

No. 12903

# Supreme Court of Illinois


Cook

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vs.

Hunt

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71641  7

# IN THE SUPREME COURT,

APRIL TERM, A. D. 1860.

ISAAC COOK,	} APPEAL FROM SUPERIOR COURT OF CHICAGO.
vs.	
EDWIN HUNT,	
Appellant, Appellee.	

## 12903 ABSTRACT OF RECORD.

2 Suit commenced by Edwin Hunt against Isaac Cook by summons, May 24th,  
1855. Declaration filed May 25th, 1855, contains only the common counts for  
4 work and labor done and materials furnished, money lent and paid, money had and  
received; goods, wares and merchandise sold and delivered, and labor, care and  
diligence bestowed. Damage, \$3,500.

6 Plea general issue filed June 5th, 1855. Cause tried June 17th, 1859, before  
7 Hon. VAN H. HIGGINS, Judge, and a Jury and verdict for \$1,678.83. Motion for  
new trial overruled October 29th, 1859, and judgment upon verdict; and appeal  
9 prayed and allowed and thirty days to file appeal bond and bill of exceptions.  
November 2d, 1859, appeal bond filed, and bill of exceptions.

10 And thereafter, to-wit: on the twenty-third day of November, in the year of  
our Lord one thousand eight hundred and fifty-nine, the said defendant by his said  
attorney filed in the office of the Clerk of said Court his certain bill of exceptions,  
which said bill of exceptions are in the words and figures following, to-wit:

**"In the Superior Court of Chicago,**

EDWIN HUNT,	} Ass't.
vs.	
ISAAC COOK,	

**Be it remembered** that on the trial of this cause before the Hon. Van.  
H. Higgins, one of the judges of said Court, and a Jury, came the plaintiff, by his



counsel, SCATES & McALLISTER, and the defendant by his counsel, BURGESS, and the Jury being sworn to try the issues in the cause. The plaintiff introduced

CARLTON DRAKE, who being duly sworn, testified as follows:

11 Knows "Young America" and knows of work being done on it by the plaintiff—rendered an account of the work done on it every week to Mr. Hunt. Witness was Hunt's foreman in the plumbing business. The work was done for Mr. Cook on the Young America building by Mr. Hunt. Witness superintended the sheet iron, tin and plumbing work; work was done in 1854, or commenced then, and continued in 1855. Heavy piece of work; one item was five hundred and forty-three and a half pounds of coil pipe at one shilling per pound; three stink traps. Mr. Hunt made a large part of the entries. Mr. Cook went through with me several times and I showed him the work. He said it was all right, go ahead. Van Osdell & Olmstead were the architects. Witness took the order from Mr. Olmstead, who represented himself as the exclusive agent of Mr. Cook. Witness usually took the orders from plaintiff in his business, in this case from Mr. Olmstead. Knew Charles Christopher was a coppersmith. Never spoke to him about any plumbing work, nor knew of his undertaking any plumbing work, and never knew that he undertook the plumbing work at any time.

**Cross Examination.**

Commenced with Mr. Hunt August 1st, 1854—left his concern three years since. I was to receive a portion of the proceeds of this work and ten or twelve dollars a week besides. My pay depended in part upon the proceeds.

The defendant objects to the witness as incompetent, and moves to exclude him and his testimony; the Court overruled the objection and the defendant excepts, which is noted.

The defendant's counsel presents the witness with the architect's certificate, dated December 23d, 1854. At the date of this, work had been done to the value of seven or eight hundred dollars. I called on Olmstead for estimate. He gave me for Hunt an order on Cook. He (Cook) would not pay it. I went back to Olmstead and got this order from Olmstead. Olmstead said Cook was a little notional, and he (Olmstead) would fix it all right.

(This statement by witness of what Olmstead said was objected to by defendant; objection overruled and exception taken to the ruling.)



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(This statement by witness of what Olmstead said was objected to by defendant; objection overruled and exception taken to the ruling.)



12

Olmstead then gave me this order.

The paper writing then shown witness is as follows :

"\$400.

Chicago, December 23d, 1854.

I. Cook, Esq.

*This is to certify that there is due to C. Christopher, plumber, the sum of four hundred dollars for labor and materials furnished your buildings on Young America as per contract payable at sight at Chicago.*

Yours respectfully,

No. 1.

VAN OSDELL & OLMSTEAD,

Couch's Block, Dearborn Street, Chicago.

*Architects and Superintendents."*

(The parts in *italics* printed in original.) On which is endorsed, "CHRISTOPHER."

Chicago, December 23d, 1854.

I. Cook, Esq.

*Dear Sir :* — Pay the within certificate to the bearer C. Drake and oblige.

Yours respectfully,

CHARLES CHRISTOPHER.

13

Received two hundred dollars on the within December 23d, 1854.

CARLTON DRAKE.

Received the within in full.

CARLTON DRAKE.

Chicago, December 30th, 1854.

The other certificate produced to the witness is as follows :

"\$400.

Chicago, January 11th, 1855.

I. Cook, Esq.

*This is to certify that there is due to C. Christopher, plumber, the sum of four hundred dollars, for labor and materials furnished your buildings on Young America as per contract payable at sight at Chicago.*

Yours respectfully,

No. 2.

VAN OSDELL & OLMSTEAD,

Couch's Block, Dearborn Street, Chicago.

*Architects and Superintendents."*

The words in *italics* printed in original.

On which is endorsed CHRISTOPHER (at the top). Then below :

( 4 )

Isaac Cook, Esq.

*Dear Sir* : — Please pay the within to C. Drake or order.

Chicago, January 11th, 1855.

CHARLES CHRISTOPHER."

" Received, Chicago, January 20th, 1855, two hundred dollars on the within.

CARLTON DRAKE."

" Received, January 31st, 1855, two hundred dollars on the within.

CARLTON DRAKE."

(At this stage a stenographer took down the testimony for the parties.)

14 By MR. BURGESS, (handing witness order No 1), explain how that came to be given? ANSWER. This was given in consequence of Mr. Olmstead stating—

Q. First. What is the date of that? A. December 23d, 1854.

Q. How did that come to be given? A. It was in consequence of Mr. Cook, as Mr. Olmstead said, being *notional* about paying the first estimate he drew of \$400 in favor of Edwin Hunt.

Q. In the first place, an order was drawn in favor of Hunt for \$400? A. Yes; it was presented to Mr. Cook and he refused to pay it, and then I went back to Mr. Olmstead and told him Mr. Cook would not pay the order.

Q. Did you give him a reason? A. I presume I did; I have forgotten. I did not know why he should not pay it.

Q. Didn't you tell him it was because the contract was made with Christopher? A. I never knew anything of Mr. Christopher at all, or that he had any claims to it.

Q. Then Mr. Olmstead took up that, and you took this in the place of it? Objected to.

15 WITNESS. Mr. Olmstead says " Mr. Cook is a little notional about this, and I will fix it all right. I will draw an order in favor of Mr. Christopher to keep and they may assign it to you. The understanding was he was to keep it in his possession. Mr. Christopher never had the order in his possession, but I received them from Mr. Olmstead. They lay in Mr. Olmstead's hands for some time, I think, and I took them myself and wrote the order and got Christopher's signature. That is the other one. The order addressed to "I. Cook," on the back—that one is marked No. 1.

Q. The other endorsements are in your handwriting? A. Yes sir; if you have but two.

Q. I am talking of "No. 1" exclusively. To whom was the money received on this paid? A. To Mr. Hunt.



Q. On account of the plumbing work ? A. Yes sir. Plumbing work on the Young America.

Q. About which you have been testifying here ? A. Yes.

Q. Here is another one of the same character ; look at that. (Submitting order No. 2). A. That is probably the same thing—to the same result. (Examining the document), Mr. Olmstead didn't write this order on the back of it.

Q. Who did ? A. It is my handwriting.

Q. Who did you get to sign that ? A. Christopher.

16 Q. That you know to be a fact ? A. I presume it is, because his name is here and that is my writing. I judge it is so.

MR. McALLISTER. You mean to be understood that you didn't see him ? A. I don't remember positively, but presume I did ; it is dated January 11, 1855.

Q. These things are correctly dated at the time the transaction took place ?  
A. I presume so.

**Direct Examination Resumed by Judge Scates.**

Q. Was any reason assigned by Mr. Cook, if you ever went to him for payment of the order given payable to Mr. Hunt, or by Mr. Olmstead, when he substituted this as a mode of getting paid, more than Mr. Cook was notional ? A. I don't remember that I ever saw Mr. Cook on that first order. I am inclined to think I did not. Mr. Olmstead in the first instance, was very particular that I should not go to Mr. Cook in that instance ; says he, " they are crowding Mr. Cook," there were a great many estimates coming in. Of course there was a great deal of competition, says he.

BURGESS objected to evidence of Olmstead's statements. Argued by counsel and objection overruled. Defendant's counsel excepted.

17 Q. State if anything was said by Mr. Olmstead in reference to Mr. Cook, at the time he was informed that Mr. Cook refused to pay the order, and gave you this order. What did he say, if anything to show a reason why Mr. Cook would pay it in the form of an order to Christopher, or his endorsement, and would not pay it directly ? A. I don't remember that Mr. Olmstead gave any specific reason, any thing further than he took the order and made the light remark and said he would fix it. I took the order and told him I didn't want any such order. Says he : " Ill keep this order until Christopher assigns it to you." That was the first one, I judge, because I took it to Christopher and he signed it.

Q. Did he give you any reason why he would pay it in that shape ? A. Nothing more than I have stated.

Q. Did he tell you that Christopher was the contractor, and you must go to the contractor ? A. I judge not, because I never thought Mr. Christopher had



anything more to do with it than you have. I never dreamed that he did until recently. I had no knowledge in any way or manner that Christopher was in any way connected or interested in that plumbing work with Isaac Cook in the Young America building until since the work was completed.

MR. McALLISTER. It is conceded, I suppose, that Mr. Cook was the proprietor of that building.

MR. BURGESS. Oh, yes.

Q. Have you been settled with by Mr. Hunt in full? Have you any interest in this suit? A. No sir.

Q. You have settled with Mr. Hunt and received pay in full for this matter? A. Yes sir.

18 Q. BY THE COURT. Were you present when these several entries were made in the books, and did you compare them from time to time? A. Yes sir; very particularly, Mr. Hunt was very peculiar.

The account (bill of particulars) and the book were here produced, the witness coming down from the witness box and examining and comparing the items in the bill with the entries in the book, assisted by counsel.

Q. Are they correct? A. Yes sir; and they correspond with the journal. The balance due is \$1,678.83.

Q. BY THE COURT. How far had the work progressed when Mr. Cook spoke to you, or saw you at work on the building? A. I should think probably the sticks of soil pipe were in, and the pipes leading through the building for the supply of the water closets, wash room and boilers, and wash basin were in. That is a pretty heavy amount of material. It was put in before the floors were laid.

Q. That is before he first saw you at work. A. A good share of it was done before cold weather, probably along early in the fall. The building was a great ways behind the time.

Q. When did he first see you at work there? A. I don't remember distinctly.

19 Q. Was it before or after these orders were made or any of them? A. I think there had been one order drawn on him before he saw me. There is an order out yet in somebody's possession. I don't remember the time distinctly.

Q. BY MR. McALLISTER. Was he there from time to time while you were doing the work? A. Yes sir; he was there several times during the progress of the work. It was not an unusual thing to see him through the building three or four times a week, perhaps every day.

Q. Did he know you personally? A. Yes.

Q. Did he know where you worked? A. I think he did.

Q. What reason have you for thinking so? A. From the fact that Mr. Cook has known me personally for ten or twelve years and would be very apt to know.



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I don't know that I ever took particular pains to tell him, or that any very particular pains ever took place between us as to the work.

Q. BY MR. BURGESS. Nor who you were working for? A. No sir. I have seen Mr. Cook at the store several times.

20 Q. BY MR. McALLISTER. Do you know that Mr. Olmstead knew that you were at work for Mr. Hunt? A. Yes sir; he knew that we did.

Q. He was at the shop, was he not? A. A great number of times.

Q. Was he the architect that superintended the work? A. Yes sir; superintended it in person. I don't remember ever seeing Mr. Van Osdell in the building with any appearance of superintendence. During the construction of the work I have seen him in the Young America.

Q. During what period of time was this work in progress from the time you commenced until you finished? A. I am inclined to think from August until after frost came out in February or March. August, 1854, I think it commenced.

Q. What time do you think you got through? A. I am under the impression it was the next March, 1855. I recollect the circumstance of its being very difficult to get the supply in from the street, and the frost was coming out of the ground. The ground was floating a great deal.

Q. During all this time Mr. Cook was in the habit of coming in several times a week? A. Yes, through the Winter season.

Q. And Mr. Olmstead superintended the work during all this time? A. Yes sir.

21 Q. BY THE COURT. What time did Christopher run away, or go away? A. Well, I don't know. I am not positive; I should think probably along in February or March, 1855.

Was this man, Christopher, in the plumbing business at all? A. I never knew of his having anything to do with it. He carried on the copper work for the Young America. He furnished the boilers for the range and the connection; and also, the pipe that took the water from the roof to the main reservoir, that supply the works below in case of failure of the supply from the hydraulics. It was a large reservoir. That was made of copper. That Christopher made. That was the only work I knew of his doing.

Q. That was his business? A. Yes sir; he was a coppersmith. I never knew of his doing any plumbing. I never saw any more lead on his place than I could carry off on my back, I am sure.

Q. His place was next door to Mr. Hunt's? A. Yes.

#### Second Cross Examination by Mr. Burgess.

Q. Is it impossible for a man to take a plumbing contract without having lead? A. Yes; he might send men out and run a shop away from his place.



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Q. His place was next door to Mr. Hunt's? A. Yes.

#### Second Cross Examination by Mr. Burgess.

Q. Is it impossible for a man to take a plumbing contract without having lead? A. Yes; he might send men out and run a shop away from his place.



Q. That paper reads "as per contract." Do you know that Christopher has that contract, or not, from that paper? Objected to.

Q. I want to ask if he don't understand from the face of that paper, that Christopher had the contract for that work?

22 THE COURT. That is objectionable.

Q. Did you read this paper? A. Yes; that is when you handed it to me.

Q. Did you when you received it? A. Yes, undoubtedly. I took it as I have taken a great many orders, or a check. I would look at the amount; I presumed it was a check, and if the amount was paid, I would be satisfied.

Q. Do you say you took it at the time as a check? A. No, I took it as a draft on Isaac Cook.

Q. In favor of Mr. Christopher? Well, I supposed.

Q. Never mind what you supposed? A. I took it as the result in favor of Edwin Hunt.

Q. But I am asking you what it was? It was an estimate in favor of Christopher, was it not? A. If I did not know any better I should think so, perhaps.

