the Sum of Whity Three Hamdred Dollar & 3300 a in the Gallowing Man new, as the work advances the Superial tendent is to make out Estimates of the nork and material Gurnished and in mrought into the Ouilding and upon the pels Entation of a certificato of Eighty (five (F5) per Cent on Said Estimates. The Paid of Mc auley is before the amount and the balance, in full out Completion of the Contract Provided the Said Superintendent Shall certify in miling that they are Entitled there b. Sand witness Munof the partie, have let their hands the day and Year Girst above muttery/ Darto Milli

Specification for the Masons Hork and Materials Figuried for the Erection and (surpletion of a Stone Front Drelling that H Mc Abley Ey is about to have Exected in the Block on Micheyaw ar Ence between Van Buren and Tyler Streets, adjoining I I black on the South Whose Buildings is all Trugly Exected, and the How Ho Dickey on the North Special Reference will be had by the tontactor bothe Gollowing Specifications and the accompanying Design as made by It It Doy my tow architect, and which consists of Plun of Foundation and Section " Gareneut " of Fred Floor " " Scend " " " Third " Fromto Elevation . Destries of Contractor! Ne shall be strictly held to make Such Work and to use such Materials as is hereinafter described, and to work up the Building to the given design and in all care when the drawing an figure the Jugines must be taken by him as the The drawing may measure on it scale.

He will be further held to Submit as to the Character of the Material, used, and the Work done, bothe field ement of the Superintendent and to procue from him all necepary interpretations of the Deign and all Hecessury cert-Hicate regarding his hay ments. Superituter dents and Their duties! It W Boy ing tow go his Ofistants architects are declared lobe the Superintendents of the Nork for the Owner; their decties Will consist in giving, on dem and Such interpretation, Either in lang-Mayo, Writing or drawing, as in their tradyment the nature of the work May require, having par ticular care that any and all work done, and Material used Cfor the nork, be such as is Chereinaftw described ; in giving, on demand any certificates that the bout detors may be Entitled to, and in Settling all deductions of or add thous bothe boutact price, which may grow out of alterations of the DEsign, after the Same is teclared to be contractly also determi-Oring the amount of damay & Which may accuse Thom any Course and to particularly decide Whow the Getween of all material used and Work dong The lantactor being bound in all cares I Temore all improper Work or Materials expen being directed to to do by the Superintendent But the Contractor if after having been

directed as above, to remove the Same, Should refuse or neglect, So to do Shall not only Suffer a deduction from the Contract Price of the Difference in value of proper and unproper Hozk and Material but Shall also be L'cable for all Damages of Whatso Ever nature or Kind that may redult from Such Cause. The above hoviston trapply in the Same nay to all man berial or Work used Made or Fixed without the Knowledge of the Superintendent. and ithis hereby Expressly Provided that in case the Contractor should feel aggreeved by the decision of the Superinten delut an appeal may be taken from such decis ion o More decision in the matter Shall be Gual and briding on all parties The owner reserves the right balter or modely the Design and to add to or diminish from the Confuct price the difference to be adjusted as provided above. The owner being bound in all cases to recognise the acts of his Super intendeut, not only as regards Esta noch, but also being in no case responsible for any accident Hes alting to the Work Grow a Defection Derigo Which Gact must be determined by an arbo-

hation of Three dis interested new, Chosen 74 indifferently, and of found that the damage part of fortractor there and in Such case, the charmages resulted Gazen a mant of perfection on the fact of bostoactor, those word in buch Color damage and loss shall be hajd for and made grand by him; but if found that the ackident or dunage resulter Grow an improper D Esign, then and in such Care all Lamaye shall fe sustained by owners Mich, in all Care must be real and in no care frontructive Damage who allowed. All pay ments made on the nork disruig its prigress are on account of the lon-Mutt, and shall in no care be Construed as any acceptance of the work Executed, but the my gota shall be liable to all the conditions of the toutest until the work is accepted as Junghed and Completed I menision of the Quilding as represented dy and Gigured on the Drawing Reight Bas Ement Story 8. g. Collan to be 1:1" Get

Avacipal "

Second "

Third "

Third "

Thought I so 10. a to the roof. This Building is intended to be Gires class the Every partisular and must be Genished

Invoughout as herein after described and any-75thing Shown by the Drawing and not herewhethe particularly reserved or described, which is necessary to Complete the nok of the buils not with standing such mason omision Grade of 18 wilding Top of Gust Gloor of joint to be Gaid to comesfrond with the Clark House you Eneted on the block and all other Gloors the Same. Excavations The Entire are a of the proposed Building as Flyurid by Plans to be dug out five feet deep below the natural Surface, Escarations for Gootiging of walls to be duy Eight inche below the fait, named Excavation. all other Of curations for drain and gistern, and far foundation of pieus and for vault of nata Closets, as required by plans. Also Go areas and foundation of all the Ex cavated Earth must be deposited in front and rear in mohntion as it may be most needed to Grall so as to turn the Grate Grow the Walls and refill the Excavations for Drain after the same is put in and properly Gajed to the direction of the Super in ten dent.

