

12147

No. _____

Supreme Court of Illinois

Underhill

vs.

Corwin, et al

71641  7

10 ~~88~~
Henry W. Underhill
vs
Ira Corwin et al.

10

1854

12147

"State of Illinois
"LaSalle County J. Pleas before the Honorable Edwin S.
"Seland Presiding Judge of the ninth
"Judicial District of the State of Illinois at a Circuit
"Court commenced and held in and for the County of
"LaSalle at the Court house in Ottumwa in said County
"on Monday the first day of November in the year of our
"Lord one thousand eight hundred and fifty two
"Present the Honorable Edwin S. Seland Presiding Judge
"Phil Lindley Clerk
"Benton C. Hook State Attorney
"R. Eaton Goodell Sheriff

On the 15th day of June 1832 the following petition for
Mechanics Lien was filed in this office viz

"To the Honorable the Judge of the Circuit Court of the
"ninth Judicial Circuit in the State of Illinois
"Respectfully represent unto your Honor your petitioners
"Benjamin and Reuben Thompson of the County of LaSalle
"and state as follows that on or about sixteenth day of
"November A.D. eighteen hundred and fifty one your
"petitioners as partners under the name and style of their
"firm of "Comins & Thompson" entered into a contract with
"Francis Tennyon late a resident of said County (& whom
"your petitioners pray may be made a party defendant to
"this petition) by which said Contract your petitioners agreed
"to furnish six window frames, four painted doors
"four door latches, eight door hinges and rock nails
"screws and other materials as should be necessary
"and to fix, fit and adjust the same to the house of

"said defendants, which house was their Situate &
"Standing on a certain parcel of ground in the town of
"LaSalle in said County & State; then in the possession
"occupancy & control of said defendants & which had
"been by said defendants enclosed & surrounded by a
"board fence & being Lots No. one, two & seven in Block
"Seven two in said town.

"And your petitioners further represent that they
"were to have & receive from said defendants for said
"materials and work as much as the same should
"reasonably be worth and your petitioners aver that said
"materials & labor are reasonably worth the sum of
"Twenty five dollars.

"And your petitioners further represent that said
"defendants represented himself to your petitioners & to
"others that he was the owner of all of said Lots No. one two
"& seven.

"And your petitioners further represent that
"reposing confidence in the statements & representations of
"said defendants that he was the owner of all of said
"Lots, did furnish said materials & do said work in
"accordance with the terms of their contract & that the
"last item of said work was done on the sixteenth day of
"December eighteen hundred and fifty one and that no
"part of said sum of \$25.00 has been paid to your
"petitioners by said defendants, or by any other person.

"And your petitioners further represent that
"said Reymon was the owner of said Lots No. one & two by
"purchase from the Trustees of the Illinois & Michigan
"Canal, and that said house of which he was the owner
"stood & was situated on said Lot No. seven in said
"Block No. 72 of which he pretended to be the owner.

And your petitioners further represent that

"Said defendant (since said materials were provided and
"said work was done) combining & confederating with one
"Henry W. Underhill & continuing him to wrong & injure
"your petitioners has sold & conveyed all his rights titles & interest
"in & to said premises to said Underhill, and they now
"both declare & pretend that said Henry now has
"any kind of title or claim to said Lot No. seven on which
"said house stood at the time said work was done

"And your petitioners further represent that about
"the time said Henry sold said property to said Underhill
"said Henry secretly left the State & as your petitioners
"are informed and believe has gone to the State of California
"since which time said Underhill has removed said
"house from said Lot No. seven to Lot No. one in
"La Brea who refuses to pay to your petitioners said
"sum of twenty five dollars or any part thereof.

"Your petitioners therefore pray that the said
"Henry W. Underhill may be also made a party defendant
"to this petition, that your writ of subpoena may issue against
"him & the said Henry that they may answer all and
"singular the premises, that on the hearing of this cause an
"account may be taken of what is due to your petitioners
"by way of hire on said premises, that a decree may be had
"for the sale of said premises or so much thereof as may
"be necessary to satisfy the said hire, and that your
"petitioners may have such other & further relief in the
"premises as equity & good conscience may require and
"your petitioners will ever pray &c

J. James Strain
their attorney

And afterwards to wit: on the same day the summons
was issued of which the following is a copy viz

" State of Illinois The People of the State of Illinois
" LaSalle County to the Sheriff of said County - Gentlman;
"