Q. The paper itself notifies you that it is a contract with Christopher? A. No sir. (Objected to.)

Q. Is this the book you compared the entries with (alluding to the book before the witness)? A. Yes sir; I think it is.

Q. BY MR. McALLISTER. Did you say that you took that order as made, paying Mr. Hunt for his services? A. Yes, sir, that was the exclusive intention.

23 MR. McALLISTER announced that the plaintiff had several witnesses to prove the work alleged to have been done, to have been actually performed.

MR. BURGESS said (also Mr. Cook) it was not disputed.

LEWIS WOLF called and sworn.

Examined in chief by JUDGE SCATES.

Q. In whose employ were you in the Fall of 1854, the latter part of 1854 and beginning of 1855? A. Charles Christopher.

Q. What was his business? A. Coppersmith.

Q. Where did he work? A. In the rear of 75 Lake Street.

Q. How far was that from Mr. Hunt's plumbing shop? A. Probably forty feet; thirty or forty feet.

Q. Was it adjoining? A. There was an empty lot between them.

Q. How long did you work with Christopher? A. I could not say exactly how long; I worked for him a couple of months that Fall, and then I went away; in the Spring, I think in March, I came back and worked until he left.



Q. When did he leave? A. I think it was the forepart of May or June 1855.

24 Q. Did he go away openly or run away? A. Well, he cheated a good many people here.

MR. BURGESS. I object.

WITNESS. It was somewhere about the 1st of May.

Q. How long did you know Christopher before you went to work for him in the Fall of 1854? A. No, I didn't know him before.

Q. What time in the Fall did you begin to work for him? A. I think September or October, somewhere around there.

Q. During the time you were at work for him, had he any plumbing contracts that you know of? A. Not that I know of.

Q. Did he carry on the plumbing business? A. No, sir. Objected to.

Q. Did he look after any work in the Young America? A. I didn't know of the work on the Young America.

Q. Plumbing work? A. No, sir.

Q. Did he have any work there as coppersmith? Objected to. Objection overruled.

Q. You say you worked on the Young America during the time you were employed by him? A. Yes.

Q. What kind of work? A. I made some copper pipes.

Q. It was copperwork? A. Yes.

25 Q. Did he do much copperwork in that building? A. There were two coppersmiths and a boy; there were three of us at work, two journeymen and a boy, once in a while he worked himself.

Q. For whom? A. For any body that wants him.

Q. Who were you working for in the Young America building? A. I don't know, I never asked him about it.

Q. You did no other kind of work except copper and sheet iron work? A. No, sir.

Q. You never knew him to do any plumbing work? A. No, sir.

Q. Had he any means or material of doing plumbing work? A. No sir, not that I know of.

Q. Are coppersmiths acquainted with or do they know how to do plumbing work? A. No, sir.

Q. Is it a part of their business? A. No, sir.

Q. Are they distinct trades? A. Yes, sir.

26 Q. Do you know who was at work at the plumbing business in the Young America, and whether it was being done while you were there? A. I saw plumb-ers who were at work there at the same time that I put up the pipe there. I don't



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know who they were; I was not acquainted with them at the time. I think it was a man named McDougal, I couldn't say positive.

Q. Did you get acquainted with any other? A. No, sir.

Q. Did you see Mr. Drake that was on the stand at work? A. I think I saw him around there.

**Cross Examined by Mr. Burgess.**

Q. Do you know Mr. Christopher's handwriting? A. I have seen some of it.

Q. Do you know that (handing witness a document)? A. It looks something like his, but I don't know whether it is his or not; it was that kind of a hand.

MR. BURGESS. We propose to offer this as evidence. It is a receipt in full.

MR. McALLISTER. I object; wait until it comes your time.

**ROBERT McDOUGAL, being duly sworn,**

Was examined in chief, by JUDGE SCATES.

Q. What's your occupation? A. A plumber.

Q. How long have you been such? A. Since 1840.

27 Q. Where did you work and for whom in the Fall and Winter of 1854-5?

A. I worked part of the time for Wilson & Hughes and then went to Mr. Drake.

Q. It was for Mr. Hunt? A. Yes.

Q. In whose employment were you while there? A. I was engaged by Mr. Drake.

Q. Who paid you? A. Mr. Hunt.

Q. What jobs did you work on? Did you work on the Young America?  
A. Yes.

Q. In whose employment? A. Mr. Drake's.

Q. Mr. Drake superintended the work? A. Yes; he superintended me.

Q. Did you see the plumbing work of the whole house done? A. Yes, sir; from the commencement to the finishing.

Q. When did it commence? A. I could not say, it was hot weather when we commenced.

Q. You commenced on it before you got in the building, you prepared for the job? A. We didn't work much in the shop. It was done by other hands.

Q. When was it finished? A. I believe it was sometime in March or June. We did some in June.

28 Q. Did you ever see Mr. Christopher superintending any plumbing work in that building? A. No, sir.



Q. Did he ever pretend to have any contract or control in that plumbing?  
Objected to.

Q. Do you know when Mr. Christopher left this City? A. I don't know what time he went away. I heard of him being gone, but I can't say what time he went away; I can't fix the precise time.

Q. State if Mr. Cook was ever in that building during the time you were putting up that plumbing work? A. Yes, sir; I saw him several times there.

Q. Did he look after the work any? A. No, sir; I don't believe I ever spoke to him, or he to me.

Q. Did you ever see him examining the plumbing work? A. He used to walk around and look on but never said anything.

Q. Did you see Mr. Hunt there? A. Yes; looking after the plumbing work.

Q. Did you see him and Mr. Cook there together? A. Yes, sir; I think I did. I think I saw Mr. Drake, and he and Mr. Hunt come up together once, and Mr. Drake once, looking for Mr. Cook.

**GEORGE HAUSLEIN, being duly sworn,**

Was examined in chief by JUDGE SCATES, and testified as follows :

29

Q. What is your occupation? A. My business you mean—locksmith and bell-hanger.

Q. Where were you at work, and for whom, in the Fall and Winter of 1854 and '55? A. For Mr. Hunt.

Q. Had you charge of that department of Mr. Hunt's business? A. Yes, sir.

Q. He had that business carried on? A. Yes, sir.

Q. State if you received and executed orders for that kind of work? A. The order for bell hanging was given to me.

Q. Did you get an order for the bell hanging of the Young America from Mr. Cook? A. No, sir; I got the order from Mr. Olmstead.

Q. You got an order for the bell hanging of that house? A. Yes, sir; Mr. Olmstead gave it to me as architect. He looked after it as architect.

Q. Did you do the work? A. Yes.

Q. Was the bill paid? A. Yes, sir; Mr. Hunt told me it was paid.

Q. This is the bill marked \$638 (handing a paper to the witness). Did Mr. Cook give you any instructions as to obeying Mr. Olmstead's orders about work?

Objected to. Objection overruled.

*Excepted to by defendant's counsel.*



30

Q. State if Mr. Cook said anything to you in reference to your receiving and obeying his orders, and if so, what it was? A. I have not seen Mr. Cook.

Q. At the time you were doing the work? A. While I was proceeding with the work until so far as it was necessary to order an *annunciator*, (a part of the arrangement in bell hanging) then it became necessary to order that, and the question was put to Mr. Cook whether the annunciator should not be ordered for some numbers larger than it was necessary for the new house, because Mr. Cook might like to attach to the same annunciator some bells from the old house, and then it was I saw Mr. Cook first and had a talk with him about the bell hanging.

Q. What instruction did he give you in reference to your receiving your orders from Mr. Olmstead and obeying his instructions. What reply did Mr. Cook make? A. After the conversation we came to the conclusion to order the annunciator some larger, and he made then with me the contract in reference to the bell hanging in the old house.

Q. Did he tell you anything in reference to receiving orders or directions from Mr. Olmstead? A. Mr. Olmstead was present; I don't know as Mr. Cook put any questions to me about Mr. Olmstead, I don't remember particularly.

31

Q. Did Mr. Cook tell you to do as Mr. Olmstead told you about the bell hanging, or any part of the work? A. If I remember aright Mr. Cook and Mr. Olmstead together went through with me in the new and in the old house and showed me the place to put the bells. I don't know as Mr. Cook said anything to me especially about Mr. Olmstead.

Q. Was Mr. Cook there more than once or frequently while you were at the job? A. Yes; he was there very frequently.

Q. Was Mr. Hunt there? A. Sometimes.

Q. Looking after you? A. Looking after me.

Q. And others? A. Yes, seeing whether I am about doing the job for Mr. Cook.

Q. Was the plumbing job being done at the same time you were doing the bell job? A. About the same time.

Q. Were Mr. Hunt's men working on that job? A. Yes, sir.

Q. Was he looking after them too? A. I presume he did.

Q. Did you see Mr. Cook there while they were doing it? A. I have seen Mr. Cook there sometimes while I was there at work. The other was being done at the same time; I don't know whether he looked about their work or not.

32

CARLTON DRAKE recalled and examined

Further by JUDGE SCATES.

Q. State, if you please, if you presented the bill of all the work that was done for Mr. Cook by Mr. Hunt? A. Yes, sir.



Q. All mixed up as it had been done and whether Mr. Cook did not request you to have it divided? A. One general bill was presented including bell hanging and the tin work.

Q. Did he make any request to have the bills separated?

MR. BURGESS. What did he say?

A. There was one general bill presented and Mr. Cook returned the bill with the request that the bill should be separated into three distinct items, which included the bell hanging, the tin and sheet iron work, and the plumbing work.

Q. Did he make any objection to any? A. I don't remember that there were any objections made, or any remarks made in reference to the bill, in any shape or manner, further than I returned the bill and I supposed the items had been selected.

Q. It was a general bill including the items in the order in which the work had been done from week to week? A. Yes.

Q. Of each character of work? A. Yes.

Q. State if Mr. Hunt carried on the tin business? A. Yes, sir.

Q. Is that separate from plumbing? A. It is rather a distinct line of business, and could not be connected very conveniently.

Q. Did he have some tin work done in that building? A. Yes, sir; by the same men, orders emanating from the same source, through me.

Q. Did you superintend the tin department? Yes.

Q. Did Mr. Cook make any objection to the manner in which the work was done, or to the paying Mr. Hunt? A. He never raised any objections in my presence, or to my knowledge.

Q. By MR. BURGESS. Are you certain that you would have understood them if he had made objections? A. It is very reasonable to suppose, if he had objected to any portion of it, I would.

Plaintiff's evidence closed here.

## DEFENDANT'S EVIDENCE.

WILLIAM B. OLMSTEAD being duly sworn,

Was examined in chief by Mr. BURGESS, and testified as follows:

Q. Did you hear Mr. Drake's testimony this morning? A. Yes; I did.

Q. You are the Olmstead referred to? A. I am.



34 Q. Do you know anything of the work done on the Young America? A. I superintended it by Mr. Cook's direction.

Q. The defendant? Yes.

Q. Do you know anything about the contract for plumbing work on that building? A. I made a contract with Mr. Christopher by Mr. Cook's orders. It was in writing. I left it in my safe when I went away, and I have not found the man it was left with.

Q. Do you know the work about which he testified? A. I know of the plumbing work.

Q. Under what contract was that work done? Objected to.

Q. By MR. McALLISTER. With whom did you leave it. A. With my son in-law, Col. Jenkins. I left the papers with him. He removed them then to Mr. Noble's place.

Q. You have not seen him since you came to town? A. No, sir. I have not seen him here. I saw him in St. Louis.

Q. He took them to Mr. Noble's office? A. Yes.

Under what contract was that work done? Objected to.

Q. BY THE COURT. State how that work came to be done—the plumbing work? A. Mr. Drake did the plumbing work, under Mr. Christopher's contract.

35 Q. Did Mr. Hunt do the bell hanging and some tin work? A. I don't know whether he did or not.

Q. Who worked at the plumbing? how happened it to be done? A. I shall have to tell something of a story to get at the facts. Sometime previous to the work being let, Mr. Drake called on me and said he was prepared to do the plumbing work. He had fixed things so with Mr. Hunt, or it was so arranged with Mr. Hunt, that he was enabled to go on and do any amount of work. I told Mr. Drake I would do all I could to get him the work. He said he would be glad to have me. It lingered along in that shape for a few days. I told him I thought Mr. Christopher would get the work. From a conversation I had with Mr. Cook he was inclined to give it to Christopher; he was an acquaintance of his and he wanted to help a poor man. I told him if he managed right he might get the work of Mr. Christopher, but it would have to be let to Mr. Christopher. I afterward learned from Mr. Drake that that arrangement had been made and that he was to do the work for Christopher. I told him under those circumstances I should be favorable to Mr. Christopher's having the work. I didn't know anything about Mr. Christopher. About that time Mr. Cook and Mr. Drake and I met, and Mr. Cook ordered me to make the contract with Mr. Christopher to do the plumbing work with the understanding between Christopher, Drake and myself, that Mr. Drake

36

was to do the work for Mr. Christopher.

Q. BY MR. McALLISTER. State the conversation? A. It would be very difficult for me to state exactly what took place.



Q. Where was it? A. In front of the Young America.

Q. When? A. Just previous to the plumber's work being let; it would be very difficult for me to state the exact language. The understanding would be such an impression on my mind that it would not be varied.

Q. BY THE COURT. State the substance of the conversation according to your recollection? A. Well, I have got at the substance as near as I am able. Mr. Drake says to me that he did not know anything about Mr. Christopher's capability of paying. I suggested to him that that matter might be kept straight by the pay; that the certificate would be apt to be drawn to Mr. Christopher and handed to Mr. Drake for Mr. Christopher to endorse, and that would allow them to arrange their matters. I did not know what had taken place. I knew there was some understanding between Mr. Drake and Mr. Christopher about the various kinds of work, but what it was I don't know.

Q. What occurred after that? A. Mr. Drake commenced and did the work and when he wanted pay I drew him certificates emanating from our office to Mr. Christopher for Mr. Drake's pay.

37

Q. Do you recollect the circumstances about Mr. Drake's stating about an order drawn in favor of Mr. Hunt for plumbing work? A. I presume the bell hanging was a separate business. I did not draw a certificate, or if I did it was by mistake, because the contract lay with Mr. Christopher. Objected to.

WITNESS. I presume I can find the contract.

Q. Where is that contract? A. I presume it is amongst the papers left with Mr. Noble; if I had known the contract was wanted I would have looked for it.

COURT. Said he would allow the defendant an hour to find the contract.

**W. B. OLMSTEAD** recalled by Mr. Burgess.

Q. Where did you last see that contract between Mr. Cook and Christopher?

A. In the safe.

Q. Where was your safe? A. In my office on Washington street.

Q. When did you last see that safe? A. About two years ago in July.

Q. Where did you leave it? A. In my office. I left the safe with Mr. Jenkins, and when he went to St. Louis he left the safe in charge of Mr. King. He is out of town. I don't know where he is. He is a money broker when he can get a chance to shave; as near as we can find out he had the safe sold, but the papers in it we can't hear anything of. I have had a gentleman looking some months to see if he can find the safe, to try and find where the safe is. It is a Lillie's safe.