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· Rubble Stone Work All wall shaded blue to be of stone of ain Ension and height Jegured on the Drawings and composed of good Guarry Stone laid hi the best manual with mortan mixed of proper proportion of best line and clear course Sand, the whole to be well I sed ded and Bonded together and Well Gaced on both sides. Drang halls to have Stone Youndatroys the Same Kind as described above and the Same to be three feet deep and arrage Sixteen inches thick forting of wall to be comhosed of large stone and will be 3! " and o'2" Wide the first course or layer must be less than Eight inches, thick by Six Geet square Surface and must be well settled in the South with a heavy instrument of Graad and laid in a mortar made as above described the Gront Steps and areas to fruit at least the Get below, the bottom of area and of suf-Licient thick new to support the Steps or Earth that may be just upon or ay any them to good listern bralls to be built, with two good loats of water Line and Made water tight bu all side, and bottom, and the ownered the plantered with second

Concrete, to present dampnen from affecting the servant room above. Wall of areas of the cellar windows Sections and plans all sand used for mostar Must be clear beached washed Sand for Every thing about the Building. all proper hole for drain and gas pipes as directed or shown by claus For the quality and Knil, reference Hell be had to the accompanying bills and drawings where the same is plainly, described and shown and must all be properly set, and after the wall, are finish when the property cleaned off and posited with the cut Stone make to be Gurmined all Gervised and Gitted for unchors and delivered on the ground at the place of building at the obview cost, after the stone are their delivered, the contractor for the masony is to take Charge of the Same and must become, responsible for any damage that may be done until the brilding is Completed and accepted all rall shaded red on plans are.

1 2 8 on Plan laid in the but manner nets Polish head and bed joints, and through They slushed bolish the Side rall will be daid in Connection note Ho Dickey on the North Side and will be a party Grall. The south side is that of I black and now up Except the portion that Extends byond said blacks wall. All necessary holes, In foists and other timbers that may be neces-Sary, are tobe cut in the Clack trall In all the different Gloors. All brick used for facing the Out ife walf must be hard furned all Soft brick to be rejected Grow the mork The fruits of the rear outs ide well be neatly struck to Extend 4 wiches above the roof and coped with with with they Onnen will Gurnish at the trune they On Wanted in all cases where the Took is how of two and composition; a sufficie Ent amount of 2+4 inch Scanting to Surground the whole roof of buildings, and Which must be built in the fire walls by Contractor in Such manney as the lower Side of the piece will be flush with the top of the roof boards All chim news to be built

a Shown by drawings, and where the Same 79 hapel through the different floors a projection of Gour wither is to be made on aft sides and in no care allow less than Six niches of brick work between the trimbers and Smoke Glues, all the Glues to be smooth by plastered on the smile and have slow hipe thingbles with the Stoppers as directed and finished above the worl at least 12 Miches above the Thighest point for fine grates to be anchored with brick and all trimmes for the support of Cheurtho Willy be turned with frich arche in the justile of the brick of the outside Wall of the differents Stories one to-Each 12 Conners Contractor to-Geoute all the Musony and Junish the Material Mccessury God Selting lost Grates and The areas Sow Anchors For Euch of the Piers and Gorat least Every ten feet of the dead walls to be care-Gully Worked in the Masonry and Secured bothe timbers of Each of the Gloons and Toof The Stone Grout Will be auchored

mith Strup auchas two to Each block of Stow Szi Is by I inch turned at Euch block End and Gitted before Stone and well bour in the brick more Timber anchas, will be all I'm anchor made to wit! I'm & miches Clony of 1/8 round Iron the Shank loke In Miche long properly Welded avoured the Cir, and will be fastened to the triber With two Spikes Thoughton Stone Lintel of Strong to Estra heavy and must be long Through to reach the Second frist Grown the Stone love anchored, Straps of 3/8 by 1'h " Don to be placed on the thubers of all the Glow and not when the same big whow and meet on division wall, then Straps must be 20 inches long anurican son and have 4 Spike Each Is not to be included. All throughout the building to be of the best quality claster of Paris Guish and all three cout Hork Except which Will be two cout noch, The first Gut must well and proportionally mused netto clear & harp lake Sand, grick line and Hair. And the Second Cout or browning must be Evenly laid and