" We command you to Summon
" Francis Ringman and Henry W. Underhill if to be found
" in your County, personally to be and appear before the
" Circuit Court of said County on the first day of the next term
" thereof to be holden at the Court House in Ottawa on the 2^d
" day of November, next to answer to a certain petition for
" mechanics lien filed in our said Circuit Court on the
" here side thereof against them by Geo. Comins and
" Reuben Thompson. And hang you there and
" there this writ, and make return thereon in what
" manner you execute the same

" Witness This Lindley Clerk of said Court,
" and the Seal of said Court at Ottawa this
" 15th day of June A.D. 1832
" Lindley Clerk

Said Summons was returned Sept 16, 1832
with the following enclosures thereon by the Sheriff
made to wit:

" Executed this writ by reading to Henry
" W. Underhill and by leaving a copy with him Aug. 25th
" 1832 R. E. Goodell Shff.
" Sent & return 64. 1 copy 50. 15 miles 75 = 1.85

And afterwards on the 19th day of July 1832 the following
affidavit of the non residence of Francis Ringman was filed
to wit:

" Geo Comins & Reuben Thompson vs Francis Ringman
" & Henry W. Underhill = Petition for Mechanics Lien

" LaSalle County Circuit Court Illinois
" State of Illinois } Personally appeared before me
" Town of LaSalle } Is the undersigned a notary public
" LaSalle County } within and for the time aforesaid
" in the County & State aforesaid I saw
" Comin one of the Complainants in the above case who being
" duly sworn according to law depose & say that the said
" Francis Penyon one of the defendants in the above case is
" not a resident of the said State of Illinois; but that to the
" best of the knowledge, information & belief of the said
" deponent the said Francis Penyon left the said State of
" Illinois some time in the month of March AD 1832
" & went to the State of California & that said Penyon has
" not returned to said State of Illinois since that time
" I sworn to & subscribed before me } I saw Comin
" this 16th day of July AD 1832 }
" James Strain Notary Public

Upon which affidavits the following notice for publica-
tion was given to wit:

" Petition for Merchants Lien
" State of Illinois LaSalle County p. LaSalle Circuit Court
" Term 1832 - vs Comin. Penyon Thompson
" vs Francis Penyon, Henry W. Underhill. It appearing
" from an affidavit on file in the Clerk's office of the Circuit
" Court of LaSalle County, that Francis Penyon, one of the above
" named defendants is not a resident of the State of Illinois;
" and the petitioners having filed their petition herein, and
" summons having been issued thereon according to law
" notice is therefore hereby given to the said Francis Penyon
" that unless you personally be and appear before the Circuit
" Court of said County of LaSalle on the first day of the next
" term thereof to be holden at the Court House in Ottawa on the

"Thence on motion of petitioners attorney It is ordered that
"the petition herein be taken as confessed and that this cause
"be referred to the Master in Chancery to compute the
"amount due the petitioners and report the same to this
"Court

The Master filed his report on the 10th day of
November A.D. 1832 & it is in the words & figures following to-wit

"In the LaSalle County Circuit Court of the November
"Term A.D. 1832,

"Dra. Comin & Peter Thompson

"vs
"Francis Kenyon & Henry A. Underhill & Son.

3^d Petition for Mechanics

"The undersigned
"Master in Chancery, to whom it was referred by order of this
"Court to take proofs touching the truth of the allegations in
"said petition contained, and report the same to this Court
"would respectfully report that

"on this day, the complainants
"attorney appeared before me and adduced proofs from which
"the following facts appear

"1st That said defendant Kenyon was in possession
"of the said Lots one, two & three in Block Seventy two in the
"town of LaSalle in said County, claiming title thereto
"at the time mentioned in said petition

"2^d That said defendant Kenyon erected a house on said
"Lot one as stated in said petition

"3^d That said plaintiffs under a contract with said
"defendant Kenyon, furnished materials for and put into
"said house, six window frames of the value of nine
"dollars and four doors of the value of ten dollars, that the
"best work done & best materials furnished under said

"Contract were so done & furnished on or about the sixteenth
"day of December AD 1831

"4th. That since the time said work was done and
"materials furnished said defendant Underhill has
"removed said house off from said Block ^(lot 1) down onto
"said lot one, on which said lot one said house is now
"situated

"5th That since the said work was done and said
"materials were furnished, said defendant Underhill
"purchased said house and said lot one and two from said
"Kenny and was in possession of the same at the time
"this suit was instituted

"to: 9th 1832 Respectfully Submitted

"Master for \$5.00

P W. D. Wallace

Master in Chancery

And afterwards on the same day the following
further proceedings appear of record in said Cause to-wit:

"On Comin & Return Thompson

"88

(1)

Petition for Mechanics

"Francis Kenny & Henry W. Underhill, Sine

This cause came on to be

"heard upon the petition, publication as to the defendant Francis
"Kenny and Service of Summons as to the defendant Henry
"W. Underhill, and the said defendants being thereupon called
"came not, but made default.