38

Q. What sort of a lock? A. The lock was fastened with figures.



Q. You need not state the figures. It is one that fastens with numbers? A. Yes; undoubtedly the contract, if any, was in the safe, has been taken out. I don't know what has been done with the papers. He can probably explain it. I thought Mr. Marshall—— Objected to.

Q. MR. McALLISTER. Explain about hunting a month for it? A. I said I had a gentleman looking over a month for my safe, for my books. He is in the room and I believe is a man of truth and veracity.

Q. BY JUDGE SCATES. Who is the man that hunted for the paper? A. Capt. Cleveland.

Q. BY THE COURT. Are you sure it is in the safe? A. I left it in the safe.

Q. When did you last see it? A. It will be two years in July.

Q. Is it with any other papers you recollect? A. Yes, sir; all my other papers, I have not seen them since.

39

Q. Haven't you opened that safe within two years? A. No, sir.

Q. Where does Mr. King live? A. I don't know.

Q. What King is it? A. His name was Benjamin.

Q. Did he sell out to Mr. King? A. No, sir; Mr. King sold out to somebody else.

*Court adjourned.*

**WILLIAM B. OLMSTEAD** recalled; Examined by Mr. Burgess.

Q. Have you found that safe you were speaking of last evening? A. Yes, sir; we found the safe—it had been opened.

Q. Did you find your papers? A. No, sir; the safe was sold at auction last November, and the papers taken out by Mr. King, (Ben King). I went to his boarding house and found he had gone out of town. I could not get access to his papers. I called on Dr. Hathaway, and every one I knew of I had reason to suspect would know where they were, if there were any such papers there.

MR. BURGESS. We have made pretty thorough search; I have myself engaged in the search for these papers.

MR. BURGESS proposed to prove the contents of the contract alleged by this witness. Objected to. Objection sustained by the Court.

*Defendant's counsel excepted.*

40

What were you authorized by Mr. Cook to do in reference to the building of that house?

MR. McALLISTER. Was you not appointed architect in writing? I was appointed.



COURT. Was there a written contract ? A. No, sir.

JUDGE SCATES. Was there not a written contract between Mr. Cook and some contractor or builder that specified his powers and duties ? A. I believe all our contracts specify their duty. Mr. Cook had a contract with Mr. ——— ; I was trying to think of his name. Walters was one.

SCATES. Ira Foot ? A. No, sir ; he had nothing to do with it. It's a builder right in here by the post office—Mr. Sollitt—he was the carpenter. Walter was the mason. There were written contracts with both of these. It stated it was to be done under the superintendence of an architect ; I think it specified, as is usual, in such contracts. I drew the specifications, and the contract was a printed copy. That contract was executed by Mr. Cook—by both of them.

Q. In reference to the contract about this suit ? A. That was contract with Mr. Christopher. McFarlane & Hudson did the gas fitting. No, I think I am mistaken ; I think it was Brown & Wilder did the gas fitting, a part of it, and McFarlane did the gas fitting in the other building. The contract with these two last gentlemen were in writing.

41

JUDGE SCATES. This evidence is not for the jury.

COURT. No, sir.

Q. What authority had you from Mr. Cook in reference to that building ? A. I was employed by Mr. Cook to be his superintendant of the building ; to draw the plans and superintend it, and see that the work was done according to the contract, and certify to the work when money was due. Objected to. Objection overruled.

*Defendant's counsel excepted.*

Q. Was there any contract between Mr. Cook and Mr. Hunt, for doing any work upon that building of any kind ? Objected to as a conclusion of the witness and as leading. Objection overruled.

*Defendant's counsel excepted.*

A. There was no contract that I knew of ; there was an agreement to do some things. I think that I wanted some bell hanging done and I called in Mr. Drake, I think, to do it. I know it was done under a contract. I am very positive.

Q. Had you any authority from Mr. Cook to make contracts for that building ? A. Not without his consent. I never made any contracts without.

42

Q. Were you ever authorized by Mr. Cook to make a contract with Mr. Hunt for the plumbing work ? were you ever authorized by Mr. Cook to make any contract with Mr. Hunt to do any work on that building, aside from the plumbing work ? A. I think not, sir.

Q. How did Drake and Hunt come to do the work ? A. I understood from some arrangement between Mr. Christopher and Mr. Drake he was to do the work.

Q. BY JUDGE SCATES. Who did you get that from ? A. I had it from Mr. Christopher. Objected to.

WITNESS. I think I had the same from Mr. Drake. Objected to.



WITNESS. Mr. Drake done Mr. Christopher's plumbing work ; the work was let to Mr. Christopher.

Q. Did you employ Mr. Drake either on his own behalf or as agent for Hunt to do any plumbing work on that building for Mr. Cook ? A. Not that I know of. I was not authorized to do so.

43 Q. Whilst Mr. Drake was there on the building did he say that he was doing work on a contract between Cook and Christopher ? A. Mr. Drake said so. I remember once positively—it was in my office once. He came there for a certificate and thought it was a very poor business for such an establishment. It was at one time when he called for a certificate ; I can't tell whether it was the first or second certificate—it was after he had gone upon the work. Objected to. Objection overruled.

*Plaintiff's counsel excepted.*

WITNESS. He said he thought it was a poor business for such an establishment as Mr. Hunt's to sub contract to so poor a man as Mr. Christopher. He did not want to be bothered in that kind of way. I don't remember what time it was. Mr. Drake said he thought it was a pretty poor business for such an establishment as Hunt's to be working as a sub contractor for such a poor man as Mr. Christopher.

**Cross Examined by Judge Scates.**

Q. Was that all that was said at that time on this subject ? A. Well, I could not tell whether it was or not. There might have been more conversation, I presume there was ; that is all I recollect positively. I can tell why I recollect that point.

Q. Did you give a certificate to Mr. Hunt for the plumbing work ? A. I might have done so, I don't recollect.

Q. Have'nt you said you did not ? A. No, sir ; I don't think I have.

Q. Haven't you heard Mr. Cook say if Hunt had such a certificate, he forged it ? A. No, sir ; I might have given him such a certificate, I have no recollection of doing it ; I might have done it, if I did I could not tell at what time it would have been done.

44 MR. BURGESS objected to examination as to the certificate unless it was produced. Objection overruled.

MR. BURGESS said he wanted to prove the existence of the contract before the Christopher contract.

THE COURT said he had proved that it existed, not that it contained such and such items, but simply that there was a contract in regard to the plumbing work or some part of it.



Q. Did you state to Mr. P. Wilder that Mr. Hunt had a contract with this plumbing work? A. I don't remember of ever saying so, sir; I don't remember of making any such remark at any time.

Q. Were you in partnership with anybody at the time you superintended that building as an architect? A. I was; Mr. John Van Osdel was my partner.

Q. Did Mr. Cook ever pay you for the work on this building for your services? A. Yes, sir; it would be very difficult for me to tell when, the transaction was so long ago.

Q. Did you give Mr. Cook a receipt for the services rendered by your firm on that building? A. I might, but I don't remember it. If I gave a receipt I presume I got the pay at the time—I don't remember ever giving Mr. Cook a receipt in full—I recollect Mr. Cook paying me. It would be difficult for me to tell when and where—mostly at the Post Office, sometimes at the Young America. I got it at several times. I can't tell when I gave a receipt, it is not likely when I got the first. I don't recollect any time or place when I got a portion of it. I recollect that I did get it. Mr. Cook was in the habit of giving me money whenever I asked him for it.

Q. Did you tell your partner that he did not pay you for the services in that building? Objected to—allowed to show bias in the witness. *Exceptions taken.*

WITNESS. I don't remember telling him so.

Q. BY MR. McALLISTER. How long have you lived in Chicago? A. Four years, sir.

Q. Where did you live before? A. Brooklyn, N. Y.

Q. BY JUDGE SCATES. When did you leave here? A. It will be two years in August.

Q. Was it night or day time? A. I think it was in the day time—I don't know as I can remember—I don't know whether it was in the night or evening.

Q. Did you leave in haste? A. I went about as fast as they usually take them in the cars. I didn't take anything except a few shirts in a carpet sack.

Q. What did you do with your goods and chattels? A. I left them in the office.

Q. Were they attached? A. I don't know.

Q. Have you been repeatedly sworn in cases that came up during the time you were architect here? A. I have.

Q. Were you ever impeached as a witness, or attempted to be? A. I believe not, sir; I have no recollection of any attempt ever being made; if it was done I didn't know it—I was in happy ignorance.

Q. Did your employment on the Young America embrace every species of mechanical work? A. I believe it did, sir, to complete it as a building. I believe



I managed them all. I superintended every thing about the building—to see every different mechanic perform his part in the building, that is the duty of the architect, I think, including the painting.

Q. Were you ever in partnership with Mr. Nicholson? A. Yes, sir; immediately after Mr. Van Osdel and I separated. It would be difficult for me to state now when we dissolved.

47 Q. Did you make any contracts for any of the work on that building? A. I wrote all the contracts that were written then. I did not contract with persons without special directions from Mr. Cook to do so. I did not contract with anybody without it is the bell hanging. I might have made a bargain to do the bell hanging; I don't remember the circumstances of how they did get the work. I am not positive that I made a contract for the bell hanging. I don't remember whether I made a contract for the tin work or not. There was tin work done. I think I did not make a special contract for the plastering—I think it was with Mr. Walters I acted in it. I received the propositions and by direction from Mr. Cook. If we wanted any work done about the building, I generally saw who would do it best, and reported to Mr. Cook, and they called on and closed with him. I entered into contracts in that way.

Q. Did you negotiate a contract with Mr. Christopher for the brass and copper-smith work? A. That was included, I presume, in the plumbing work. I don't remember any special contract with him, I presume Mr. Sollitt did—he made it with the painter. There were propositions handed in from various carpenters who would do the work. Mr. Sollitt was the lowest bidder, and it was awarded to him by Mr. Cook, and I proposed to make the contract with him.

COURT. Was the plumbing in the east or west part of the building?

MR. COOK. The east part.

48 WITNESS. There were two portions of the building; there have been three portions I believe. It has been built at three different times. The main part on the corner and the east half of it, and some twenty feet on the south end. The first corner building was built when I came here, I think in 1853—it was built before I came here. The east wing was built next, I think, between 1853 and 1854. The south wing was a small portion built when Mr. Irish went into it. I think it was 1856, it might have been 1857.

Q. (Presenting order No. 1, dated Dec. 13, 1854). Is that your handwriting?  
A. Yes.

Q. That subscription is yours? A. Yes.

Direct Examination by Mr. Burgess.

Q. All the contracts you have spoken of were submitted to Mr. Cook, and passed upon by him? A. Yes.



Q. Did you ever submit to him any contract between Mr. Hunt and him, for doing work on the Young America? A. I don't remember.

MR. BURGESS offered and read in evidence the two certificates, previously aluded to in the evidence.

MR. BURGESS offered in evidence a receipt as follows :

“ Chicago, Illinois, May 15th, 1855.

Received of Isaac Cook, Esq., Twelve Hundred and Seventy Three Dollars, in full payment of all demands for materials furnished and work done in fitting up plumbing in the building known as the Young America, situated on the corner of Randolph and Dearborn Streets, in the City of Chicago, as part of the agreement made with the Ass't (Mr. Olmstead).

CHARLES CHRISTOPHER.”

49

MR. McALLISTER objected. The Court sustained the objection.

*Defendant's counsel excepted.*

MR. BURGESS proposed to call a witness who was present at the time this receipt was given and the matter settled ; to prove it, and to prove by this witness, (Mr. Hooper,) the fact of actual payment by Mr. Cook.

MR. McALLISTER objected. Court sustained the objection.

*Defendant's counsel excepted.*

ROBERT McFARLANE called and sworn.

Examined in chief by MR. BURGESS.

Q. Where do you live? A. In Chicago; I have been here about five years.

Q. Do you know Charles Christopher? A. Yes; his first name I am not acquainted with. His business is coppersmith.

Q. Do you know the building called the Young America? A. Yes; I know when the east part of it was in construction.

Q. Did you see Christopher about that building? A. Yes; he seemed to be superintending the putting in the ranges and plumbing work and copper work.

Q. What acts did he do? A. He was there commanding the men, telling them what to do and how to do it.

Cross Examined by MR. McAllister.

50

Q. How many men did he have there? A. I could not say; there was quite a number of men there. I have seen myself over four or five men that he gave directions to. I have seen him give directions to men there several times. I put



the steam piping in that building for Hulme & White. I was not personally acquainted with the employees (Christopher's).

Q. Were you in Court yesterday afternoon? A. No, sir.

Q. What! A. I was in Court, yes.

Q. Did you recognize anybody here you saw him command? A. No, sir.

Q. What did he order them to do? A. He was telling them what to do, how to place things, how they should be done, how to place the range.

Q. You were at work in connection? A. No, sir; the range is for water, heated by the furnace. My business was with the steam; I built it myself.

Q. By MR. BURGESS. Has that hot water business any connection with the plumbing? A. It is in connection with the plumbing.

51 Q. By MR. McALLISTER. Is it not coppersmith business? A. It partly belongs to that business. They were iron boilers, but the connections were made by copper, and I suppose that Mr. Christopher was the party who did that part. He gave the instructions to the parties who were putting these heaters and boilers in. I heard that Mr. Christopher had the contract for the plumbing. Objected to.

WITNESS. That is all I heard; I have nothing further to say as far as the contract was concerned. I heard it from the steward in the house; I don't know anything about Mr. Drake's saying so. I heard Mr. Drake say he was doing the plumbing work. Drake was doing the plumbing work. The job I was on I contracted for individually with Hulme & White. I was working for them myself.

Q. You say it partakes partly of plumbing work and coppersmith's? A. Not mine; I had nothing to do with that—the branch of trade I belonged to was the heating department. It is a different business by itself. Plumbing work is entirely different from coppersmithing; the two are sometimes together. The work I did was steam fitting entirely. No copper or plumbing work about it.

**Direct Examination Resumed by Mr. Burgess.**

Q. What portions of the work did you see him superintending? A. As I said before, putting in the boilers.

52 Q. By MR. McALLISTER. That's what you mean, when you say superintending both? A. No, sir; I have seen him talking with the plumbers and giving directions.

COURT. What plumbers? A. I could not say. The cisterns were to supply the house. They are made with iron rods—this is done by a plumber. I should say the principal part of the work in the house was plumbing, in this particular job. That was entirely plumber work connected with the cistern.

Q. What directions were given them? A. He seemed to find fault with one



man because where the connecting rods went through they did not seem to be cut out deep enough, but to be made a little stronger. I did not see any coppersmith work in connection with this cistern. I did not see any, he might have put in an overflow pipe, but I did not see it.

Q. Is not that coppersmith work? A. I never saw a copper overflow put in; however, that may be—there must have been an overflow to this. This was when they were under way. This overflow pipe is generally not copper; it is very seldom. There is not one plumber out of 500 would do so. This was lead.

