

No. 12246

Supreme Court of Illinois

Higgins

vs.

Lee

71641  7

State of Illinois
 LaSalle County } p

Plas Proceedings and judgments
 held and taken in and before the LaSalle County
 Court in the State of Illinois at the Court House in
 Ottawa in the County of LaSalle of March Term,
 to wit, of the fifth day of March in the year of
 our Lord one thousand Eight hundred and
 fifty five - and of the independence of the
 United States of America the Seventy ninth,

Present, Hon. Henry G. Cottar Judge
 Samuel W. Raymond Clerk
 Francis Warner Sheriff

On the 13th day of February 1855. a precept was
 filed in the office of the Clerk of the County
 Court for said County, in the words and figures
 following, to wit,

LaSalle County Court, March Term A.D. 1855,
 Joseph Lee

vs

} assault

Ebenezer Higgins } Damages \$1000.00

} The Clerk of said Court
 will please issue summonses as above - also
 Subpoena for John Bassel, Benjamin Gundry,
 Seth W. Hurdin & Elias G. Spaulding as witnesses
 for plff.

Dickey & Wallace

Plffs Attys.

And thereupon on the same day a summons
 was issued in said Cause in the words and
 figures following, that is to say,

The People of the State of Illinois, To our Sheriff
of our County of LaSalle — Greeting

We Command you that you Summon
Ebenizer Higgins if he shall be found
in your County personally, to be and
appear in our LaSalle County Court, before our Judge
thereof, on the first day of the next term ~~for~~ of said
Court, to be held at the Court House in Ottawa
on the first Monday in March next, at ten
O'clock in the forenoon, there and there to answer
unto Joseph Lee in a plea of trespass on the
Case upon promises to the damages of the said
Joseph Lee as he says of one thousand dollars,
And have you then there this writ and the Return
in which you shall have executed the same,

In witness whereof, we have caused the Seal of
our said Court to be here to affixed and attested by
Samuel W. Raymond, our Clerk thereof at Ottawa
the 12th day of February 1855

S. W. Raymond Clerk

On the 3rd week of said Summons the
Sheriff made the following return, viz
"Executed this writ by reading the same to
Ebenizer Higgins," Feb. 14th 1855

F. Warner Sheriff

Serv & Rt 60

16 miles 80

\$ 1.40

" Filed March 3rd 1855 "

"S. W. Raymond" Clerk

on the 21st day of February 1855 a Declaration
was filed in the office of the Clerk of said
Court in words and figures following, viz,

State of Illinois

LaSalle County — and County thereof

To the March term A.D. 1855

Joseph Lee the plaintiff in this suit, by Dickey &
Wallace his attorneys complains of Ebenezer
Higgins the defendant in this suit, who was
summoned & of a plea of trespass on the case
on promises

For that whereas heretofore to wit, on the
twenty first day of December in the year of our Lord
eighteen hundred and fifty two, at the County
aforesaid, by a certain agreement then and there
made between the said plaintiff and the said
defendant, the said plaintiff agreed to furnish
all the materials, such as laths, nails, lime, sand
&c. and do all the labor in plastering and Stucco
work required to be done on the building then
being built by said defendant and known
as the "Chambers House" said plastering and
Stucco work to be done and finished according
to the specifications of said work by J. Mulany,
Architect of said House —

The said defendant agreed
to pay to said Plaintiff for said work and
materials, the sum of two thousand dollars, to
be paid as follows, to wit, one span of horses,
waggon and harness (then owned by said defendant)
for the sum of four hundred dollars, the balance
sixteen hundred dollars to be paid as the work
progressed — and the said agreement being