Glosted tow to a straight Edge, with

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Equal plumb angles and corners, and the last Coat thoroughly polished Finally the whole job to be fully Completed in a careful, Skilful, and more manlike Marquer and Every material Whefurnished therefor, and any thing Show by the places relating to or is recessary to Complete the marony of the building and not herein before partibularly reserved, or de or wew is to be done at the cost of the Contractor not with standing Such mission Owney of give popepion of the ground on a before the Gill day of Murch an 1856 tookator much agree to build the walls And Chimneys ready Gor the roof on a Men the Glist day of September 1806 and Miss set the front step for the Soon and which the mix as an wacticable after the above M Entroned time Said not in no care shall be Considered as Genished unless the Same in to reported to the Superinten dent and accepted by him The owner hereby agree my to have in gend in Es all ricer-Sarry trivber and forgenter work as they I May be nantest In that in no care

the masony, shall be hindered for the mant of the Same, and will put on Each Gloor of joint on all the Buildings within to receive the same and in Cire he should fail to do So then and in Such care he hereby agrees to Extend the time Gor Gui-Disping Bail Work, in a pro rata proportion Gorbuch delays and will also pay all dand from Such Chure of delay Provided the Contractor from for Shall at the time of Such delay notify the Superintendent in meting of the Estent therefrom, and if required by owner must Manag Es And in order to Secure the & Ecution of the nork in the manner, and at the The specified it is hereby districtly de-

And in order to Secure the & Ecution, of the nork in the Manner, and at the thomas specific it is hereby distinctly de-Clased, that the damages arising your the non Aufilianent of the Contractions and from Rent of the Contractions and from Rent of the Oriems of Each and From Applies hed and Dehicle Sum of Damages shall be deduced from the Contract price

Jay ments. To be made on the rock as may be here-after agreed. Council handed to the nether the following Certificate or writing in I hereby Certify that Thur Examined the nothing bill and Checked Such them as I mus Satisfied mes Correct and done under my Saperision and Cornered out Such Charges as & con-Sibered not Correct, The Charges for the Barn and for to hauling Earth to had no Superis ion over, and Cannot Certify When the constitions of the Contract amust To Sunayer to the Gront caused by not being suitably anchored to the order of I to Mark The auchoring has since Ibeen done but the blemish still remains hereby certify to so much of the Authorite as amounts in approve the contract of the house 3'300.00.

by deducting as afore aid the sung 3489.50

\$3439.50 Within bill as amount to \$189.50 have drawn Certificates to the Onverent of Iwo thousand, I hereded 2400, 50 We the fatual for house. Respectfully submitted 839.50 Chicago Nov 3 1869 Superintendent & architect

Respectfully submitted

IN M Boying low

Chicago Nov 37839 Superintendent varchitect

On the back of which was the following subreement

Checker and marker as follows, 84

on the back of which was the following Endorsement Checked and marked as follows. 85 Henry Old Chiley To Laster & Mille De June For Sheet Lead Front & Real V 5,40 Cluy & Sep 4 D' Sender carrying Jours 6,00 " Oltering Window Glass 13.00 Oct. 27 " 41/2 Do Mason Deafening floor to 013.00 13.50 " 14/4 Jender " rendering about your 3 22.12 4 ft bougan } " 80 ft Stone form dation additional part p16 V12,80 " 7.115 1 grick laid 0 \$ 12 V84.78 Excuration for addition a chuning 16.13) Mains of Excuration for Barn c 2/34.25 V 5.00 11.14 Cord of Stow @ \$16 178. 4 42,750 Brick laid \$11/h. 491.62 Hauling 100 Loads of Earth to their a order 11.20, 715.31 12,00 2867 May 21. 3 De Mason Cleaning Paint Grow Jones) 9.00 " 97 Gt Stone Wall Foundation for Fence 16 peord 15.52". Degging French & filling about same " Digging Irench Hilling about same . Ant of Contract Con House 2300.00 ant of connuncy Ont to Oct 1. 4 mos 2/.06 4281, 49 27.06, En the for the of which with a fine in Carlo mount