## REBUTTING EVIDENCE BY THE PLAINTIFF.

### CARLTON DRAKE Recalled and Further Examined

By JUDGE SCATES.

53

Q. Do you know what was done in the way of an overflow pipe spoken of by that witness? A. Yes, sir; there was an overflow pipe put in there by Mr. Christopher; I think a four inch copper pipe—I know it was a copper pipe; it is in the building and will show for itself at the present time.

Q. Making copper pipe is no part of plumbing? No, sir; no part of it where we made connection simply.

Q. Did Mr. Christopher ever give you any directions for doing that job? A. No, sir; not to my knowledge.

Q. Or any of your men? A. Not to my knowledge. If he gave directions to the men it must have been casual, and must have been outside of my knowledge.

Q. You had to make some connection with his copper pipe? A. Yes; we connected it to the lead pipe from the reservoir, the overflow pipe conducting the extra water to this pipe that led into the sewer and carried it off into the street. Mr. McFarlane might have been correct so far as the lead overflow was concerned from the tank or cistern, for the distance of eighteen inches space, if I recollect, from setting our coupling rods in. That connection, from the tank to the copper pipe for the overflow, was lead, and he might have seen a bit of that and taken it for granted it was all lead. There was a connection of lead with the copper overflow pipe.

54

Q. Did you hear Mr. Olmstead's testimony in regard to a conversation between him and Christopher and yourself? A. Yes, I did; between Mr. Christopher himself, and myself and Mr. Cook. I never had any conversation with the three, myself making the fourth, in my life. I never remember that I did with any two of them outside of taking Mr. Cook through the building to show him the work,



have any conversation with Mr. Cook. I never knew any thing about Mr. Christopher or that he had any claim or interest in the matter.

Q. Did you ever negotiate or contract or undertake to do that work under Christopher? A. No, sir; never.

Q. Is the fact so or not, that you knew otherwise than by what appears on the face of these orders that Christopher had any pretence to a contract about it? A. Not that I know of.

Q. Was the fact ever communicated to you by Mr. Cook, Mr. Christopher or Mr. Olmstead? A. No, sir.

55 Q. Do you state that the fact is not so? A. I should think it would not be so, I am quite certain. He was an irresponsible man entirely. I don't think I would have entered into an agreement to the amount of \$500 or \$600 without knowing his business character—knowing nothing of his financial character. He was a coppersmith on a small scale; he was not a man of means. I don't suppose he was responsible for the value of ten cents; I supposed so, I didn't know anything further than appearances. I would not have undertaken a contract from him.

Q. (Presenting order). Did you see that order made and given? that certificate—that top paper? A. I called for it and received it myself. It was signed by Mr. Olmstead; filled out by Mr. Olmstead, and not as you find it there.

JUDGE SCATES offered the paper in evidence.

MR. BURGESS objected, as it was not a matter for which Mr. Cook was shown to be responsible. Objection overruled.

*Defendant's counsel excepted.*

And certificate read as follows :

\$400.

Chicago, December 13th, 1854.

I. Cook, Esq.

*This is to certify that there is due to E. Hunt for plumb work the sum of four hundred dollars for labor and materials furnished your buildings, on Young America, as per contract payable at sight at Chicago.*

No. 1.

Yours respectfully,

VAN OSDEL & OLMSTEAD.

Couch's Block, Dearborn Street, Chicago.

*Architects and Superintendants.*

56 Q. Are you acquainted with Mr. Olmstead? A. Yes; I could not say how long I have known him, probably some time within six months or a year after he associated himself with Mr. Van Osdel; I can't say how long ago. I have been in the habit of going into Mr. Van Osdel's office for a great many years; my first acquaintance with him was here.



Q. Are you acquainted with his general character for truth and veracity? A. A great many of those who have done business with him seem to speak rather disparagingly of him.

Q. You have heard his character spoken of? A. Yes.

Q. Is it good or bad? A. A great many have spoken bad of him.

Q. From that character would you believe him under oath? A. That is rather a delicate question. I should doubt him sometimes undoubtedly. I should lay it down as a principle that a man who would doubt once would doubt twice.

Cross Examined by Mr. Burgess for defence.

Q. Who did you ever hear say anything against him? A. If I were to speak in general terms I could say almost everybody who did business with him.

Q. Give us a name? A. William Price particularly. I think Amos Grannis, also Mr. Ross, of Ross & Foster. There are three or four persons, who he has done work for, who have spoken disparagingly of him.

57 Q. Have not Mr. Price and Mr. Van Osdel had difficulties with him? A. I don't know of their having any difficulties with Mr. Olmstead; I inferred that from the fact that Mr. Price was so much opposed to his manner of business, or his way of doing business, that he declined going into his office to make estimates or take any work out of his hands. I did not go into his office a year and a half before he left here (not heard distinctly). But I have not the slightest personal animosity against him. If he lets me alone, I will give him a good letting alone.

Q. You would not go into his office? A. No, sir; I think if he were to come here again I don't think I would take any work out of his office.

Q. Do you know anything except from persons who had difficulties with him? A. I don't know whether these persons had difficulties, I don't know—I don't remember—I am not certain.

PETER A. NICHOLSON, called by the Plaintiff, sworn,

And examined by JUDGE SCATES in chief.

Q. Are you acquainted with William B. Olmstead? A. Yes, sir.

Q. How long have you known him? A. Within four years past in Chicago.

Q. Are you acquainted with his general character for truth and veracity in this community? A. The general opinion of those who have done business with him seems to be that he is not a man of truth and veracity—his reputation is not good.



58

Q. I ask as to your own belief, I mean judging by his reputation? A. I am inclined to the same opinion myself.

Q. Were you a partner with him for a year? A. Yes.

Cross examined by Mr. Burgess.

Q. Did you dissolve with him with pleasant or unpleasant feelings? A. Unpleasant.

Q. There has never been a settlement? A. It has been left open.

Q. How long after he came before you first heard of him? A. Very shortly after I first heard of him, I was acquainted with him. That was several years ago.

Q. Who did you hear speak of him? A. James Grant, Stampouski—I have heard a number of others. I can't think of their names at present. James Grant said he would not believe him on oath. I have heard of him having disputes with him in business transactions. Grant was a mason and had contracts under Olmstead. Mr. Olmstead was superintending as architect.

Q. Was there a difficulty arose between the owner and the mason about the work? A. No, sir; not that I know of. Grant was a mason on Ross and Foster's building. I think there was a law suit about that building and Mr. Olmstead was a witness. He was the architect.

59

Q. This mason was under him and the difficulty was whether the mason had done the work well? A. I don't know; it was a dispute about a contract promised to Grant which he had figured on, and he thought he was justified in having it.

Q. What reason did he assign why Mr. Olmstead was not to be believed under oath? A. He did not assign any reason; I don't know of any difficulty he has had with Stampouski. I don't know much about Stampouski; I know him, but not intimately at all. He said he would not believe him under oath. He remarked that to-day. Those two are the only ones I recollect at present to have heard say any thing about him.

BUCKNER S. MORRIS called by the Plaintiff,

Sworn and Examined by JUDGE SCATES in Chief.

Q. Judge, are you acquainted with Mr. Olmstead? A. I know Mr. Olmstead when I see him.

Q. How long have you known him? A. It has been several years. I think since he came to Chicago.

Q. Are you acquainted with his general reputation for truth and veracity in this community? A. I don't know that I could say that I was. I have heard a



60

number of people speak of Mr. Olmstead's character, but I do not know that it would be sufficient to form a general reputation. I should say I had heard a few dozen, perhaps more, and may be a few less. I have not taken particular notice of their number. My means of knowing his reputation are, I have heard him on several occasions in Court where I have been, and on one occasion particularly, he testified before myself and two other arbitrators or referees and with divers and sundry other witnesses. It was a case of my knowledge. Mr. Cook was a party and some workmen about this same house, in which this gentleman testified with other witnesses. I have heard persons who have been engaged with him in business transactions speak of Mr. Olmstead, for I have been cautioned by four or five individuals who understood that I was going to build a house, to be very careful how I made any arrangement with him — that I had better have it in black and white and so on, and in that way I became acquainted with his character to some extent.

61

Q. BY THE COURT. Have you heard of him frequently spoken of in the community like any other person whose name is mentioned? A. Yes, sir. I have heard him spoken of as an architect and as a business man, with mechanics and others who had dealings with him. I don't know that I know what the community of Chicago think of him, but so far as these men I have spoken of think of him, and in connection with that trial and the facts there testified before us in opposition to his statements and the reasons given for it, and I have heard a good many persons who pretended to know his transactions with Mr. Richmond, my opinion is formed from the whole of this; from the statement, from my personal knowledge of matters that came before me in opposition to other testimony, and then from what other parties have said who have had conflicts with this man growing out of his transactions, from the testimony given in before the arbitrators. Taking the whole together, I have a very decided opinion upon the subject. So far as I have derived information from those persons who have known him and had business transactions with him, I could speak, but I do not know that these things are generally known or talked of.

Q. BY THE COURT. What do these people who know him say of him? What is his general reputation? A. So far as I can form an opinion from those who have transacted business with him and those who have testified, taking all these circumstances together that I have just detailed as a basis for an opinion, and I have a decided opinion that I should consider his testimony as unreliable, particularly if it in the slightest conflict with anything like respectable testimony.

Cross examined by Mr. Burgess.

Q. Have you had any difficulty with Mr. Olmstead yourself? A. Yes; he has sued me. I think the suit is dismissed.



Q. Is that one of the items that go into the basis upon which you form an opinion of the man? A. No, sir; I do not consider that as an item, because that was setting up a claim that I consider unfounded, but not touching his general character for truth.

62 Q. Did you not employ him to make out a plan for a building? A. I say positively I never did. He never was in my office in my life and I never passed a dozen words with him until he had made a drawing. He asked permission of me to make a drawing and if I adopted his drawing I was to pay for it, and he sued me for a drawing made without my consent. I have no feeling about it. I know I had made no contract with the man and I didn't care the snap of my finger. I was only astonished that his son-in-law presented a bill to me, but I learned it was not an unfrequent occurrence.

Q. Give us the names of one of these persons you have heard? A. Mr. Foot, a mechanic, who worked for him, and several other mechanics; Mr. Van Osdel, his former partner.

Q. Were those the mechanics on the Richmond House? A. No, sir; that worked under his superintendence. There were several gentlemen who testified to facts before myself as arbitrator in conflict with his testimony. I derived information through that source, that satisfied me from his dealings towards a mechanic that he would pervert the truth to that man's injury, and tell him he would do so.

Q. Are you arguing the case? A. I am telling the facts that occurred on oath.

Q. Who sat with you? A. Mr. Cleveland—I forget the other.

63 Q. Was it not Mr. Saxton? Did he agree with you in the verdict? A. No, sir.

Q. Did he sign it? A. No, sir; he said he believed we were correct, but for reasons satisfactory to himself he didn't sign it—reasons which he did not pretend to give us.

THOMAS RICHMOND, called by the Plaintiff, sworn,

And examined in chief by JUDGE SCATES.

Q. Where do you live? A. In the city; I have lived here twelve years.

Q. Do you know Mr. William B. Olmstead? A. Yes; since 1854. I have known him in this city.

Q. Are you acquainted with his general reputation in this city for truth and veracity? A. I am acquainted so much as I have heard about it. I have heard more or less said, considerable.

Q. Is that good or bad? A. It is not good.



Q. From that reputation would you believe him on oath? A. If he was well corroborated with other witnesses I should if it was contrary. I should balance, of course, between the liabilities of the parties.

Q. State whether you would in all cases under oath? A. I do not.

Cross Examined by Mr. Burgess.

64

Q. Who have you heard say anything about him? A. Well, it has been so general it would be difficult to be specific. Mr. Olmstead and Mr. Van Osdel were architects and managed the building of a house I had, together with some others, a block called "park row." That was done in 1854 mainly. Then he managed the building of the Richmond House, commenced in 1855 and ended in 1856. I have heard Mr. Van Osdel and Mr. Jones and William Jones speak of him; an indefinite number of persons came to me and cautioned me, but I can't call up the names. The whole report was on one side entirely. There were others but I didn't charge my mind, they cautioned me in regard to his integrity and truthfulness and reliability. They said just what one would say cautioning another. They all gave me warning that I would get into difficulty with him, he was an untruthful man.

Q. Have you had any difficulty with him? A. No, sir; he sued us for what he claims to be wages or salaries or for services, but that never makes any difficulty with me.

Q. That is "Golden Jones"? A. No, sir.

Q. Did you have any arbitration growing out of that claim? A. Yes, sir; Mr. Jones was arbitrator. They found a judgment against us and a verdict I think of \$1,000.

N. P. WILDER, called by Plaintiff, sworn,

65

And examined by JUDGE SCATES in chief.

Q. State what Mr. Olmstead told you in reference to Mr. Hunt's having the plumbing contract? Objected to.

THE COURT. At what time was this declaration made? A. Well, sir; all there was said to the matter—

MR. BURGESS. Never mind that.

WITNESS. We did the gas fitting. It would not benefit either of you. I simply asked him who was doing the plumbing. He was acting as architect for the original building of the Young America. I went to give him a bid, and in reply to



my interrogatory: "who does the plumbing?" he said Mr. Drake. Objected to. Objection overruled.

*Defendant's counsel excepted.*

THE COURT. Was that while the plumbing work was being done? A. I don't know whether it was; Mr. Drake was standing there. It was what they called the original Young America. The east part has been built since. That conversation occurred before the east part was built. The building was up ready to receive the plumbing work and gas pipes. They hadn't bid for the gas works.

Q. You understood the bids for the gas works were being put in? A. Yes; I handed in a bid to get it.

66 Q. Was that the time the bids for the plumbing work were being put in? A. I don't know. I don't know whether at the time of this conversation, this plumbing work had been done. It was merely accidental that I asked the question. There were no more observations. We put one bid in through him as architect.

WILLIAM F. MERRICK, called by Plaintiff,

Sworn and Examined in chief by JUDGE SCATES.

Q. Where do you live? A. Three miles south of here on the lake shore. I have lived here twenty-two years.

Q. Are you acquainted with William B. Olmstead? A. Some little. I have known him between four and five years. I knew him in the city.

Q. Are you acquainted with his general reputation for truth and veracity in the city? A. Well, I don't know hardly whether I am particularly. I am somewhat acquainted with him. He did some business for me; I have had a little acquaintance with him one season—he did some little work for me. I have heard him spoken of a great many times.

Q. By Mr. BURGESS. How long ago was that work? A. Four years ago last season.

Q. Are you acquainted with those who know him generally? A. I have some considerable acquaintance.

67 Q. Are you well acquainted in this city generally? A. I think I am, sir. I think I had the means of knowing his general reputation among his acquaintances that season some considerably.