"It is therefore ordered, adjudged and decreed that said
"petition be taken as confessed against said defendants.

"And this cause thereupon coming on for hearing on
"the report of the Master in Chancery of this Court to which
"it was referred to take an account of what should be done
"to said plaintiffs by way of Sine on the premises in the

"petition set forth for Confirmation of said report the Court do
"find that there is now due to said petitioners the sum of
"nineteen dollars of principal and the sum of one dollar of
"costs making in all the sum of twenty dollars.

"It is therefore ordered that the report of said Masters stand
"Confirmed in all things. that the said Francis Kenyon &
"Henry W. Underhill pay to the said Ira Comins and
"Reuben Thompson the said sum of twenty dollars and also
"the costs of this suit within thirty days from the giving of this
"Court, and in default of such payments that the Sheriff
"of this County for the term being as a special Commissioner
"be directed to sell the said premises in said petition set
"forth and described to wit: Lots No. one (1) and two (2)
"with the appurtenances in Block No. Twenty two (22) in said
"town of LaSalle in the County and State aforesaid or so
"much of said premises as may be necessary to satisfy and
"pay the amount of this decree & the costs of this suit. that
"he proceed to sell the same as on judgments at Law
"and that he make report of his proceedings in the premises
"to the February term of this Court AD 1853 to which time
"this cause stands continued.

And afterwards on Thursday Nov. 18th of said term
the following further proceedings appear of record in
said Cause to wit:

"Ira Comins & Reuben Thompson

"88

"vs

"Francis Kenyon & Henry W. Underhill

3 Petition for Mechanics
3 Lien

"This day came
"the defendant Underhill of Court his attorney General a
"motion to set aside the default and open the docket
"therefore made in this cause, which motion is sustained

"of the Court upon Condition that said Underhill should
"pay the costs accruing under the default, which said
"defendant declined & thereupon the Court overruled the
"motion of said defendant excepted to the opinion of the
"Court in imposing the payment of said costs, and prayed
"an appeal to the Supreme Court, which is granted upon
"Condition that within thirty days from this date he shall
"file an appeal bond herein payable to the plaintiffs in
"the penal sum of one hundred dollars with Joseph C
"Dunn as security.

The following power of attorney appears on file in
this matter to wit:

"From all men of these presents
"that I Henry W. Underhill of McLean County Illinois
"do by these presents make constitute and appoint B. C. Cook of
"LaSalle County my true and lawful attorney for me and
"in my name to execute any appeal bond and any
"other writing either under seal or not necessary to perfect
"an appeal to the Supreme Court of the State of Illinois in
"the case of Ira Comins and Penker Thompson vs Francis
"Knyon and Henry W. Underhill decided in the Circuit
"Court of LaSalle County Illinois at the November term thereof
"A.D. 1832 the said case being a petition for a Mechanic's
"lien and in which case I ^{prayer} prayed an appeal to said
"Supreme Court, and I do hereby authorize my said
"attorney for me and in my name to do all things necessary
"to perfect said appeal, hereby ratifying & confirming
"whatever my said attorney shall do in my name in that
"behalf.