The said notinen Genther bestified am' acquainted with the hand Writing of Um It Boyington the Segnature to this paper referring botho aforesaid Certificate is in his hand miting The muting and Gigues andhis signatume One in his hund, Writing , The Gigines and Mitting on the back of the paper are not in his hund meting; and thew upon the plaintiff by their Connel offered to read Said Certifi-Cute or meting netto the Endpresents aforesaid thereon in cridence to the day, to the reading of Mych ji Evidence the defendant, Mc auly by his foursel then and there of jected, but they bount overruled Said objection and the Same has thereupon read as Evidence with Agry and to the ruling and deces ign of the fout in overruling Spill objection the defendant Mc auley by his consissed thew and then acepted and thereupon the plaintiff called netwers who testified that the work ha done & material Gurnished for the burn under the contract you the premises alleged in the amended hetetion and The Gollowing mas admitted to be correct so Gar as the nork dow on the Barn and the materials Gurnished by the plaintiff therefor.
42445 Bricks at \$ 11.00 per m 10 98/m cords Stone Rubble a #16 her cond 16 Geet of Cut Stone Jother foot 137 yard of Excavation at 201 per yard

Here the Plaintist rested, and the defendant Newry Me anley called nitreenes and offered to prove Dust What Mr HBoying ton on the 25 of Faxy November AN1851 at the request of the defendant Mcauley gave notice to the plaintiff of defects in the building of the wall of The duelling house and that those defects, have not been remedied Jecond That the Excavations Under the Obuil ofing were not made to the depthe required Buil That the ground about the ralls mas not levelled off so as to turn the water as my unid by the Specifications Smith That the Stone of the Gosting of the Hall man not set in the Earth as required by the Specificuling and that the Sand ? used in the mortan Gen the Grall was not clear beach washed Sand as required by The Specifications of the bulding of the Specificatron nor new the from anchor norked links and secured to the timber as required by the the extraction Porth That the Stone front of the Building has projected in Consequence of the insufficient Michigrage as afortiqued that the Frank is defaced and that the walls in the South East corner of the Building in Consequence

Here the Slandish rested. and the defendant Henry (Me anley called witnesses and offered to prove Dust What Mr HBoying to on the 25 of Faxy November AD1851, at the request of the defendant Mcauley gave notice to the plaintiff of defects in the building of the wall of The dwelling home and that those defects, have not been remidied Jecond That the Escavations Under the bourt ofing, mue not made to the depthe required by the Brecifications This hat the ground about the ralls mas not levelled biff so as to turn the mater From the That the Stone of the Gooting of the hall tray not set in the Earth as required by the Specification and that the Sand ? used in the mortan Gar the Grall was not, clear beach marked Sand as required by The Specifications of the bulding Thus not auchored as required by the Specificatron nor new the from anchor normed bit and secured to the timber as required by the the cification Porth That the Stone front of the Building hus projected in Consequence of the insufficient anchyrage as afores quil and thereby the front is defaced and that the walls in the South Each corner of the Building in Consequence

thereof has settled and is still settling to the 88 Great injury of the room, and ide of the building of the Extent of the durages sustained by the defendant Mc Ouly in Consequence of Eighth That the Contract in respect to the In the following particulars Seven Giry grates new not set. Inche Store pipo them bles not put in, one Range Mot set, no pointing up under nindon Sells around tin where roof joing wall, That a portion of the wall between front, and rear part of the House was orgitted that the wall above and beyond I Clark, purty Wall mas an Eight wich instead of a twelvo wich, Wall thereby Feguiring a less number of brick and that in respect to the particular last above named then should be deducted Show the amount of the Certificate of m It Boying tow given in Esidence the sum of The hundred thirty nine dollars to nation form Cents and that the same mu muldoked by Said Boyington by mistake When he gave Said lestificate But the loost rejected the Same in respect to Each and all of said determined that said endeinder and

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Every item and part thereof was incompetent under the issues made in said cause, that Said defendant Mcauley was Estopped from Making Said proof and quoing Said Cordence by the Certificate of Mr W / Doy mg ton aheady Grad in Evidence in said Cause, to Which Puling and decision of the boart in rejecting Said Evid Ence and Every part thereof the defendant by his Commel they and there duly acepted he defendant Mc anly thereupon offered and read in Evidence the Gol lowing certificate with the receipt Endorsed A 300- Chicago May 31. 1851,

On this is to certify That they is one of Much layter & Miller And Matorial Juxing hed your Building on Michig dom The mise as feel Contract pay able at sight at Chairs.