So made, afterwards, to wit, on the day and year
aforesaid, at the County aforesaid, in Consideration
thereof, and that the said plaintiff at the Special
instances and request of defendant, had there and
then undertaken and faithfully promised the
defendant to perform and fulfil the said agree-
ment in all things on the plaintiff's part to be
performed and fulfilled - he the said defendant
undertook and then and there faithfully promised
the plaintiff to perform and fulfil the said
agreement in all things to be performed and
fulfilled on ^{the} defendant's part, - and although
the plaintiff hath always from the time of the
making of said agreement performed and
fulfilled all things on his part in said agreement
to be performed and fulfilled, and did afterwards,
to wit, on the day and year aforesaid, enter upon
and commence the said work, and for that purpose
did procure and find all materials and labor
necessary for performing the same, and did progress
with said work as fast as the former work would
admit of, and did ~~finish~~ finish and complete
the same, to wit, all the plastering and Stucco work
required to be done on said Chambers House according
to the said specifications, by said J. Mulany,
Architect as aforesaid, in pursuance of said
agreement, of all which said premises the said
defendant hath had notice, to wit, at the County
aforesaid, Yet the said plaintiff in fact
saith, that the said defendant, contriving and
wrongfully intending to injure the said plaintiff,
did not nor would perform the said agreement,
nor his said promises and undertakings in whole,
but thereby craftily and subtly deceived the said plaintiff

in this, to wit, that the said defendant did not nor would pay to plaintiff the whole of said sum of two thousand dollars but only a part thereof, to wit, one span of horses, waggons and harness for the sum of four hundred dollars, as aforesaid, and six hundred dollars in cash in pursuance of said agreement - but on the contrary thereof hath hitherto wholly neglected and refused to pay to said plaintiff the residue of said sum of two thousand dollars, to wit one thousand dollars - to the damage of the said plaintiff of one thousand dollars -

And whereas also the said defendant afterwards, to wit, on the first day of December in the year of our Lord Eighteen hundred and fifty four, at the County aforesaid, was indebted to the said plaintiff, in the further sum of one thousand dollars for the work and labor, care and diligence of the said plaintiff, by the said plaintiff, before that time done, performed and bestowed in and about the business of the said defendant, and for the said defendant, and at his special instance and request, and also for divers materials found and furnished by plaintiff for said work and business for the said defendant and at his like request, And also the further sum of one thousand dollars for divers good, wares, and merchandise by the said plaintiff before that time sold and delivered, to the said defendant, and at his special instance and request - and also in the further sum of one thousand dollars for money, by the said plaintiff, before that time lent, and advanced to, paid out, and expended for the said defendant,

and at his like special instances and request, -
 And in the further Sum of one thousand
 dollars for other money, by the said defendant,
 before that time had and received to and for
 the use of said plaintiff,

And being so indebted he the said defendant,
 in consideration thereof, afterwards to wit, on the day
 and year last aforesaid undertook, and there and
 there faithfully promised the said plaintiff to pay
 him the said several Sums of money in this
 Count mentioned, when he should be thereunto
 afterwards requested -

Nevertheless the said defendant
 not regarding his said several promises and
 undertakings, but contriving and fraudulently
 intending, craftily and subtly to deceive and defraud
 the said plaintiff in this behalf, hath not as yet
 paid the said several Sums of money, or any, or
 either of them, or any part thereof to the said plaintiff,
 although often requested so to do; but the said
 defendant to pay him the same hath hitherto
 wholly neglected and refused, and still doth neglect
 and refuse - to the damage of the said plaintiff of
 one thousand dollars - and therefore he brings
 his Suit &c -

Diekey & Wallace

attys for Plff.

Copy of Contract Sued on
 Article of agreement Made this twenty first day
 of December A.D. 1852. by and between Ebenezer
 Higgins of the first part, and Joseph Lee of the
 second part,

Witnesseth that the said Lee agrees to furnish all

the Materials (Such as Lath, Nails, Lime, Sand
&c and do all the labor in plastering and Stucco
work required to be done on the building now being
built by said Higgins and known as the "Chambers
House" the plastering and Stucco work to be done
and finished according to the Specifications
of said work by J. Muldany architect of said
House - for the sum of two thousand dollars,
to be paid by said Higgins as follows,
one Span of horses, Wagon and harness, now
owned by said Higgins, for the sum of four
hundred dollars, the balance sixteen hundred
dollars to be paid as the work progresses, said
Higgins having the right to retain as much as
he may think will secure the performance of
the above Contract.

If the said Lee should not progress as fast
with said work as the joiners work will admit
of said Higgins may at any time put on
more force and retain the amount paid
out by him for such work or materials, from
the above amount to be paid said Lee.

Said Higgins reserves the right to declare
this Contract void at any time that he believes
said Lee to be incompetent to do the work, or
that the work is not being done in a workmanlike
manner.