Henry W. Underhill ⁱⁿ ~~his~~ ^{own} name

"State of Illinois, LaSalle County ss. Before me Philip Suddley

" Clerk of LaSalle Circuit Court appeared Henry W. Underhill
" personally known to me to be the person whose name is
" subscribed to the above power of attorney as having executed
" the same and acknowledged that he had executed the
" same just for the uses and purposes therein expressed
" Given under my hand and seal of said
" Court this 19th day of November AD 1832
" Lindley Clark
" P. J. V. Watkinson Depy

The following is a copy of the appeal bond herein

" Know all men by these presents that we Henry W.
" Underhill as principal and Joseph A. Orr as Security are
" held and firmly bound unto Ira Cornin and Reuben
" Thompson in the penal sum of one hundred dollars lawful
" money of the United States for the payment of which well and
" truly to be made we bind ourselves our heirs executors and
" administrators jointly severally and firmly by these presents
" Witness our hands and seals this 13 day of December AD 1832

" The condition of the above obligation is such that
" whereas the said Ira Cornin and Reuben Thompson did
" on the 10th day of November AD 1832 in the Circuit Court of
" LaSalle County Illinois obtain a decree that the said Henry
" W. Underhill and one Francis Kenyon pay to the said Ira
" Cornin & Reuben Thompson the sum of twenty dollars and
" the costs of said suit in said Circuit Court within twenty
" days from the rising of said Circuit Court. And in default
" of such payment that the Sheriff of said County for the time
" being a special Commissioner be directed to sell lots
" number one and two with the appurtenances in Block
" No Seventy two (72) in the town of LaSalle in the County and
" State aforesaid or so much of said premises as might be

"necessary to satisfy and pay the amount of said decree
"and the costs of said suit; which decree was entered
"upon a petition for a mechanics lien in which the said
"Ira Comins and Reuben Thompson were petitioners and
"said Francis Kenyon and Henry W. Underhill were
"defendants from which said decree the said Henry W.
"Underhill, has prayed for and obtained an appeal to the
"Supreme Court of said State of Illinois

"And if the said Henry W. Underhill shall duly
"prosecute his said appeal with effect and shall
"monies pay the amount of the said decree costs
"interest and damages rendered and to be rendered
"against him in case the said decree shall be affirmed
"in the said Supreme Court then the above obligation to
"be void, otherwise to remain in full force and virtue.

"Witness my hand & seal of said
"Court this 15th day of December
"1832. Rindley Btk

Henry W. Underhill *per*
J. B. E. Cook his Atty in fact
J. O. Glover *per*

State of Illinois } I Chas Lindley Clerk of the Circuit
LaSalle County } Court in & for said County do
hereby certify that the above foregoing
is a true, full, perfect & complete record of the above
entitled cause of Ira Comins & Reuben Thompson vs
Francis Kenyon & Henry W. Underhill as the same
is the same appears on file & of record in my office
Witness my hand & the seal of said
Court this 15th day of July 1833
Rindley Btk
for J. F. Ash Dptg

And now comes the said Henry W. Underhill
and Francis Kenyon
plaintiffs in error and say that in the record
and proceedings aforesaid and in the
recitation of the decree aforesaid there is
manifest error in this to wit

1st The Court erred in ~~suspending~~ ordering
the petition to be taken for conference
as to said Francis Kenyon no notice having
been given him as required by law

2nd The Court erred in decreeing a sale of lots
No one & two mentioned in the petition

3rd The Court erred in rendering the decree
aforesaid in manner & form aforesaid

4th The Court erred in decreeing that defendant
Underhill should pay any money

And they pray that said Judgment be
set aside & reversed

Glover & Hook

attys for plffs in error

And said defendant in error
by Thain his attorney says there
is no such error as is above averred
by plffs in error and that said
judgment should in all things be
affirmed

Strain for defts
in error



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Mr. Leonard
H. Newton Thompson

ats.

Francis Thompson
Henry M. Underhill

Manuscripts of A. Leonard
James LaSalle Co. L. C.

Excess to LaSalle

Box 11 850-

Filed July 21st 1853.
J. Heland Clerk

83.95

Ira Corwin &
Reuben Thompson
vs
Francis Kenyon &
Henry W. Underhill

Error to Basallo

I make the following points in support of the motion for Superseas

1st Debt Kenyon was never in Court, The printers Certificate does not prove publication of legal notice to him Vide Rev. Stat 94 Sec 8 - The Certificate does not show a publication for four successive weeks - It doesn't even appear to have been a Weekly Newspaper -

2 The petition is utterly insufficient, The Statute gives the lien to the person who does work or furnishes materials by Contract with the owner of the lot. The petition does not aver that Kenyon was ever the owner of lot No 7 on which the building was built

3^d The Masters Report does not justify the decree because -

1st The report shows that house was built on lot 7, that lots 1 & 2 had been bought by Underhill, And it does not appear that the suit was brought within six months after the debt became due & payable - Report says on or about the 16 December - If it was on the 15th the petition is too late