And I good to the Man Me I Boy ing ton architect & Superintendent Mr Do Me Auley This is to Certify That there is due to factor or Miller the sum of Three House Dollars Go Labor and

Motivial First Now Sind your Building on Michigan Homes of the Contract payable at sight at Contract of Mayable Mr. W. 13 oying ton \$ 400 Mo Handy De anly Mis is to Certify That there is due to fante of Miller the sum of Figur Hun to Jed Stun Gir Labor and Materials Gurnihed Gor for Building on Michigan Or as few Control, payable at eight at Chicago Respectfully In It Boy ing ton 203 Architect & Superintendent ASM. M. 20 State Cingo aug 11. 185%.

This is do leastify

Miller the Pum That there is done of the line of the form of the State of the first of the fight at the country of the Boying tow a to the first of th

Rec'd Chicago Sept. 27./5% of Henry Mcauly From hundred & Minity dollars to apply on Use of building Contract farty & Miller Pucajo Sept. 22. 1856 That there is down to Laction the line of Matina, and Matina, and Martina, and Mart The above being all the Evidence Juien in the cause the defendant by his Council as ked the fourt to instruct the jury as Gallon To Entitle the plaintiffs to recover ing this action of any balance Which may be du them for doing brook and furnishing Materials under the Written Contract given die Eridence in this Cause respecting the Tryelling house it is necessary that they shows Chefre Uto Compnencement of this suit have procured from the Superintendant of said nove mentioned in said Contract a certif-

- cente of the amount due them and have 92 given notice to the defendant that they had procured Paid certificate and unles the Jung Shall belevis from the Evidence that the defendant me in some manner notified Such Certificate had been procured then their Verdict in this case should not include the Claim for noch done + materials Gurnished under Paid Mutter Contract But the Count Refused to give Duch instruction to which Ouling That decision of the Court in refusing to give Such instruction the defendent Me auley by his Coursel then and then duly Excepted and thew upon Said Cause upon the Cijdene afneraid Tras Dien tothe funy, and the day returned the Gallowing Verdict " He the Jury Gind the issue Go the plaintill and that the sum of One Thousand They hundred and Eighty Wine dollar and Forty Six Cents remain due to them for rock done under the Controct mentioned in the Petition upon the foremises therein described Whereupon the Alfen dant Mcarley by his Council Entend his Motion for a Said motion for a new trial to which

ruling and desicion of the loogt in overruling Said Motion the said defendant Mcauly by his Connoch them + there duly Excepted and thereupon the defendants Mcauley by his Connel Entered his motion in arrest If full gement but the loop ouruled Paid Motor to which ruling and desicion of the tout in overruling Said motion Said defendust by his correct then and then duly ex-Cepted and Gar as Much as the Several Matters aforesaid do not appear of record in said Cause the said defendant by his Connel, homy that this his bill of Exceptions may be Signed and realed and made a party of buch Ficurd pursuant blaw in Such care Which is done this 94th day of Murch as 1859 Olorge Manierro (Deal)-Judgo of 7" Judicial Circuit Shirois afternands to nit on the 24" day of March last Apriaid said defendant Giled in said Count Miz Certain appeal I Soud In the mord and Jegines Gollowing to Wit! Jum all men by there presents that We Hetsey Me auly as Principal and John D. Jenning as Suret. One held and Giving bound

unto William Ho Couter and Henry Miller in the penal sum of This teen Hundred And Thenty Mine Dollars (& 1329) lawful money of the Uguted States of america Ga the play ment of which been well and truly tope Made me do chereby boil ourselves our heris Organtas and all Ministratas Girmly by there Orisints O Scale & with our Seals and dated this christy Gonth day of March as 1859 Meren the said William Ho facter and Denny Miller at the debyeny Special of Enn Suit for a Michanies Leen Popending in said fount Wherein the Paid William Ho Carter, and Henry Miller men Plaintiff and the Said Honey Mc Ouley Was Defth days neurol a Sudgment against the Said Henry Malula for the Dun of Divilor Hundred Seventy nines Gallan and John Six Cents besides Costa of Suit how which Indament the said Henry Macaula, has hrayed an appeal to the Supreme fourt of the State of Illinois. Now therefore the Condition of this obligation is such that if the Said Henry McDuley Shall July pros-Cente his raid appeal and shall nell and truly pay the said Judy ment tog-Etho With all Costs, interest and duringer

affirmed then this obligation to be roid letter rise to remain in Jule Horce and Effect I em Mc Auly (Leal) In Jenning, (Leal) State of Illinois, s. s. COUNTY OF COOK. J. WILLIAM L. CHURCH, Clerk of the Circuit

And now come the said Mealey by Hoogne, Meiller relevished attorneys and says that in the record and proceedings aforesaid there is manifest error in this, to wir; The court erred in receiving in evidence on the trial of said can set the certificale purporting to have been signed by M.M. Boyington set forth on page 83885 of record and overmle ingstrendants objections thereto.