Signed at Plover on 2 E. Higgins
the day above written } Joseph Lee

Account Due on
Ebenzer Higgins to Joseph Lee Dr
To work and labor done \$1000.00

To Materials found and furnished	\$1000.00
To Merchandise	\$1000.00
To Money lent	\$1000.00
To Money had and received	\$1000.00

On Monday March 5th the same being one of the days of said Term of said Court the following order was entered of record in said Cause, to wit

" Joseph Lee }
44 vs } Assumpsit
Ebenezer Higgins }

This day come the plaintiff by Dickey and Wallace his attorneys, and defendant being three times solemnly called comes not nor any one for him but makes default, and it appearing to the Court that said defendant has been duly served with process more than ten days before the first day of the present term of this Court, on Motion of Plaintiff by his said Attorneys, It is ordered that judgment be entered against said defendant for want of a plea "

On Wednesday March 7th the same being one of the days of said Term of said Court the following order was entered of record in said Cause, to wit

" Joseph Lee }
44 vs } Assumpsit
Ebenezer Higgins }

This ^{day} come the said defendant By Chumero his Attorney and filed an affidavit of defendant, and on his motion it is ordered that the default entered herein be set aside at defendant's Costs.

On Wednesday March 7th 1855. a plea was filed in this cause in the words and figures following to wit;

Ebenezer Higgins	} Sadale County Court
advs.	
Joseph Lee	} March Term 1855

And ~~the~~ the said defendant by Mr Chammasero his Attorney Comes and defends the wrong & injury when it is said says that he did not undertake and promise in manner of form as the plaintiff hath above declared against him and if this he puts himself upon the Country

Mr Chammasero
Plffs Atty,

and the Plff doth the like
by
Wallace Atty,

On Thursday March ^{8th} the same being one of the days of said Term of said Court the following order was entered of record in said cause to wit;

Joseph Lee	} Assumpsit
vs	
Ebenezer Higgins	

This day came the plaintiff by Wallace and Champlie his attorneys, as well as the defendant by Chammasero and Cook his attorneys - Thereupon came the following sworn of a jury to wit; Henry W. Gridley, Marvin Dimock,

J. S. Ellsworth, Henry Bow, Charles H. Sutphen,
Jacob Roop, Josiah E. Shaw, Lewis L. Woodward,
Jacob Miller, Eli Barnes, Jonathan Tullis and
Edward Grist, who were duly Elected tried and
Sworn to try the issues herein according to the
evidence - after hearing - part of the evidence
in the case on the part of the plaintiff, the jury
were allowed to separate and come into Court
to morrow morning -

Friday March 9th the following order was entered
of record in this Court

" Joseph Lee

vs

Ebenezer Higgins

}
} assumpsit

} This day again came the
parties herein by their attorneys, together with the
jury sworn herein - after hearing the balance
of evidence and arguments of Wallace for Plaintiff
and Chumason for defendant, the jury were
allowed to separate and return into Court to morrow
Morning "

Saturday March 10th the following order was
entered of record in this Court -

" Joseph Lee

vs

Ebenezer Higgins

}
} assumpsit

} This day again came the
parties herein by their attorneys, together with the
jury sworn herein - after hearing the argument
of Cook for defendant and Champlin for

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plaintiff, the jury retire to consider of their
verdict, and after due deliberation thereon had
the jury return into Court the following verdict,
to wit; We the jury find a verdict for the
plaintiff in the sum of Sixty two dollars and
fifty cents,

Whereupon defendant by his said attorneys
Enters his motion herein for a new trial

on Monday March the 12th the same being one
of the days of said term of said Court the following
orders were entered of record in this Cause

44
Joseph Lee
vs
Ebenezer Higgins } I assumpt

} This day again comes the
parties herein by their said attorneys, - Thereupon
after hearing the arguments of Counsel on the motion
of the defendant entered herein for a new trial -
the motion is overruled by the Court, to which
obedience of the Court the defendant by his said
attorneys then and there accepted,

It is therefore considered by the Court
that the plaintiff have and recover of the said
defendant the said sum of Sixty two dollars
and fifty cents for his damages and also his
costs and charges by him herein expended
and that he have execution therefor,

44
Joseph Lee
vs
Ebenezer Higgins } I assumpt

} This day comes the defendant

by his attorneys and prays an appeal herein which is allowed on his entering into an appeal bond in the sum of Two Hundred and fifty dollars with J. D. Brewster or Wm. Chumason as security who are hereby approved by the Court and by agreement of parties it is ordered that a bill of exceptions be made and filed within ten days and that the bond be filed on or before the first day of May ~~next~~ 1855.