Q. State what his reputation was? A. Well, what little I heard was not very favorable. I think it was bad, sir.

Q. From that reputation, would you believe him under oath? A. I should be afraid to, if I thought he was anyways interested pecuniarily.



Cross Examined by Mr. Burgess.

Q. Who have you heard say anything about him? A. Mr. Van Osdel, his former partner.

Q. Anybody else? A. I can't say. In the first place, he did some business for me and made it cost me about three times what he said it would first cost me, and I talked with people about and found other people found as much fault with him as I did.

Q. What fault? A. That his character for truth was bad—his character for truth was very bad. He told me I could build such a house as I wanted for \$5,000, and it cost me \$15,000. That didn't come very near the truth.

Q. Did he put that down in a definite shape to you? A. He drew up a plan of it and said he could build the house. It was done by the day. He said it could be done cheaper that way. He hired the men; I was away. He superintended the business. I don't think that came very near the truth.

68 Q. Did you hear anything else but that? A. Yes; but I can't state the men. I know I spoke to a good many about it, should not be surprised if I talked to a hundred about it.

Q. Will you swear that you talked with a hundred? A. No, sir.

Q. With a dozen? A. Yes, sir.

Q. Can you give the names? A. No, sir.

Q. Can you give a single name except Van Osdel? A. No, sir; I don't know as I can.

ALONZO HAMLINE, called by Plaintiff, sworn,

And examined in chief by JUDGE SCATES.

Q. What is your business? A. I am not in any business at present. I have been engaged in loaning money here; I have quit that kind of business. I have been here thirteen years.

Q. Are you acquainted with Mr. Olmstead? A. Yes; some little. I got acquainted with him when he came here in 1854. I was boarding at the same place where he was boarding.

Q. Are you acquainted with his general reputation for truth and veracity? A. I cannot say that I am; it is with me as with the rest—I lived with Mr. Merrick. There was some like talk about the building. There was some talk as to his general reputation. I mean there was but a few I have talked with about that, I can state a few I have talked with about; I had talked with these men and



other men when he was putting up buildings. I have heard others speak that I didn't talk with. His general reputation would perhaps require more than I have talked with ; I can give my statement as to the number. If it would make a general reputation I can answer your question. When he came here I don't suppose he had much acquaintance, I say perhaps half a dozen. I can name three or four or five. I can state so far as this the general reputation I have heard of him. I didn't have any difficulty with him, but having business with Mr. Merrick, that perhaps led me to talk more about it than otherwise.

Q. Is his reputation good or bad ?    Objected to.    Objection overruled.

*Defendant's counsel excepted.*

WITNESS. It is a pretty hard question to answer, but I can't say that I can say anything in his favor.

Q. Is it good or bad ?    A. It is bad.

Q. From that reputation would you believe him under oath ?    A. That is a pretty tight question ; if he was interested I should be afraid to risk it.

Cross examined by Mr. Burgess.

70

Q. If he was not interested what then ?    A. He could tell the truth as well as any other man, of course. I have no feeling on my part. Take him in all cases I should be afraid to risk him.

Q. You were acting for Mr. Merrick ?    A. Yes, sir ; in his business.

Q. Were any others mixed up in that quarrel ?    A. No, sir ; with the hands, not with him. In settling up there was some difficulty in the measurement. It was not for me to have any feeling at any rate ; it was a matter of Mr. Merrick's. I had no feeling at the time ; it was between the hands. It was for him to say whether so much should be paid or not—it was between Mr. Merrick and the workmen ; it was built by the day. The difficulty was there was too much time reported. They charged full time from the time they commenced. The architect was to keep the correct time he had charge of the building. They reported the time and he certified to it in the end, and Mr. Merrick thought he certified to too much—and that led to this talk. There was an agreement and we finally settled it. There was no difficulty between us ; it was all between him and the workmen.

Q. The workmen didn't find any fault, did they ?    A. They didn't if they got their pay. Mr. Merrick found fault with Mr. Olmstead. He thought he did not pay sufficient attention to it. The workmen were satisfied.

71

Q. Did you hear them say what they believed as to the time certified ?    A. No, sir ; I didn't hear them—they claimed the time certified for them. They said it was right certainly.



Q. Mr. Merrick thought too much time was certified? A. Yes, sir.

Q. And then he began to talk like Price and Richmond? A. This was before that building was done I talked with Price. I talked with Mr. Van Osdel and Mr. Granniss too. There are three Prices, brothers—one of them had the job.

Q. Who else did you hear? A. I don't recollect any others; I guess it is the man who had this business—I guess I heard Mr. Drake talk, I would not be positive, but Mr. Peterson I think. He had the plastering I think.

Q. Did Mr. Peterson and Mr. Olmstead ever have any difficulty? A. I don't know; I don't know as Olmstead ever had any difficulty with any of these men that I have spoken of.

72

Q. Did you say Olmstead certified the work on that building? A. I think so, I would not be certain about the Prices. I know they got together and it was finally settled and there was a deduction made, I don't remember about the last. It was done by the day—there was a discount on the matter when it was settled. I could tell by referring to my bills.

Q. Didn't he refuse to certify in the end to the mechanics' bills? A. I would not be positive as to that, I can't recollect; I know there was an arrangement and a settlement and it was all agreed upon. They got together and made the compromise some way.

**JOHN M. VAN OSDEL, called by the Plaintiff, sworn, .**

And examined by JUDGE SCATES.

Q. What is your occupation? A. Architect.

Q. How long have you lived in the city? A. twenty-two years.

Q. Were you in partnership with Mr. Olmstead at one time? A. Yes; about eleven months I think.

Q. During that time did your firm undertake to draw the plans or specifications of the Young America or some part of it? A. Yes, sir; an addition. It was so done by our firm; Mr. Olmstead had special charge of it. We had at the same time the Briggs House and I took charge of that specially, and Mr. Olmstead of the Young America specially. I was seldom in that building and he seldom in the other.

73

Q. Was that work paid for to you? A. At the time we dissolved there was an account of \$320 against Mr. Cook for which I sued him and got judgment, the accounts being all assigned over to me, and I understood from Mr. Cook's lawyer that a petition was presented to the Court to set aside the judgment.

Q. Did you see that receipt? A. No, sir; I know the judgment was set aside.



Q. On what ground? A. I understood from his lawyer only.

Q. Who was his lawyer? A. Col. Carpenter.

Q. What Court was the judgment in? A. The Circuit Court, I believe.

Q. Did Mr. Cook ever pay you for that work? A. No, sir.

Q. You say that account fell to you in the division with Mr. Olmstead of the matters of the firm? A. All the matters of our firm for collection were set over to me; the firm was indebted to me.

Q. How long have you known Mr. Olmstead? A. About five years, sir.

Q. Where did you know him? A. I first became acquainted with him in this city, I think about five years ago.

Q. Are you acquainted with his general reputation for truth and veracity among men doing business with him? A. I am, sir.

74

Q. Is it good or bad? A. I am very much afraid—I was in hopes that would not be propounded to me.

Court. Answer the question.

Witness. It is bad, sir.

Q. From that reputation would you believe him under oath? A. I should rather have it corroborated.

**Cross Examined by Mr. Burgess.**

Would you believe the statements of Mr. Olmstead in this case in reference to whom this contract was with? Objected to. Objection sustained.

Q. Have you and Mr. Olmstead had difficulties in the course of your business connection? A. Well, there were difficulties; I had a difficulty to get my share of the money, that was one difficulty.

Q. Did you have any other difficulty? A. Yes.

Q. What was its character? A. Do you want me to go fully into it? I have no feeling against Mr. Olmstead. The world is wide enough for us both. If it is necessary for the cause of justice I will go into it. I think the difficulty was all on one side.

Q. Was it on his or on yours? A. No, sir.

Q. You never thought he was doing wrong with you? A. No, sir; it is a difficulty of his making. I think I can appreciate a wrong, when I receive it.

75

Q. Have you not received what you conceive to be wrongs from him, and are you not testifying under the influence of that? A. No.

Q. Have you heard the other witnesses? A. I heard a part of Mr. Hamilton's. I have not been in Court more than fifteen minutes to day; I did not hear Mr. Richmond.

Q. Did you ever say anything to Mr. Richmond against the character of Mr.



Olmstead? A. I think it would be against his character. I said he got his building by telling a lie.

Q. Did he get it away from you? A. Yes.

Q. You thought he got it away from you? A. I know it. I wrote a letter to Mr. Richmond explaining the circumstances.

Q. Did you say anything more than to accuse him in that single transaction between you? A. I don't remember that I did.

Q. Did you ever say anything to Mr. Merrick about it? A. Very likely I did. I don't recollect—I don't recollect what I said.

Q. Did you say anything against his character for truth and veracity? A. Very likely I have spoken to a great many.

76 Q. You have gone around telling a great many people? A. I didn't say so; I have had Mr. Olmstead's name brought up to me and the position we occupied a great many times.

Q. Was there not a great deal of rivalry as to the positions you occupied? A. Not on my part.

Q. Was there any dispute between you as to how to settle the unfinished business? A. No, sir; we divided the business on hand.

C. PRICE, called by Plaintiff, sworn,

And examined by JUDGE SCATES in chief.

Q. How long have you lived in the city? A. About twenty-two years off and on.

Q. Are you acquainted with Mr. Olmstead? A. I am by reputation, I have known him four or five years.

Q. Are you acquainted with his general reputation for truth and veracity? A. Amongst a certain class of people I am—the mechanics. He has been dealing with mechanics here.

Q. Is that reputation good or bad? A. Bad.

Q. Is that reputation confined to mechanics? A. I believe it is with people that have had deal with him.

Q. You mean his acquaintances? A. Those that are acquainted with me.

THE COURT. Amongst your acquaintances that are acquainted with him? A. Yes.

77 Q. Would you believe him on oath from that reputation? A. I should hate to believe him on oath.



**Cross Examined by Mr. Burgess.**

Q. Who have you heard say anything about him? A. Mr. Sollitt, Mr. Hays, Mr. Johnson, Mr. Van Osdel, Mr. Malcolm.

Q. All contractors? A. Yes, most of them.

Q. Have they had any difficulties with Mr. Olmstead? A. Mr. Malcolm had some little; nobody else that I know of.

Q. Did you gather it from their conversation? No; it was his general reputation amongst them. Mr. Malcolm had some feeling, but the others had no more than —

Q. What? A. Common conversation came up. Mr. Malcolm said he was a dangerous man for mechanics to deal with. He was not a fair man; not honest in his dealings.

Q. Was it not that he would not certify their work as high as they wanted? A. Some said he would not certify at all.

Q. They were capable of doing it as well as he was? A. He would not certify to it when it was done well. I never dealt with him myself. They said he was very contrary.

78 Q. He looked a little too much after the owner rather than the mechanic? A. I don't know. He looked after himself pretty much.

Q. What possible interest could the architect have between the owner and the mechanics? A. His reputation generally was that he liked to be paid for estimates.

Q. By whom? A. By the mechanics.

Q. Do you say that he was ever paid? A. No, sir; I say that that was what they said — what they complained of. I never had difficulty with him.

Q. Had your brother? A. I don't know that he did.

Q. Have you had difficulties with Mr. Cook? A. No, sir.

Q. Your brothers had? A. Not that I know of.

Q. Didn't you have some difficulties about the south end of the Young America building? A. No, sir. I just notified Mr. Cook that the building was in danger.

Q. Didn't you threaten to tear it down? A. No, sir.

79 Q. Didn't you tell him it was to be torn down in twenty-four hours? A. No, sir; I told him if it was dug out, it would fall down. Mr. Cook said if the building was torn down he would make me pay. I told him I didn't notify him except as any other man.

**Direct Resumed by Judge Scates.**

Q. You are a contractor and mason? A. Yes.

Q. You are a brother of Ex-Postmaster Price? A. Yes.



**SANFORD JOHNSON** called by Plaintiff,

Being duly sworn, was Examined in chief by JUDGE SCATES.

Q. Where do you reside ? A. West Division.

Q. How long have you lived here ? A. Twenty-five years.

Q. What is your occupation ? A. Carpenter and joiner.

Q. Are you acquainted with Mr. Olmstead ? A. I have known him some four or five years

Q. Are you acquainted with his general reputation for truth and veracity ? A. I have never had anything to do with him myself. His general reputation is bad. That is, I have always heard men speak bad of him ; I never heard men speak well of him.

Q. From that reputation, would you believe him under oath ? A. Not having anything to do with him, I would not like to swear.

Q. If he was what people say, would you believe him under oath ? A. No, sir ; particularly if he was interested.

80

Cross examined by Mr. Burgess.

Q. What if he was not interested ? A. Then he could tell the truth, if he was a mind to, as well as anybody else. I have had no difficulty with Mr. Olmstead. The only difficulty ever was between us was at the time he was in partnership with Mr. Van Osdel building the Briggs House. When Mr. Van Osdel went to Springfield, he came up there and ordered some timbers and I ordered him out. For it was the distinct understanding with the Briggs House that he was not to have anything to do with it, and I ordered him out. When Mr. Van Osdel came home, he sanctioned it and said it was right. If you may call that a difficulty, that is the only word of difficulty Mr. Olmstead and me ever had. I never did anything under him ; I always refused. I heard Mr. Foot find fault with him, and the Price boys and all that ever worked under him that ever said anything. I can't call to mind who all worked under him. May be I heard Mr. J. Y. Scammon speak of him not very well. He said Mr. Olmstead said he did a great deal of building in the way of building hotels in New York, and he wrote down there and the man wrote back that he did not know such a man. I was not acquainted with him and did not know about these things.

Q. Do you know of raising any money to drive Mr. Olmstead out of town ?

A. No, sir ; I never gave money to turn any man out of the city.



**SAMUEL L. WALTER** Sworn, Examined in chief,

81

By JUDGE SCATES.

Q. Where do you live? A. In Chicago.

Q. What is your occupation? A. Brick mason.

Q. Did you do the brick work in the Young America? A. No, sir; my brother and me. I had the superintendence of it.

Q. Do you know Mr. Olmstead? A. Yes; I have known him since the fall of 1853 in the city.

Q. Are you acquainted with his general reputation for truth and veracity among business men? A. I have heard it spoken of frequently; I have conversed with mechanics and builders.

Q. Is his reputation for truth and veracity good or bad? A. It is bad as far as I have heard. So far as I have any knowledge — so far as mechanics are concerned — I have heard him spoken of, I have never heard it spoken of other than not being truthful myself. I have been acquainted with him for several years.

Q. Would you believe him under oath from that reputation? A. I would not.

**Cross Examined by Mr. Burgess.**

82

Q. Have you had difficulties with Mr. Olmstead? A. No, sir.

Q. Did you agree with him as to the amount of work, &c. on the Young America? A. No, sir; not as to the amount of work, that was with my brother.