2^d The decree is not against the lot on which

The house was built, but against other lots not adjoining that, and which were held by Underhill without notice of any lien upon them, there can be no law to sanction such a decree

3^d Although Underhill did buy the house and move it on to his lots, this could not transfer the lien from lot 7 to lots 1 & 2 unless it was a traveling lien. The Complainant should not have allowed the house to have been removed if it interfered with his lien, if moving the house on to lot one moves the lien with it, how do they get a lien on lot 2 - The principle of the decree is this - Complainant has worked for Deft Keenyon. Keenyon did not own the lot so that Complainant could have a lien on the lot when the work was done, but Keenyon did once own some lots in another place which he had since sold to Underhill and the lien was to be enforced by against Underhill's lots under a sort of fugitive lien law. Although Underhill purchased without notice, and the utmost that the Master can say as to time is that the petition is in time or about in time

There are other errors but I deem it unnecessary to refer to them particularly

B. C. Cooke

Atty for Plff in Error

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *La Salle* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *La Salle* — county, before the Judge thereof, between *Ira Corwin and Ruben Thompson*

plaintiffs and *Francis Kenyon & Henry W. Underhill*

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

Henry W. Underhill

as we are inform-

ed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of *La Salle*, on the ~~2nd day of July 1853~~ *2nd Monday of June next*, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *21st* day of *July*

— in the Year of Our Lord One Thousand Eight Hundred and Fifty-

Three -

L. Leland Clerk of the Supreme Court.

By *P. K. Leland* Depy.

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Henry W. Underhill
impled. &c -

^{vs}
Ira Comin et al.

Writ of error -

Filed July 27th 1853.

L. Leland Clk.

By P.H. Leland Sry.

This writ of error is
made a Supersedeas,
& as such is to be
obeyed accordingly by
all concerned -

July 28th 1853.

L. Leland Clk.

By P.H. Leland Sry.

Know all men by these presents that we Henry W. Underhill as principal and Joseph O. Glover as surety are held and firmly bound unto Ira Corwin and Reuben Thompson in the penal sum of fifty dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators jointly ^{severally} and firmly by these presents
Witness our hands and seals this 23 day of July A.D. 1853

The Condition of the above obligation is such that whereas the said Ira Corwin and Reuben Thompson did on the 10th day of November A.D. 1852 in the Circuit Court of LaSalle County Illinois obtained a decree that the said Henry W. Underhill and one Francis Kenyon pay to the said Ira Corwin & Reuben Thompson the sum of twenty dollars and the costs of said suit in said Circuit Court within ~~thirty~~ ^{twenty} days from the rising of said Circuit Court and in default of such payment that the sheriff of said County for the time being a Special Commissioner be directed to sell lots number one and two with the appurtenances in Block No Seventy two (72) in the Town of LaSalle in the County & State aforesaid or so much of said premises as might be necessary to satisfy and pay the amount of said decree and the costs of said suit; which decree was entered upon a petition for a Mechanics Lien in which the said Ira Corwin and Reuben Thompson were petitioners and said Francis Kenyon and Henry W. Underhill were defendants from which said decree the said Henry W. Underhill ^{Francis Kenyon} ~~now~~ prosecuted a writ of error to the Supreme Court of the State of Illinois, and whereas an order has been granted for a Supersedeas in said Cause, Now therefore in

to Francis Henington

Case the said Henry W. Underhill, shall well
and truly pay the judgement, Costs interest &
damages in Case the judgement shall be affirm-
ed, and shall also duly prosecute said writ
of error - then this Bond to be null and void
else to be and remain in full force and vir-
tue

Henry W. Underhill, 

J O Glover 

Quid

Filed July 28, 1853.
L. Leland del.
By T. H. Leland Secy.

[11-61121]

Francis Kenyon &
Henry W. Underhill plaintiffs in error
vs
Geo. Corwin & Reuben Thompson defendants
in error.

Shewn for defendants in error,
The first error assigned is that the
court ordered the Petition to be taken
as confessed as to the plaintiff in error
Kenyon, no notice having been given
him as required by law.