on the 22^d day of March the following bill of exceptions were filed in the office of the Clerk of Said Court - to wit,

Lee	}	Saballe County Court
vs		March Term A.D. 1855
Ebenezer Higgins		

Be it remembered that on this 7th day of March A.D. 1855. The Said defendant by Chumason his attorney, moved the Court to set aside the default heretofore entered in this case and in support of Said Motion read the following affidavit -

Ebenezer Higgins	}	Saballe County Court
ads		March Term 1855.
Joseph Lee		

} State of Illinois
Saballe County } Ebenezer

Higgins defendant in the above entitled cause being first duly sworn doth depose and say that he has a good defence upon the merit in this case as he has been advised by counsel

and verily believes to be true - That this suit was commenced to the present term of this Court - That at the time of the service of the summons upon affiant he understood that said suit was commenced in the Circuit Court and not in the County Court of LaSalle County and that the first information that he had to the contrary was on this morning when he was informed by ~~William~~ Wm Chambers that the suit was pending in the County Court and that a default had been taken herein - and he further saith that he has been informed that said default was taken on the morning of the first day of the present term, Subscribed & sworn before Ebenezer Higgins me this 7th day of March
1855

J. W. Raymond Clerk

"Endorsed" Filed March 7th 1855

J. W. Raymond Clerk

Which motion was sustained by the Court and the default set aside, The plaintiff there moved that the defendant plead instantly, The defendant moved that time be given till afternoon to file his plea, and on the defendant's motion ordered that time be given until afternoon for him to file his plea, ^{and} afterwards, the defendant moved the Court to dismiss the suit for the reason that the plaintiff was at the time said suit was commenced a non resident of this State and that no bond for costs had been filed, The Court overruled the motion, to which decision of the Court the defendant there & there excepted,

Be it also remembered that when this Cause came on to be heard the plaintiff introduced in evidence the following Contract in writing,
 "Article of agreement made this ~~twenty~~ first day of December A.D., 1852 by and between Ebenezer Higgins of the first part and Joseph Lee of the second part,

Witnesseth that the said Lee agrees to furnish all the materials (such as lath, nails, lime, sand &c., and do all the labor in plastering and Stucco work required to be done on the building now being built by said Higgins and known as the "Chambers House", the plastering and Stucco work to be done and finished according to the Specifications of said work by J. Melany architect of said House - for the sum of two thousand dollars, to be paid by said Higgins as follows - one span of horses, wagons and harness (now owned by said Higgins) for the sum of Four Hundred dollars, the balance Sixteen hundred dollars to be paid as the work progresses - said Higgins having the right to retain as much as he may think will secure the performance of the above Contract -

If said Lee should not progress as fast with said work as the joiners work will admit of said Higgins may at any time put on more force and retain the amount paid out by him for such work or materials, from the above amount to be paid said Lee,

Said Higgins reserves the right to declare this Contract void at any time that he believes said Lee, to be incompetent to do the work or that the work is not being done in a workman

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- like measure,
Signed at Peru on 3^d } E. Higgins
the day above written } Joseph Leo "

The defendant objected to said Contract as evidence under the first Count of plaintiff's declaration and his objection was sustained by the Court, and said Contract was excluded under said first Count, said Contract was then read in evidence ~~under~~ by plaintiff under the 2^d Count in his declaration and also the following Specifications of J. Mulany -

Specifications

of Materials and labor required for the Erection of a Hotel in Peru, according to the accompanying plans, and Elevations, marked, 1, 2, 3, 4, 5, 6, 7 -
Excavation - Four feet deep and the earth graded properly around the foundations, and Carried to convenient distances -

Stone Work - The foundations for the main walls 2 ft, 8 in. thick and 2 ft high, of large flat stones laid in suitable mortar and well filled in, in all its parts, with good grout of sharp coarse ^{ground} and sand and hot lime, The basement walls 2 ft 4 in. thick, and 11 ft high with proper ~~break~~ break 8 in. thicker to receive chimney breasts where they occur - all laid vertical joints and horizontal courses in good mortar, and closely filled in with stone in all its parts, the stones properly bedded, two walls built across the north front, dividing the lower hall, baggage room and stores, 16 in. thick, and 12 ft. high, built in the same manner as main walls,