Q. Did you not agree with your brother? A. Yes, sir.

Q. Then you differed from his opinion? A. Of course I did; as it regards that matter there was a difference, but not personal. I meant a personal one between us. There never was any altercation between us two.

Q. Was there not a law suit grew out of that matter? A. Yes, sir.

Q. You testified on that and he did? A. Yes.

Q. Who have you heard say anything about him? A. I have heard Mr. Hughes, Mr. Button, (Q.) I have heard almost every mechanic I have conversed with in town speak about it.

Q. Did it not all grow out of work that he superintended? A. Yes; I did not hear them say anything as it regards the certificates. They said he would not speak the truth. He would say one thing and then say another. That I know myself. I knew him to say things and then swear in the contrary myself.

Q. What was the ground of that difficulty with the mechanics? A. He was not a fair man in business transactions as superintendent.

83

Q. He sided with the owners, did he? A. I don't know what he did in all cases; many think when his interest was there he acted.



Q. There was still a difference between him and the mechanics? A. Yes.

Q. All these mechanics had difficulties? A. Yes; for instance, my brother had a difficulty and the difficulty was this——

Never mind that, there are two sides to every story.

*Rebutting testimony closed.*

SUR-REBUTTING TESTIMONY OFFERED  
BY THE DEFENDANT.

**L. D. WILKINSON** called and sworn. Examined by Mr. Burgess.

Q. Do you know W. B. Olmstead? A. Yes; the architect. I have known him since the spring of 1855.

Q. Are you acquainted with his reputation for truth and veracity? Yes; I am.

Q. What is it? A. It is good.

Q. Would you believe him under oath? A. Yes, sir; I have had occasion to enquire into it.

84 Q. Were you present at the trial wherein Judge Morris was an arbitrator? A. I was attorney in that case for Mr. Walters against Isaac Cook, for the mason work on the Revere House. I heard him testify on that occasion.

**Cross Examined.**

Q. Did you hear anything said of his character? A. I did, on that occasion, hear it questioned by my client.

Did you ever hear it questioned by another man? Is that the only time? A. Yes.

Q. Your profession is that of a lawyer, I believe; you have not been out among the laborers and builders? A. Some; enough to hear anything said about him among that class of humanity.

Q. Did you hear it questioned? A. You ask me a very safe question unless you allow me to answer it in my own way.

Q. Tell the simple fact. A. It was known perhaps by those builders that I was attorney in that case, and it was a very hard fought case and in which Captain Olmstead was the material witness for Mr. Cook. The builders and architects have frequently spoken in reference to that case. If you will now allow me with



that exception I will answer. My answer would be that among the architects of this city his reputation for truth is good.

Q. I asked if you had heard it questioned? A. I have heard it spoken of in connection with that case and no other case.

85

Q. Have you heard his character for truth and veracity questioned, disputed? Have you not heard builders, mechanics, architects, &c., question his truth and veracity, his fairness, &c.? A. I think I have.

**Direct Examination resumed.**

Q. In what connection? A. In connection with the explanation of that suit.

Q. Who were they? A. I would rather not tell, but I think I have heard Mr. Hawks speak rather unkindly of Captain Olmstead. I have heard a man not now living in the city, Mr. Foster, now somewhere in Wisconsin or Minnesota, I am not sure. The Captain knows better than I do whether the architect of this building, Mr. Van Osdel, has spoken unkindly of him; I think I have heard him do so—I think perhaps I have heard Mr. William Thomas, I am not sure about it. I would make that answer under safety. This occurred in connection with this suit, all in conversation growing out of this suit of Walters versus Cook, in which I endeavored to break his testimony but didn't succeed.

**Second Cross Examination.**

Q. Mr. Hawks is an architect? A. Yes.

Q. Mr. Foster? A. He was a builder also; he has now left the city.

86

Q. Mr. Thomas? A. He is a builder also; now I believe engaged in Indiana in architecturing a building down there. He architected my building and that is why I happened to know about him.

**REUBEN CLEVELAND, called and sworn.**

Examined by MR. BURGESS.

Q. Do you know W. B. Olmstead? A. I do.

Q. How long have you known him? A. Since about the summer of 1854—he is an architect.

Q. Do you know anything about his reputation for truth and veracity in the neighborhood in which he resided then? A. Well, I never heard it questioned that I know of until to-day; it is good so far as I know.

Q. Have you heard people talk about him? A. I have heard a good many.



Cross examined by Judge Scates.

Q. You say you have heard talk about him. Did you ever hear anybody question his truth and veracity? A. I think I never did until to-day.

Q. Why did they speak of it? A. I have done a great deal of work under Mr. Olmstead—I am a carpenter by trade. I never heard it questioned until to-day.

Q. You didn't know his character? A. I did not know of his character being such as I heard it to-day; I rather took him for an honest, upright man.

87 Q. Are you the individual who bought the safe of Mr. Olmstead? A. I have bought a safe of Mr. Olmstead. It was very early in the spring, along in March or April—one that he left here when he went away, with his son-in-law.

Q. What did you give him for it? A. I was to give him about seventy dollars for it. I did not get it. A gentleman named King claimed the safe and said he had sold it. He didn't say who to.

Direct Examination Resumed.

Q. You are City Superintendent? A. Yes, sir; I am.

Q. Were you one of the arbitrators in that case of Walters vs. Cook. Objected to. Objection sustained.

Second Cross Examination.

Q. Have you any ill feelings towards Mr. Hunt? Have you some controversy? A. He has sued me; I don't know whether you call that a controversy. I have no feeling against him. He is in my office every few days.

E. J. HIGGINS called and sworn.

Examined in chief by Mr. BURGESS.

Q. Do you know Captain Olmstead? A. I do.

88 Q. How long have you known him? A. A little over fifteen years; I knew him in this city ever since he has been here; I don't know how long it is. He is an architect.

Q. Are you acquainted with his reputation? A. I thought I was; I think so now.

Q. What is his reputation for truth and veracity? A. All correct as far as I know. I never knew anything out of the way in him anywhere.

Q. From what you know of him would you believe him under oath? A. I would as quick as any man I know of.



Cross Examined by Judge Scates.

Q. What is your occupation at present? A. My occupation in years gone by was machinist. I was in the army about seventeen years; since then I have been here in Chicago the last eight years. I had charge of a foundry of a machine shop. For the last four or five years I have had charge of the Masonic Temple. Now I am a sort of what some people would call the Masonic Temple Janitor. I am getting old and feeble.

Q. Is Mr. Olmstead a fellow in that society? Is Mr. Cleveland? Objected to. Objection sustained

Q. Did you ever hear anybody question his truth and veracity? A. No, sir; not that I know of.

89

Q. Did you ever hear Mr. T. O. Wilson make any complaints? A. He told me he and Mr. Olmstead had some little difficulty but never questioned his truth and veracity. He is the only man I ever heard make any complaints about him.

S. C. LUM, called and sworn,

Examined by MR. BURGESS.

Q. Do you know Mr. Olmstead? A. I do; I became acquainted with him in the summer of 1854 in Chicago. He was an architect at the time.

Q. Do you know his reputation for truth and veracity? A. I never heard it questioned before until since I have been in this room.

Q. From what you know of him would you believe him under oath? A. I certainly should from my own knowledge, as far as I have heard his general reputation has been good; I never heard anything to the contrary. I have had conversations with persons that named him and never questioned his truth and veracity.

Cross Examined by Judge Scates.

Q. You never heard any talk in reference to him about this subject. A. Never any more than common casual conversation; I never heard him questioned for truth and veracity. I have lived here six years this fall.

90

Q. What business do you follow? A. I am keeping a boarding house and saloon, 89 Dearborn Street.

Q. Are you connected with some lodge? A. No.

Q. You never heard this subject mentioned? A. Never, sir; never heard him questioned.

Q. Never heard him praised for truth and veracity? A. No, sir; I have heard him spoken of as a business man since 1854. I don't recollect that I ever heard anything said about it.



**ROBERT McLEAN**, called and sworn,

Examined by Mr. BURGESS.

Q. Do you know Mr. Olmstead? A. Yes, sir; since 1855. He has been engaged as architect.

Q. Do you know his reputation for truth and veracity? A. So far as I know it has always been good. I am on my farm. I was in the fruit business.

**Cross Examined by Judge Scates.**

Q. You say as far as you know—what do you know? A. I used to be in Mr. Olmstead's company a great deal. I got his reputation from being with him and around him. He is captain of a military company I belong to. There are a great many members and he is always spoken well of. I never heard anybody say anything about his character for truth and veracity.

91 Q. Neither one way nor the other? A. I have heard it spoken of as good. In business contracts I have heard them speak of it that he was a nice pleasant man to deal with and they thought a great deal of him.

Q. Did they say he always told the truth? A. Yes; I don't know why they said so. In dealing with a man very often you speak of him as being a nice man to deal with. I don't know as I can give any particular reason. I have heard men say Mr. Olmstead was a nice man, not particularly to the point of truth and veracity, I have not.

**Direct Examination Resumed.**

Q. Was the captain of that company elected? A. Yes.

Q. Was you a member when he was elected? A. He was captain when I was elected.

**Second Cross Examination.**

Q. Didn't they vote him out of the company? A. No, sir.

Q. How did he get out? A. The company broke down.

Q. How came you to be captain? A. I was not captain. He was captain and I was an active member.



**ROBERT McLEAN**, called and sworn,

Examined by Mr. BURGESS.

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Q. Do you know his reputation for truth and veracity? A. So far as I know it has always been good. I am on my farm. I was in the fruit business.

**Cross Examined by Judge Scates.**

Q. You say as far as you know—what do you know? A. I used to be in Mr. Olmstead's company a great deal. I got his reputation from being with him and around him. He is captain of a military company I belong to. There are a great many members and he is always spoken well of. I never heard anybody say anything about his character for truth and veracity.

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Q. How did he get out? A. The company broke down.

Q. How came you to be captain? A. I was not captain. He was captain and I was an active member.



**J. N. BARKER** called and sworn. Examined by **Mr. Burgess**.

92

Q. Do you know Mr. Olmstead? A. Yes; I think I have known him about four years.

Q. Do you know his reputation for truth and veracity? A. I don't know that I do much; I don't know anything against his reputation for truth and veracity.

**MR. McALLISTER**. The question is whether you are acquainted with it? A. I don't know. I have known him for that many years.

Q. Do you know his friends and acquaintances? A. No, sir; I never heard his reputation spoken of at all.

Q. Never heard it questioned? A. No, sir; not to my knowledge. I never heard anything said against him until this morning. I heard they were intending to impeach him. I am acquainted with his friends. I have been in his office a great many times. He was the architect for a house I built on Wabash Avenue. I knew nothing against his general reputation as a man of fair and upright dealing, including truth and veracity.

**JUDGE SCATES**. Do you know it? A. I know it only in that way. I know a great many of his friends, and have never heard anything against it from them or others. That is all I know about it.

Q. From what you have heard said of him, would you believe him under oath?

A. Yes, sir. Objected to. Objection sustained.

*Defendant's counsel excepted.*

93

**WITNESS**. I say I have known Mr. Olmstead and known persons he has done business with, and I never heard them say anything against his reputation for truth and veracity at all.

**Cross Examined by Judge Scates.**

Q. You say you never heard anybody say anything for him? A. I don't know that I ever heard it questioned; never heard it for or against.

**WILLIAM H. KING**, called and sworn,

Examined by **MR. BURGESS**.

Q. What is your business? A. Practicing attorney.

Q. Do you know Mr. Olmstead? A. I have no particular acquaintance with him, I have known him for a few years as an architect in the city.

Q. Do you know his reputation in the community? A. I derive it from his friends, from those who done business with him. It is first rate.



Q. Would you believe him under oath? A. Unhesitatingly.

Cross Examined by Judge Scates.

Q. Did you ever hear it questioned as against? A. No, sir; I have heard it highly spoken of. I never heard it on the other side until I came into this Court-room. I have heard what has been said since I came in. I was not here this forenoon.

94

TURNEY GILBERT, called and sworn,

Examined by MR. BURGESS.

Q. Do you know Mr. Olmstead? A. Very well; I think I have known him some four or five years.

Q. Are you acquainted with his friends and acquaintance? A. Tolerably well. I have done business with him myself.

Q. Do you know anything of his general reputation for truth and veracity? A. Yes, sir; it is good.

Q. From your own knowledge of it would you believe him under oath? A. I would, sir. I have had business relations and transactions with Mr. Olmstead and I have always found him to be true. I know his general reputation in regard to that matter with other parties to be most unquestionable.

Cross Examined by Judge Scates.

Q. How many did you hear speak of it? A. I am unable to say; I never heard his character for truth and veracity questioned until I came in here—I have been here about half an hour.

Q. You are an attorney? A. Partially so.

MR. BURGESS. Have you ever done business with him? A. Yes, sir.

ISAAC SPEER called and sworn,

95

Examined in chief by MR. BURGESS.

Q. Do you know Mr. Olmstead? A. Yes, sir; I have known him about three or four years I guess. He has been an architect. I do not know his friends and acquaintances.



Q. Do you know anything about his reputation for truth and veracity in the community in which he lives? A. No, sir; I never heard it questioned. I never heard anything said against him.

Q. What is your business? A. Jeweller. I have lived in Chicago twenty years. I have not known Mr. Olmstead particularly. I have seen him about his office and around in the city a good deal. I have never heard anything against his character at all in any shape whatever.

Q. From what you know of him would you believe him under oath? Objected to. Objection sustained.

*Defendant's counsel excepted.*

WITNESS. I have never had business enough to do with him to know his general character, any more than a man in the community the same as anybody else. I never heard anything against him in the world; never heard anything about it one way or the other. I always considered him a good, fair man.

**THOMAS BLACK** called and sworn. Examined by **Mr. Burgess.**

96

Q. Do you know Mr. Olmstead? A. I have known him pretty near six years about as well as any man in the city. I have done about as much business with him as anybody.

Q. Do you know his reputation for truth and veracity? A. It is about as good as any man in the community.

Q. From your knowledge of it would you believe him under oath? A. Yes.

Q. In what business are you engaged? A. The liquor business. I have known him in St. Louis since he came there; he has lived there for two years.

**Cross examined by Judge Seates.**

Q. You saw him nearly every day? A. Yes.

Q. Who were his associates? A. Mr. Cook and a hundred others I could mention. I speak of men doing business with Mr. Olmstead; I know his business as an architect. I used to keep saloon under the Matteson House. That was where I saw him.

Q. And his associates were those who came there drinking? A. No, sir; if I saw a man with him I supposed they were gentlemen; I didn't see him go with loafers. I don't know that I ever heard his reputation spoken about at all for truth and veracity.

Q. How do you know it is good? A. I have done some little business with him, and I am talking about his honesty; I don't know any person who has the hardihood to tell me he was not a man of truth and veracity.

97



Q. What would follow? A. I would tell him he was no gentleman.

Q. The question is whether you know his reputation for truth and veracity, hard as the case might seem—do you know it? A. He might have told lies that I never heard of, but I believe he is a gentleman.