I reply that the
notice which was published is in the
usual form, & no objection is made
on that score. And the certificate
of publication by the publishers of
the paper, is a substantial compliance
with the Statute; it shows that the
notice was published in the Ottawa
Republican (a newspaper of general
circulation in the County of La Salle
Illinois) published in Ottawa) six weeks
commencing with August 21st 1852
and ending October 2nd 1852. A
transposition of the words "six weeks"
to the place they occupy in the
sentence as above is warranted by
the rules of construction, and when
so transposed, the certificate shows
not only a substantial, but a
literal compliance with the statute,
for there are just six publication
weeks within the dates given, no more,
& no less. And the notice was pub-
lished two weeks more than

than the statute requires.

The second assignment of error is, that the Court erred in decreeing a sale of Lots one & Two, mentioned in the Petition; and this I apprehend is the only assignment in which there is any force.

The petition alleged and the proof shows that, the defendant Kenyon was in possession of a parcel of ground enclosed with a board fence, in the Town of LaSalle that the same was in the possession occupancy & control of said Kenyon the same being Lots one, two & seven, in Block seventy two. Counsel for Plaintiffs in error have somewhere volunteered the statement that these lots are not adjacent. There is nothing in the record on that point, but the truth is that Lot 7 lies immediately in the rear of & adjoining Lots 1 & 2. It might with propriety be said that these lots were a "tract of land" and that the lien was co-extensive with the estate of Plaintiffs in error, in the whole, for a liberal construction is given to this Statute by the Courts for the purpose of giving it effect, and it would be as proper to say as that a lien should attach in case of a house on a

half lot, or on two or more lots.
and no one will pretend that a lien
would not attach in such cases.
But the Court being invested with
full chancery powers so far as they
may be applicable and necessary
will not permit a lien as in this
case to be avoided or defeated by
the fraudulent or wrongful acts
of the defendant, and in this
case it is alleged and proved that
the defendant Henryon procured
the materials to be provided, and
the work to be done by falsely
& fraudulently representing himself
to be the owner of lot 7 on which
the house stood, and the defend-
ant Underhill removed the same
from lot 7 to lot 1. It is said
that the lien could not be transferred
from lot 7 to lot 1 unless it was
a travelling lien. If it be true
that the lien did not attach to all of
the premises, but to the house &
lot 7, then would Underhill be
able to remove the house from
under the lien, unless it be a
"travelling lien". That a lien existed
there can be no doubt, whether it
be construed to extend to the whole
of the premises or to the house.
The estate of Henryon in lot 7 only
which evidently was an estate great
enough on which to found a lien,

for it was in his occupancy, possession-
and control. If this be true, and if
Underhill could not by removing the
house divest the lien, - what does
it attach after the house is removed
to lot one, & has become a part of
the realty as much as the soil or
grass of land on the lot?

If it be true that
the lien will not attach to all of the
premises as to a "tract of land", (but
which certainly would be the case if
it were necessary to sell the whole,
to satisfy the lien, in case of fraud)
yet the decree ought not to be
disturbed as it has so far worked
no injury to the plaintiffs in error
and probably would not, as it directs
said premises, or so much thereof
as may be necessary to satisfy the
decree & costs, to be sold.

The fourth error assign-
ed is, that the Court erred in
decreeing that Underhill & Chandler
pay any money.

If this be an error
it is a very harmless one, for
the decree is in the alternative, that
he & Henryson pay the amount of
the decree and costs, or that
the property be sold to satisfy
the same, and if he chooses
not to obey the decree then he
can let it operate on the
property covered by the lien,

It is said the Master's report does not
justify the decree because it shows
that the house was built on lot 7,
& that lots 1 & 2 were bought by Under-
hill; This is all true, but it is a very
loose statement of the facts. The
Petition & report of the Master show
that Newyon was the owner of lots
1 & 2, & had them and lot 7, (all adjacent
) enclosed together claiming them all
as his own; that on the strength of
these representations the work
was done; that within six months
of the time when the work
was done Underhill bought the
whole premises with constructive
notice, & of course barred by the
notice.

It is also said that the report
does not show that the suit was
brought within six months.
It does show that the last labor
was done on or about the 16th of
December, & the Petition was filed
on the 15th day June 1832. Counsel
say "if it was done on the 15 of Dec,
it was too late," and they might
have added, ^{with equal force} if it was done on
the 17th the Petition was filed
a day sooner than was necessary.
In the absence of any proof one
way or the other, it is to be pre-
sumed to be on the 16th.

~~Corwin & Thompson~~

Weyman & Burdett
is pledged in error
us

Corwin & Thompson
is in error

Argument on
behalf of Weyman
is error by Thain
then why