The Court erred in regusing to permit the Defendant because to browe on the trial of said cause that the Said M. Boyington

State of Illinois, county of cook.



I. WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the work. Measure proceedings Bell of the ciptions Lappent Lords pending in said Court on the Coursen low side thereof, wherein William Hor to Hung Mille were letitioners and

He Mcauly was defendent

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Living find day of Africago, this Living find day of Africago, the D. 1809

Mm Chush Clerk.

on the 23th day of November A. S. 1836 at the request of Me Anley gave notice to the Plantiff below of defects in the building of the wall in the dwelling house and that those defects had nothern remedied. The Courterred in refusing to permit the Tefendant Meetuley to give evidence to the July of the partie ular defealt in the performing of the work by the Plaintiffs on the dwelling house and partion larly det forth on paged 87, 488, of the record, and the damages which had resulted to the Defend ault therefrom. The court erred in refusing to permit the Defend, ant Mecanley to give evidence to the jury that the contract respecting the dwelling house and read in evidence was notherformed by the Plaintiffs below in the particulars del forth on page 88 of the abstracts, and that the several omipsond there specified were by mistake of Said V.M. Boyington overlooked by lim when he made the certificate read in evidence in Said cause The Court coved an refusing to give to the jury the instruc from asked by the Defendant Meatuley and Set forth on page 91, of the record. The Courterred in overruling Defendants motion for a new trial of Laid Cause The court erred in overriling Defendants motion for an arrest of Judgment. Wherefore said MecAuly by his attorneys aforesaid prays that the said judgment may be reversed and held for naught

ruling and desicion of the loost in overruling Said motion the said defendant Mc auly by his Connel them + there duly Excepted and thereupon the defendants Mcauley by his Connel Entered his motion in arrest If fud gment but the loos overuled Paid Motion to which ruling and desicion of the out in overruling Said motion Said defen-Thank by his correct then and then duly excepted and for as much as the Several Matters aforesaid do not appear of record in said Course the said defendant by his Connel, my that this his bill of Exceptions may be Signed and realed and made a putt of buch Ficord purpiant blaw in Such cares Which is done this I 4th day of Murch an 1859 Olorge Manierro (Deal). Judgo of 7" Judicial Circuit afternando to nit on the 24" day of March last Afgraid said defendant Giled in said Court Miz Certain appeal I Soud In the word and Sigures following to nit!

Then presents that the Hetsey Me auly as

Principal and John D. Jenning as Suret. One held and Girmly bound

unto William Holanter and Henry Miller in the penal sum of This tern Hundred and Twenty Mine Dollars (& 1329) lawful money of the United States of america for the playment of which Sum well and truly tope Made no do Chereby boil ourselves our heris Organtas and all Ministratas firmly by there Orisints Tealed with our Seals and dated the currenty Gonth day of March as 1859 Meren the said William Ho factor and Denny Miller at the February Special From of the forguit fount of back downty in a Just For a Mechanics Leen Peper derig for Maid fount Wherein the said William Ho Carter. and Henry Miller men Plaintiff and the Said Hours Mc Ouley Mas Defendant remaid a Sudgment against the Said Henry Mcaule For the Deen of Direle Hundred Seventy nine Hollan and July Six Cents Seride Cost of Suit hope which Ind genent the said Henry Madula, hy prayed an appeal to the Supreme fourt of the State of Illinois. Now therefore the Condition of this obligation is such that of the Said Henry McDuley Shall July pros-Coute his raid appeal and shall nell and truly pay the said Indy ment tog-Etho With all Costs, interest and duringer

Hoyne Miller Adervis Attys for Mee Auley

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J. & Montpoin

My for appelles

311-201 Henry Mc Auley William H. buster the houserefet & Bassqt. of Euros Filid April 25. 1859 Leland Elk.

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