Q. What do people say of him? A. I never heard anything about it; I have heard men speak well of him. He belonged to a company and his company used to patronize me. He can get up a good company in St. Louis.

Q. Did you ever hear any man say he was a man of truth? A. I never had any conversation of that kind with a gentleman.

Q. You never heard any man say he was a liar? A. No, sir; I should not like to hear him say so.

Q. Never heard anybody say anything on the other side? A. No, sir.

**L. N. PARSONS, called and sworn. Examined by Mr. Burgess.**

Q. Do you know Captain Olmstead? A. Yes; I have known him about three and a half years—he is an architect. I am in the insurance business now.

98 Q. Do you know anything about his friends and acquaintances? A. Yes, sir; I can't say I know the men he has done business with—that I am personally acquainted with them. I have known him and people that have been intimate at his house.

Q. Do you know what his reputation for truth and veracity in this community is? A. I never heard it called in question before. I have been personally acquainted with him since three years ago last December. I knew him before by reputation, I think two years or more; I don't know the exact time. I knew some men who worked in his office. I knew a man named Mitchell that was his foreman or whatever you call it. I never heard anything against his character for truth and veracity. He was born in the place I came from last, within a mile of the place, Auburn, New York, and I have heard many speak of him there. My father-in-law lived here during the summer and fall of 1857. I came here in May and done business here.

**Cross Examined.**

Q. Did you hear any anybody say he was a man of truth? A. I have heard my father-in-law speak of it in that manner, of his being a man of truth, I asked him; we were intimate with the family and he has spoken of him to me.

Q. Anybody else? A. I don't recollect. I can't mention names.



**J. D. JENNINGS** called and sworn. Examined by **Mr. Burgess.**

99 Q. Do you know Captain Olmstead? A. I have known him only for a short time — three or four months before he left. He was an architect. He drew up the plan for my present dwelling. I don't know that I knew many of his friends and acquaintances. He left three or four months after my acquaintance was formed. I never heard his reputation questioned, never heard it spoken of either way that I know of. I have supposed that it was good, but my acquaintance was short. I knew nothing to the contrary.

**ISAAC L. MILLIKEN** called and sworn.

Examined by **Mr. BURGESS.**

Do you know Captain Olmstead? A. I do; I have known him for several years, perhaps five or six; he has been an architect. He never has done any business for me. I think I know some of his acquaintances, business men. I don't know as I know any considerable number of his business friends, but I think I know his acquaintances generally; many of them.

Q. Do you know what his reputation for truth and veracity in this community is? A. I can only say I have never heard it questioned. I have never heard anything said one way or the other as to his reputation for truth and veracity. I think he is a man pretty generally known. His character is good so far as I know.

**Cross Examined by Judge Scates.**

99 Q. Can you speak from reports or your own personal opinion? A. No, sir; I don't speak from my own personal opinion. I don't know that I know his character, except that I never heard it questioned. I was acquainted with those among whom he was acquainted. I have heard him frequently spoken of. I never heard his truthfulness questioned.

**CLINTON R. JONES** called and sworn.

Examined by **Mr. BURGESS** in chief.

Q. Do you know Mr. Olmstead? A. I do; I should think I have known him seven or eight years. I think I am acquainted among his friends and acquaintances.



Q. Do you know his general reputation among persons who know him in this community for truth and veracity? A. I never heard anything against him. I have frequently heard him spoken of as a man and never heard him questioned for truth and veracity.

Q. From what you know about him would you believe him under oath? A. I certainly should.

**Cross Examined.**

Q. Did you ever hear anybody say he was a man of truth? A. No, sir; I never heard him spoken of on that subject. I have been acquainted with a good many of his acquaintances but not the question of his truth and veracity at all.

**WILLIAM L. CHURCH, called and sworn,**

Examined in chief by MR. BURGESS.

Q. Do you know Captain Olmstead? A. Yes; I don't know how many years I have known him. He was an architect.

100 Q. Are you acquainted with many of his friends and acquaintances?  
A. I don't know that I know who his intimate friends are; I only knew him as I know lots of other persons, men in the place. I never heard his reputation for truth and veracity questioned; I believe he is a man well known in this community. I do not call to mind when I have heard him spoken of. I never heard his reputation questioned; I know him like Mr. Van Osdel and others. I can't call to mind when I have heard Mr. Van Osdel spoken of.

Q. You are clerk of the Circuit Court? A. Yes.

Q. Have a pretty general acquaintance? A. Yes; I have been sheriff of the County.

JUDGE SCATES. You say you never heard him spoken of as respects his reputation for truth and veracity one way or the other? A. No, sir.

**WILLIAM BROSS, called and sworn,**

Examined in chief by MR. BURGESS.

Q. Do you know Captain Olmstead? A. Yes; I don't remember how long; It is quite a long time since I have known him. He is an architect here—I have been in his office frequently. We had some considerable talk about some plans at one time, but we have never had any business. I don't know who he may have done business with; he was here a long time and did a great deal of business.



101

Q. Do you know anything about his reputation for truth and veracity? A. I never heard it questioned, sir. So far as I am personally concerned I have never known anything but what was perfectly fair; I don't think I ever heard anything against him. So far as I know his reputation is very good. With me it would be so.

**Cross Examined by Judge Scates.**

Q. You don't know his reputation for truth and veracity? A. I know it simply as I know every other man's in the city. I never heard anything against him. I never heard him spoken of one way or the other as to veracity. So far as I know his reputation is entirely good. I know it only as I know hundreds of others. I never heard anybody speak of him except as a business man—an architect.

Q. I am speaking of truth and veracity. A. Well!

Q. Do you know anything about what is said by the community in relation to his truth and veracity? A. No, sir; I don't know as I do.

Which was all the evidence in the cause, and that the bill of particulars filed with Narr. is as follows:

CHICAGO, \_\_\_\_\_

**ISAAC COOK, Esq.**

1854

**TO EDWIN HUNT,**

102

October 31,	543½ lbs. soil pipe, 4 in. @ 12½ c.	\$67 94
	3 S. Traps, \$5.00	15 00
	5 Bends, 4.00	20 00
	35 lbs Solder, 40 c. (see footing for deduction)	14
	11½ lbs ½ in. lead pipe, 10 c.	1 15
	55 lbs 1½ in. waste do. 10 c.	5 50
	5½ days plumber and helper, 5.00	27 50
	2 " " " " "	10 —161 09
November 11,	480 lbs 1½ in. lead pipe, 10 c.	48
	1426 lbs 2 in. " " "	142 60
	625 lbs ¾ in. " " strong,	62 50
	181 " 4 in. soil " 18½ c.	33 94
	112 " solder, 31½ c.	35
	57 " sheet lead 10 c.	5 90
	15 " tacks 12½ c.	1 88



	270 lbs 1 in. strong pipe . . . . .	\$27	
	170 " $\frac{1}{2}$ " " " . . . . .	17	
	155 " $\frac{5}{8}$ " " " . . . . .	15 50	
	4 $\frac{1}{2}$ " nails @ 6 c. . . . .	27	
	2 gro. screws 1 in. @ 75 c. . . . .	1 50	
	1 4 $\frac{1}{2}$ in. bend. . . . .	4	
	12 $\frac{1}{2}$ days plumber and helper, 5.00 . . . . .	62 50	
	30 lbs 1 in. strong pipe, 30 c. . . . .	3	
	25 " $\frac{5}{8}$ in. med. . . . .	2 50	
	1 gro. screws, 75 c., 2 lbs tacks, 12 $\frac{1}{2}$ c. 25 . . . . .	1	
	4 days plumber and helper, 5.00 . . . . .	20	
	Paid balance on permit . . . . .	50	
	354 lbs 1 in. strong pipe, 10 c. . . . .	35 40	—514 99
December 13,	1087 lbs 8 lb sheet lead, 10 c. . . . .	108 70	
	1 coil 1 $\frac{1}{4}$ in. lead pipe, 169 lbs . . . . .	16 90	
	2 " $\frac{3}{4}$ " " strong, 353 lbs . . . . .	35 30	
	69 lbs solder 31 $\frac{1}{4}$ c. 51.56, 13 lbs tacks 12 $\frac{1}{2}$ 163 23 19		
	44 lbs $\frac{3}{4}$ in. strong pipe . . . . .	4 40	
	1 gro. 1 in. screws . . . . .	75	
	2 days plumber and helper, 5.00 . . . . .	10	
	$\frac{1}{2}$ days labor. 1.50 . . . . .	75	
	2 1 in. rough stop cocks, 2.75 . . . . .	5 50	
	3 traps en. 2 in. 2.00, 3 in. 3.00 . . . . .	15	
	27 $\frac{1}{2}$ lbs $\frac{5}{8}$ in. strong pipe . . . . .	2 75	
	22 " $\frac{3}{4}$ " " " . . . . .	2 30	
	4 " 2 " trap screws, 1.25 . . . . .	5	
	46 " 1 $\frac{1}{4}$ in. waste pipe . . . . .	4 60	
	6 days plumber and helper, 5.00 . . . . .	30	
	1 " labor . . . . .	1 50	
	4 " plumber and helper, 5.00 . . . . .	20 00	
	607 lb sheet lead, 10 c. . . . .	60 70	
	670 " " " " . . . . .	67	
	1 1 $\frac{1}{4}$ in. rough stop cock . . . . .	3 75	
	1 " " finished . . . . .	4 75	
	1 iron hopper . . . . .	8	
	1 3 in. S. trap . . . . .	4	
	20 bush. charcoal, 15 c. . . . .	3	
	47 lbs solder, 31 $\frac{1}{4}$ c. . . . .	14 69	—452 53
	3 $\frac{5}{8}$ in. rough stop cock, 1.50 . . . . .	4 50	
	6 days plumber and labor, 5.00 . . . . .	30	—34 50



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26	798 lbs sheet lead . . . . .	\$79 80	
	13 days plumber and helper, 5.00 . . . . .	65	—144 80
30	72 lbs solder, 31½ c. . . . .	22 50	
	30 " strong lead pipe . . . . .	3 00	
	32 bush. charcoal, 15 c. . . . .	4 80	
	1 water closet basin . . . . .	16	
	1 " " cistern . . . . .	15	
	1 ball cock and ball . . . . .	4	
	8 flange wash trays cocks, 2.00 . . . . .	16	
	4 lbs putty, 6 c. . . . .	25	
	6 ½ in. flange screw bibb cocks, 3.25 . . . . .	19 50	
	2 ¾ in. finished stop and water cocks, 2.00 . . . . .	4	
	2 lbs nails . . . . .	13	
	10½ days plumber and helper, 5.00 . . . . .	52 50	
	2 ¼ in. bends, 4.00 . . . . .	8	
	2 shower flange cocks, 2 50 . . . . .	5	
	1 cop. shower, 2.00, 1 bath tub, 18.00 . . . . .	20	
	5½ days in shop, 5.00 . . . . .	27 50	
	778 lbs sheet lead, 10 c. . . . .	77 80	
	322 " " " strong 10 c. . . . .	32 20	
	Additional service cock, cash paid for this by		
	E. Hunt, . . . . .	3	
	1 coil strong lead pipe 1.80 . . . . .	18	
	1 1 in. rough stop cock . . . . .	3	
	4 days labor, 1.50 . . . . .	6	—394 43
1855	2 ½ in. rough cocks lever hals, 1.25 . . . . .	2 50	
January 25,	1 1½ in. bath plug . . . . .	1 50	
	2 1 in. rough stops LH 3.00 . . . . .	6	
	2 ½ in. finished stops, 1.50 . . . . .	3	
	1 ½ in. stop and water . . . . .	1 50	
	1 gro. 1 in. screws, 75 c., 14 " tacks 12½ c. 175 . . . . .	2 50	
	1 ¾ in. stop and water cock finished . . . . .	2	
	3 marble slabs, 10.00 . . . . .	30	
	3 wash-bowls, 3.00 . . . . .	9	
	3 plug washers plated, 1.25 . . . . .	3 75	
	6 No. 3 close plated basin cocks, 9.00 . . . . .	54	
	2 1 in. finished stop cocks, 3.25 . . . . .	6 50	
	1 1½ in. " " . . . . .	4 25	
	4 3 in. strainers, 31½ c. . . . .	1 25	
	2 1½ in. stop cocks, 4.25 . . . . .	8 50	
	1 4 in. double action pump . . . . .	45	

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		6 lbs tacks 75 c., 135 lbs solder 31½ c.	42.19	42 94
		8 " block tin 45 c.		3 60
		122 lbs 1 in. strong pipe, 10 c.		12 20
		22 days work plumber and helper 5.00		110
		105 lbs solder 31½ c.		32 81
		221 " sheet lead		22 10
		1 2 in. tap screw		1 50
		1 3 " S. trap		4
		1 2 " bend		3
		31 lbs 4 in. soil pipe 12½ c. 3.87, 1 4 in. bend 4.00	7 87	
		1 2 in. brass valve		1 50
		18 feet brass chain, 3 c.	54	423 31
		3 " plated " 5 c. 15, 1 4 in. S. trap 5.00	5 15	
		47½ lbs iron bolt 12½ c.	5 90	
1855		12 days plumber and helper, 5.00	60	71 05
January 31,		46 lbs solder 31½ c.	14 37	
		2 iron hoppers, 10.00	20 00	
		11 lbs tacks, 31½ c.	1 38	
		1 coil 1½ in. med. pipe 139½ 10 c.	13 95	
		2 4½ stop hopper grates, 1.75	3 50	
		3 hopper hlds. and rods, 2.25	6 75	
106		14 days plumber and helper, 5.00	70	129 95
February 17,		1 day " " " "	5 00	
		90 lbs sheet lead, 10 c.	9 00	14
March 28,		12 " solder 31½ c. 3.75, 1 gro. brass screw 1.50	5 25	
		1 pa. tacks 10 c., 1 strainer for iron sink 50 c.	60	
		3 sockets for boilers 1.25	3 75	
		2 ½ in. bibb cocks 1.50	3	
		1 No. 2 clon. plated basin cock	8	
		2 plated bath and water closet cocks 4.00	8	
		11½ days plumber and helper, 5.00	57 50	86 10
				2426 75
		Less 35 lbs solder overcharged 9 c.	3 15	
		129 lbs cuttings returned 5 c.	6 50	
		2 4 in. bends 4.00	8	
		7 lbs solder 31½ c.	2 17	19 77
				2406 98
		Amount of bill for tin work		71 85
				\$2,478 83



( 54 )

1854					
December	23,	by cash . . . . .	200		
"	30,	" " . . . . .	200		
1855					
January	20,	" " . . . . .	200		
"	31,	" " . . . . .	100		
		By cash paid to C. Drake	100	—	800 00
		Due to E. Hunt			<u>\$1,678 83</u>

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CHICAGO, \_\_\_\_\_

Mr. I. COOK

To EDWIN HUNT,

BILL FOR TIN WORK.