Dwarf wall built from main cyp wall between the smoking room and hall, and down to South

and under Kitchen floor, to receive the floor, 2 ft high, and 14 in. thick, laid in like manner, Chiseled Stone Caps and Sills of proper proportions over each outside door and window, with 6 in. bearing on each side, set in mortar, all the flues to have 12 in. arches with $\frac{3}{4}$ in. curved iron Straps; all the doors and windows to have 12 in. arches, set closely in fine mortar with proper Summering - all laid in Brick, all the outside walls above the surface to be hammered Stone, neatly pointed, and coped on top with hammered Sill for brick setting on it and splayed from the bricks as water fall at least 2 in, ventilators built in the work in the manner of flues, commencing above the surface with 8 in. square opening (filled in with cast iron grid, pierced) and carried down in the work under the basement floor opening 12 in. square - 10 of these flue, as neatly pargetted as the main flue for fire places - all the openings splayed from the frames 5 in. wall 6 ft. square, and 2 ft high, under Kitchen Stone, with a chiseled curb to protect 6 in. above the floor and $\frac{4}{4}$ in. thick chamfered on the edges -

Brick Work = All the main walls 20 in. thick except when the breaks occur which are 24 in. thick, to be laid in English bond, that is headers and stretchers in alternate courses - the inside face of the walls neatly pointed and rubbed to receive paint, All the flues as marked and laid down, carried up through the work in a judicious manner, and pargetted smoothly, and capped in the form of pedestals on the top, and the work continued between them all round the building in the same manner, The cornice well and truly bedded and laid perfectly straight to the horizon, as well as all the other walls of the

building - all angles perfectly plumb or vertical to the horizon - all the flues have 12 in. arches, properly summered and laid in $\frac{1}{2}$ in. iron curved strap - all the openings, except the doors, to have cast iron fancy caps and sills outside, and 12 in. brick arches inside the doors to have 20 in. arches, all the hearths to have skew-back arches laid between the trimming joists of ~~the~~ and the walls all ^{the} hearths of blue stone laid on a bed of sand and mortar, and fenced round on the three edges with a fancy cast iron curb, secured to the trimmer in form of a fender, the roof wall running east and west 12 in. thick, laid in hard brick as well as the main walls, All ^{the} brick to be well burned and approved of before laying, All ^{the} beds of the work to be perfectly level through the thickness, and free from the circular wall, Two boilers to be put up in the wash room and drying room, with proper conductors and flues and the trimmings properly set, all the grates and mantels fixed in a careful and neat manner, the first floor between floor and ceiling joists 12 ft high, the second floor between floor and ceiling 11 ft high, the third floor between floor and ceiling 10 ft high, and 8 ft 6 in. the cornice and pedestal, blocking which finishes the brick work, all the pilasters to have cast iron caps.

The divisions, heights, dimensions, and general arrangement are to be found in the plans & accompanying this specification,

Plastering - All the halls and rooms, and closets on the first and second floors lathed ($\frac{3}{8}$ inch between) plastered ~~smooth~~ browned and hard finished, fit to receive paint, all angles

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perfectly straight, all plastering evenly and smoothly laid on the mortar of best quality, and approved of before laying on, The dining room to have a good dental cornice, and three center pieces, with ruffles, twist and foot leaf in each, The parlor to have a good Cornice of approved model, with two center pieces, with scroll and foot leaf, The Hall to have two centers, with plain cornice and leaf, The third floor, the attic and the basement, with all the rooms, halls, passages, apartments, closets, Stairs &c. to have lath, and plastered two coats; and finish smooth, with good materials and in proper proportions, and finished, white fine and workman like,

Carpenters = All the window frames boxed, 1-4 inch clear stuff, and fit for blinds, and hung double, with pulleys, and all other fittings complete, to be made so as the sash may run up through the brick work, with revolving heads, and the sash to fit into fillet on the sill, the sash cut of 2 inch stuff, moulded and free from knots, shakes and sap, and finished neatly and free, with solid hooking meeting rails, all the sash on the first floor to have 18 lights in each frame, 12 by 18 glass, all the sash on the second floor to have 15 lights in each frame, all the sash on the third floor to have 12 lights in each frame, of the same size glass; all the sash in the basement to have 12 lights in each frame for glass 12 by 17, and to be finished in every particular as all the other frames, except the revolving head, all the outside door frames out of 3 inch stuff moulded on the frame and rebated, The inside frames out of 2 inch stuff, rebated and Cased with architraves both sides, with dental cornice head over each, on the first and second floors, on

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the third floor and attic, with plain casing and
beek moulding to each, on the basement with
plain casing only to each, all the inside doors
out of 2 inch stuff, framed, panelled and moulded
except in the basement, third floor and attic, which
are to be plain, raised panels, and hung complete, with
good but hinges and screws, with serviceable lock of approved
finish and appointments to each door, The two hall
doors out of 2 inch stuff, lined on the back with
matched clear stuff, joints on the rails and
narrow, and hung with sufficient hinges and
locks complete - the two partition doors across
the parlor on first floor ^{and across hall & office on the same floor}, out of 1 1/2 inch clear stuff,
framed, panelled and moulded, to be hung on weights
with chain, the weights to run through two ionic
columns, one at each side door, with base and
capitals complete, with the usual entae complete
to each column, two ionic columns to crop hall
and in a straight line with the columns that
divide the office and hall, finished in the same
manner, with entae to each complete, a square
column at end of partition in office, finished like
the entae complete; the windows inside to be finished
in the same manner as the doors, on their respective
~~doors~~ floors, with paneled back to each moulded,
Floors - The floor joists in basement 2 by 10, and
20 inches between centres, the joist in first and second
floors 2 by 12 on the third floor 2 by 10 trimmed, framed
complete, for stairs, chimneys, and all other openings,
shated with first quality milled narrow 1 1/2 inches
matched pine plank, well seasoned, and
laid complete on all the floors blind nailed
and ~~beeked~~ levelled off in a neat and clean
manner, all the floors to receive lath and plastered

Ceiling to be laid 15 1/2 inches between centres, a trap of iron set in a pair of beams 4 by 12 and well bolted together, and strained with sufficient King bolt in the centre of each to be put under each partition across the dining room ceiling, the floors to be grained and skouldered ~~together~~ into each, one fixed under every partition of the Chambers above -

Partitions = Studding 3 by 4, at each side of doors 4 by 4, and well nailed, 15 inches between centres, a trap partition over office to receive ^{partition} ~~office~~ door, and the same over ^{the} parlor in like manner, The water closets to have framed sides over the ceilings and sheet properly ~~sketched~~ at bottom and sides, to receive lead as cisterns, the same over the bath room, the water closets to be fixed with vents, and proper vents, backs and fronts framed and paneled, and moulded on top, the seats to have cover hung over each vent,

Base = All the Chambers, Closets and other apartments, passages, to have plain beveled base, out of 1 1/4 inch clear seasoned stuff, 10 inches wide, firmly fixed and well closed to the floors, all the sitting rooms, parlors, living rooms and halls, to have a double faced base moulded, fixed in like manner and 12 inches deep,

Sinels = All the windows and outside doors to receive linels 1 inch thick to each foot of ope, and 8 inch bearings on the ends,

Stairs = The main stairs from basement to third floor, of moulded nosings to steps 1 1/2 inch thick, and returned over brackets on the ~~partitions~~ architrave, strings, and dovetailed to receive turned balusters - two balusters on each step

17 Nailed over each beam in the dining room ceiling and over parlor or first floor, and office on the square fixed in a firm manner; a double partition

Eisers out of $1\frac{1}{4}$ inch Stuff, Strings out of ~~2~~² inch
 Stuff, and to receive bath and plaster black
 walnut hard rail out of 4 by 4 moulded, with
 scroll at foot of each, and continued from top
 to bottom on main, stairs, all the back and
 ladies stairs to have 2 inch base strings at each
 side to receive $1\frac{1}{2}$ inch moulded step and $1\frac{1}{4}$ inch
 Eisers, all the stairs ^{fixed} in a firm, neat and work-
 -man like manner the stairs to attic in like
 manner -