1854					
December 5,	207 lbs speaking pipe 6 c.	. . . . .	12	94	
	120 elbows for do. extra 5 c.	. . . . .	6		
	1 bush. charcoal 15 c., 2 sheets tin 20 c.		35		
	2½ days work by tinsmith 2.50	. . . . .	6	25	
	1 lb solder 31 c., 70 ft. speaking pipe 6 c.	4.37	4	68	
	5 elbows 5 c. 25, 1 lb solder 31 c.	. . . . .	56		
1855	1 days work by tinsmith	. . . . .	2	50	— 33 28
January 25,	60 ft. speaking pipe 6 c. 3.75, 21 angles 6 c.	1.31	5	06	
	6 iron strips 6 c. 38, 1 days work 3.00	. . . . .	3	38	
	5 lbs copper pipe and 1½ days work	. . . . .	4	50	
"	31, 14 plated mouth-pieces for speaking pipes	1.50	21		
	2 ft. speaking pipe 6½ c.	. . . . .	13		
	1½ days work by tinsmith	. . . . .	4	50	— 38 57
					<u>\$71 85</u>

And that thereupon the plaintiff tendered the Court to be given to the Jury the following instructions, viz :

1. If the Jury believe from the evidence that the plaintiff by his employees furnished the materials and performed the work in question for the defendant in this suit without any special contract therefor between plaintiff and defendant, but the defendant knowing that the same were furnished and done, as aforesaid, at the



time the same were being furnished and done, received and used said work and materials, the law implies a promise on the part of defendant to pay the plaintiff the fair value of such work and materials.

Given.

2. That if they believe from the evidence that defendant, Cook, made a contract with C. Christopher for the materials and plumbing work on the Young America, yet if they also believe that the architect in charge and superintendence of the building requesting plaintiff to do said work, and said plaintiff did perform said work and furnish said materials with the knowledge and assent of defendant, and without any agreement with or employment by said Christopher, and without any knowledge of said contract with said Christopher, but for and on account of said Cook, then he is entitled to recover the value of said work and materials.

Given.

3. If the Jury believe from the evidence that the plaintiff's account in question in this case was presented to the defendant, Cook, and that the defendant at that time requested the same to be made out in three separate accounts, and did not object otherwise to the same, these facts are competent and proper evidence for the Jury to consider in determining the defendant's liability in this cause.

4. If the Jury believe from the evidence that Olmstead, as superintendent of the work in question, ordered the plaintiff by or through Drake to do the work and furnish the materials in question in this suit, that the defendant, with knowledge of such facts and the circumstances, paid the plaintiff for a part of said work and materials, such payment, as aforesaid, is some evidence of a satisfaction, by Cook, of the acts of said Olmstead in ordering such work and materials, and the acts of said Olmstead in that behalf will be evidence tending to bind Cook, although the Jury may also believe that Olmstead had no authority from Cook at the time such order was given to order said work.

All of which Court gave to the Jury, the last two without writing upon them or otherwise marking them in the margin or elsewhere "given" or "refused."

To the giving of which instructions the defendant then and there objected which was noted.



And the defendant tendered the Court to be given to the Jury the following instructions, which the Court refused to give as asked, and amended them by inserting the words which are underscored, and in that condition marked them "given," and read them to the Jury which are as follows, viz :

1. That if the Jury believe from the evidence, that the defendant made a contract with one Charles Christopher to do the labor and furnish materials for the plumbing work in his building, the Young America. That the work specified in such contract was afterwards done by an arrangement between Christopher and Hunt. That Cook refused to recognize any person other than Christopher as the person with whom he had made the contract for such work and labor, *and that the plaintiff had notice of such refusal*, and that after he so refused the plaintiff went on and did the work and labor in controversy in this suit, and within the terms of the contract between Cook and Christopher, they must find for the defendant unless they find that the plaintiff and defendant did expressly make a contract for the same.

Given.

110 2. That if the Jury believe from the evidence that the labor and materials which are in controversy in this suit were done and furnished by the plaintiff in fulfilment of a contract made between the defendant and Christopher, the defendant is not liable to Hunt and they will find for the defendant, *if the plaintiff so understood it at the time.*

Given.

3. That if the Jury believe from the evidence in this cause, that the contract for doing the plumbing work on the Young America was not let to Hunt, *and that Hunt was not employed by Cook or his agent.* That Cook, after Hunt had done some plumbing work, refused to recognize him as contractor, and did to his, Hunt's, or that of his agent, Drake's, knowledge recognize Christopher as the contractor for the work so done, and paid money upon the order of Christopher as contractor to either of them for such work, then, unless an express contract is shown to have been made between Hunt and Cook afterwards about the plumbing work, the mere fact that Hunt prosecuted and completed the job, will not *of itself* entitle him, Hunt, to recover, and they will find for the defendant, *especially if they believe that Hunt had notice that Christopher had a contract with Cook to do the same work and they believe that Hunt did the work for Christopher and not for Cook.*

Given.



To the refusing of which as tendered and given them as amended by the Court the defendant then and there excepted, which was noted.

The defendant also tendered the following instructions for the Jury which the Court refused to give, and marked them "refused," to-wit :

111 "That if the Jury believe from the evidence, that a certificate by the architect in charge of the work, in favor of the plaintiff as the contractor for a part of the work, labor and materials in controversy in this suit was presented to the defendant, Cook, and he refused to pay it, and afterwards that was surrendered and another certificate was taken in place of it by Hunt or his agent in favor of Christopher as contractor, which was transferred by Christopher and presented by Hunt or his agent to Cook and paid by Cook to Hunt or his agent, that is conclusive evidence upon the parties that the contract was originally between Cook and Christopher, and not between Cook and Hunt. That it is incumbent upon the plaintiff to show that an express contract was made between Cook and Hunt afterwards, in the absence of such proof, the law implying that the work was finished under the contract under which it was commenced, unless such proof of an express contract has been introduced they will find for the defendant."

Refused.

"That the certificates No. 1, date December 23d, 1854, and No. 2, date June 11th, 1854, contains upon its face a notice to any person reading it that the contract for the work for which it was given, was between Cook and Christopher, and that the one dated December 13th, 1854, recognize Mr. Hunt as contractor, and that that, with the exception of the dates, is the only difference between the papers."

Refused.

To which refusals the said defendant then and there severally excepted.

And that the Jury having retired and brought in a verdict for the plaintiff the defendant thereupon entered his motion for a new trial as follows :

112 "In the Superior Court of Chicago,

ISAAC COOK,	}	Ass't.
<small>ADS.</small>		
EDWIN HUNT,		

The defendant moves for a new trial in this cause.

Because the Court allowed improper testimony to be given by the plaintiff.

Because proper evidence on part of defence was excluded from Jury.

Because the instructions given for the plaintiff were contrary to law.

Because instructions asked for by defendant were excluded from the Jury.

Because instructions of the defendant's were modified by the Court.

Because the verdict of the Jury was against the law of and facts proved in the case.

Because of improper conduct on part of Jurymen.

Because one of the Jurymen was taken sick and unable to attend to his duties as a Juror, and the Jury found a verdict to relieve him from his confinement.

Because instructions went to the Jury without being marked "given" or "refused" as required by law.

Because and for the reasons stated in the affidavits filed in support of this motion.

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And that afterwards, said motion coming on to be heard, the said defendant read the affidavit of Isaac Cook and Charles Christopher as follows :

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EDWIN HUNT,	}	Ass't.
vs.		
ISAAC COOK,		

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STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

ISAAC COOK, the above named defendant, being duly sworn, says that he made a contract in writing with Charles Christopher to do work and furnish materials under which the work and materials for which this suit is brought were afterwards done and furnished. That the statement of Carlton L. Drake, a witness sworn on the part of the plaintiff, made on the trial of this cause, that no such contract had been made to his (Drake's) knowledge, and that said work and materials had not been done and furnished thereunder, took this defendant entirely by surprise, and that he was not prepared with evidence to prove those facts to be so within his knowledge, which he would have had had he supposed the plaintiff intended to controvert that fact. That at the time of the trial and for a long time prior thereto he



did not know where the said Christopher was so as to have procured his attendance or his deposition.

That at the time of the trial of this cause he, said Christopher, resided and was in Nebraska territory.

114 That immediately after the trial this defendant caused inquiries to be made for him, and then, after considerable inquiry, learned that he was at Omaha City, in said territory. That he immediately sent and obtained from said Christopher the affidavit signed by him hereto attached. That this deponent expects, in case a new trial should be granted to him, to prove on such trial of this cause the facts set forth in said affidavit by said Christopher.

This deponent further states that since said trial of this cause he has caused a search to be made for said written contract and inquiries made from all persons whom he could learn there was a probability of its being in their possession, and that from all the facts he has been able to learn the same was lost in the confusion in the office of Olmstead consequent upon his abrupt departure from this city.

That this deponent has been informed by King, alluded to on the trial of this cause, as having had the safe in which the contract was supposed to have been left, that he did not find such a paper therein and never had such a paper in his possession.

I. COOK."

Subscribed and sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

**"In the Superior Court of Chicago,**

E. HUNT,	}	ASSUMSIT.
vs.		
I. COOK.		

NEBRASKA TERRITORY,	}	ss.
COUNTY OF DOUGLAS.		

CHARLES CHRISTOPHER, of said county, being duly sworn, says that he formerly resided in Chicago aforesaid, that he then knew the plaintiff and defendant in

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this suit above named ; that this deponent also knew there, Carlton Drake, that this deponent during the year 1854 entered into a written contract with Isaac Cook for doing the plumbing work, &c., on the east addition of the hotel then known as the " Young America," situated in Chicago, Cook County, Illinois, and built by said Isaac Cook, that said contract was drawn up under the supervision or direction of William B. Olmstead, as I believe, (and signed by Isaac Cook,) then of the firm of Van Osdel & Olmstead, architects, in the said city, that the fact that said Cook had made such contract with this deponent was at or about the time of its being made, well known both to said Hunt and to the said Drake, that this deponent informed them both of the fact, and that an arrangement was made between this deponent and said Drake, as the agent of and acting for said Hunt, for the work under that contract to be done by said Hunt, or said Drake for said Hunt, for this deponent as a sub contractor under it and him this deponent, that this deponent was to receive the money therefor, retain a certain per centage and pay the residue to them or one of them, that according to this arrangement and under the contract with this deponent so sublet to the said Hunt, all the plumbing work of the east addition to the " Young America," done while that addition was in course of erection, was done either by said Hunt or by said Drake for him, that this deponent afterwards settled with said Cook for the work under said contract and received his pay therefor. That said Cook in the presence of said Drake and while the said plumbing work was in progress refused to recognize any person but this deponent as the contractor for it and refused to pay money to any other person but this deponent for said plumbing

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work, that this deponent left said written contract in the possession of said Olmstead to be kept by him for both parties, that this deponent never received it or authorized any other person to receive it from said Olmstead. That the last he, this deponent, knew of it it was in said Olmstead's possession and that this deponent does not now know where it actually is or can be found.

CHARLES CHRISTOPHER.

Subscribed and sworn to before me this 8th day of October, A. D. 1859.

Attest, my hand and seal Notarial,

[SEAL]

DAVID D. BELDEN,

*Notary Public for Douglas County, N. T.*



And the plaintiff read the affidavits of E. Hunt and David W. Hunter, as follows :

STATE OF ILLINOIS, } ss.  
COOK COUNTY.

E. HUNT,	}	ASSUMSIT.	MOTION NEW TRIAL.
vs.			
I. COOK.			

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E. Hunt being duly sworn deposed and says that he has heard read a copy of an affidavit of Charles Christopher in relation to taking a contract of I. Cook for plumbing work on the hotel "Young America," and that the fact of his making said contract being well known to affiant at and about the time of its being made and to C. Drake, and of his informing both of them of the fact, and the making an arrangement between said Christopher and said Drake, as agent of affiant for doing the work for him said Christopher, under said contract between him and said Cook, as a sub contractor to him said Christopher, by which said Christopher was to receive the money therefor and retain a certain per centage and pay the residue to affiant and said Drake, or one of them, and that he, said Christopher, accordingly sublet the said work to said Hunt, and that the work was done under the same for said Christopher, and that said Cook in the presence of said Drake, and while the work was going on, refused to recognize any person but said Christopher as the contractor for said work, and refused to pay anybody for it but said Christopher. And in relation to all these statements so made and sworn to by said Christopher, deponent says that so far as they relate to this affiant's knowledge of and participation in and consent to the matters therein stated, the same are severally and as a whole wholly false and untrue. Affiant states that he had no knowledge that said Christopher had taken a contract for said plumbing, and affiant never did make an agreement or contract with said Christopher to do said work, neither personally nor by said Drake to his knowledge, and further saith not.

EDWIN HUNT.

Sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

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DAVID W. HUNTER, being duly sworn, deposes and says that he has been a clerk and salesman in E. Hunt's store for near ten years past and familiar with all his business as a Wholesale Hardware Merchant and in his business of plumbing, and was so during the time of the doing the plumbing work on the "Young America," and he states that he never heard of a sub contract for said plumbing

work with said Christopher, but on the contrary thereof always and at the time understood that the said Hunt was doing or having the same done for said defendant, Cook, and that the entries upon the books of said Hunt for said work were made against said Cook as the contractor and debtor therefor. And further saith not.

DAVID W. HUNTER.

Sworn to before me, October 29th, 1859.

W. KIMBALL, Clerk.

And the Court after hearing the arguments of counsel overruled said motion, to which the defendant then and there excepted.

And inasmuch as the several and various matters aforesaid do not appear of record in said cause the said defendant hath tendered said Court this his bill of exceptions to be signed and sealed in pursuance of the Statute, and it is done accordingly in open Court, as of the twenty-third day of November, A. D. 1859.

VAN H. HIGGINS, [SEAL]

*Judge Superior Court.*

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## ERRORS ASSIGNED.

1. The refusal to exclude Carlton Drake as a witness.
2. The admission of what Olmstead said in the absence of Cook, when Drake returned the order of December 13th, 1854, to Olmstead, and on other occasions excepted to in the course of the trial.



3. Refusing permission to the defendant to prove the contents of the written contract between Cook and Christopher.

4. In allowing the witness Olmstead to state what he had told his partner about Cook's paying him for their services.

5. In refusing to allow the defendant to read in evidence the receipt of Christopher to him, and the proof of payment to him to be given to the Jury.

6. In allowing N. P. Wilder to relate a conversation between him and Olmstead.

7. In refusing to allow witness Barker to state whether or not he would believe Olmstead under oath.

8. In giving the instructions for the plaintiff below.

9. In refusing and qualifying the instructions asked for by the defendant below.

10. In giving instructions to the Jury for plaintiff without marking them

11. In refusing the motion for a new trial.

12. The judgment was for plaintiff should have been for defendant.

W. T. BURGESS,

*For Appellant.*