Roof = Prepared for fire proof cement, with
 proper even fall into cisterns over water closets and
 bathing room, gutters placed and made 10 inches
~~wide and 2 inches below the level of the roof flooring~~
~~same quality as all the other floors, the par from~~
 the walls all around, 10 inches wide and 2 inches
 below the level of the roof flooring with conductor of
 tin into cisterns, the joists 2 by 10 and laid 18 inches
 apart with Sheeting of $1\frac{1}{4}$ inch rough boarding, and
 another of the same material matched and free
 from knots and shakes, perfectly seasoned,
 with a ceiling under resting on the partitioning,
 ceiling joists placed 15 inches ~~apart~~ between
 centres and stayed properly -

Attic = Built on roof 12 feet high, roofed in
 the same manner as the above, with ceiling also
 the same, the studs 2 by 4 and 15 $\frac{1}{2}$ inches between
 centres, the flooring laid on the same joists as the
 main Roof, but 8 inches higher, of $1\frac{1}{4}$ inch flooring,
 same quality as all the other floors - the
 partitions of 2 by 4 studs, and trussed over partitions
 on third floor, and 15 $\frac{1}{2}$ inches between centres,
 window frames boxes same as all the other
 frames and fit for blinds, and finished outside

with beveled architrave, and inside the same as the third floor sash, out of $1\frac{1}{2}$ inch stuff, and glass 10 by 14, and lower sash hung with cast iron weights, pulleys, and all other fittings complete, the base plain, with beveled edge, 7 inches wide, and fixed complete, all the doors same as below on next floor, the sheeting on the outside of $1\frac{1}{4}$ inch matched clear narrow flooring, the cornice out of $1\frac{1}{2}$ inch stuff, seasoned, and all put up close and neat, with a beveled base at the roof, and closed properly, and the roof to have 4 Conductors of tin on to the lower roof -

Observatory - To be framed with 8 in. Square Sills resting on partitions and posts 8 in. Square with girts and interties 6 in. Square, braced in a firm manner, drawn, bored and pinned, and the post feet ~~strapped~~ with iron, and bolts to sills, The base section of 3 by 4 in. Studying, framed and sheathed the same as attic in every particular, and bracketed cornice, The second section finished in like manner, with plain cornice and four Ionic Columns backed each side the floor decked inside and outside with 2 in. Splay outside, the double blocking one finished close, framed and paneled and moulded, and splayed at base on to cornice of Ionic section, and deck covered in proper manner - the upper blocking pierced with circular headed panels and moulded on the top, and capped over each pedestal and over each opening with Italian Minarets, The second section to have 4 French Casements, opening on hinges and closed at bottom with sunk rebated fall, hung with hinges fastened on top with brass bolts, the windows on

the base finished the same as attic,

Piazas = All around the East, South and west, on first floor, the joists 2 by 8 in. and built in brick work moulded on the ends, and covered with the same quality of flooring, boards lengthwise from the wall, laid close and blind sealed with 2 in. fall from the wall, and gutter in the cornice, of tin to carry off the water, with conductor of tin, sheeted under the joists with inch narrow matched and beaded flooring, supported on the outside with doric columns proportioned to their heights, or of cast iron, as may be agreed upon, fenced with black walnut hand rail 3 by 6 inches, moulded, and rail of 2 by 8 in, framed into balluster, with circular head between each pair of balluster, moulded and capped, the newels square moulded in like manner, and framed into front breast summer, with steps to ascend and descend, as may be agreed upon, with hand rail in like manner, all made complete in a workman like manner.

Steps = All the outside steps out of 2 in. stuff, square edges - with risers of 1 1/4 in. - the north front to have paneled sides to the steps, and pedestal faces, with 2 ionic columns with their usual antaes, with cornice and pediment covered with canvas and painted in the form of deck roof, with oil, ochre and lead, the ceiling finished in the same manner as the other piazas,

Porte Cochere = Finished the same as the piazas with two pairs of columns at each side, front, and triple light, same as the basement windows,

Basement doors 2 ft 10 in, and 6 ft 9 in, and first floor 3 ft 2 in, and 7 ft 2 in, second floor 3 ft and 7 ft, and third floor 2 ft 10 in, and 6 ft 10 in, fourth floor and attic the same as basement, all the windows to have blinds, hung

It is the inside the inside joists framed to receive the flooring

and fastened, - The divisions, heights, dimensions, and general arrangements are to be found in the plans marked for this Specification - the Scale for measuring the same throughout the whole,
 Painting - All the wood work, both inside and outside, usually painted to receive three good coats of pure white lead and linseed oil, The blinds the same, the two last a bronze green, All the brick work outside, a light drab two coats,
 The roof Covered with fire proof Cement, put on in proper quantities, and painting done at proper times and intervals - All the nail holes and other imperfections neatly stopped and levelled, The halls, parlors, and living rooms, walls painted in like manner shaded as desired - All the papering required to be hung in straight, even and workman like manner, All the windows glazed with glass free from waves and blisters and floated in with good putty.
 Ironmongery - All the blinds hung on patent fittings, All the locks and hinges of approved description and quality - all of the chimneys to have Cast iron Mantels, grates, and cups as flue doors, 6 trufes of Malleable iron $\frac{1}{2}$ in. by 4 in, bolts $1\frac{1}{2}$ in by 3 in, King-bolt $1\frac{1}{2}$ in. round iron with square head and nut, all the windows to have Cast iron Caps & sills, the pilasters on the North front, East and South, to have Cast iron caps in attic Corinthian order, all the Castings to be free from holes and blisters, the windows and door weights cast round, all the windows to have proper fastenings on the meeting rails, windows to have outside blinds, roll, venetian, and bells to all the rooms,
 All the materials of their different kinds and descriptions to be of the best quality and free from extraordinary imperfections, and to be approved of before being put to use,

John Mullany Architect

709 yards Excavation
 423 cubic yards Masonry
 654,000 Brick laid complete
 28,800 feet Flooring, Ceiling and Roof joists
 38,750 do Studding
 28,000 do Flooring boards clear
 40,000 do clear lumber for inside finishing
 142 Window Frames, Sash, Glass, hung all complete
 90 Doors hung complete
 7,250 yards Plastering
 Painting & Ironmongery and Costings
 Estimate of Carpenters work "

The Plaintiff then called as a witness John
 Barrel who testified as follows
 An acquaintance with the ^{spacious and with the} Chambers House in
 Pm, I am a brick layer, plaintiff had the
 Contract for plastering the Chambers House.
 I saw Lee at work on it he seemed to be hoping
 the job had 4 or 5 men plastering some of the
 time & some times not so many, I saw some
 filling between joists in the basement. The wall
 had to be filled up to make it straight. Can't
 tell what portion of the wall was filled, don't
 know how long it would take to do it, The
 plaintiff asked the witness the following question,
 State whether according to your best recollection
 there was half of the inner surface of the wall of the
 basement not filled up or more or less? To which
 Question the defendant by his counsel objected, the
 Court overruled the objection, and defendant then
 then excepted to the decision of the Court in overruling
 the said question, the witness answered the question

This question was asked and the answer to it was
 given before the witness' Contract was introduced in
 evidence

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as follows. I can't tell exactly I should have to guess. Should think there was there was part of it filled in the main or south part not filled in west side. The east front of the building is 104 feet long North front from 60 to 65 feet. he usually put on two or three coats of plaster on a building whatever a man wants put on, if the inner walls of basement had been smooth it would have taken two coats - don't know how many were put on I believe Lee did the plastering on the attic I was not there when it was done. I worked for Cadwell on the building. I saw Lee in the Spring Cutting down some chimneys that projected 8 inches into the room 2 in the west end & 2 in the dining room. The chimneys were through three stories, they were cut down & made fair with the face of the wall, don't know that they were cut down in more than one story. The brick walls in the dining room were not straight don't know that any furring was used. There is a cistern there I saw Mr Lee and his son at work on it, it was built of brick 9 or 10 feet deep and about the same across don't know whether it was plastered or not.

Crop Examined

Lee told me he had a contract in writing for plastering that house, only saw him at work on the chimneys once & once on the cistern. The Plaintiff then called Saper Bros as a witness who testified as follows, I am a Brick Layer & plasterer worked two weeks for Lee on the Chambers house. I helped plaster the first brick story & part of the second. I think

Lee furnished the Material, There was filling up the space between the joists in lower story with Stone and Mortar Lee did it so much as I know, don't know how much it was worth did not take notice enough to tell how long it would take a man to do it, Lee worked some on Chimneys Saw him at work on Chimneys in dining room, don't know that it was done in stories above the dining room Lee did the plastering in the attic I worked in basement two days the basement wall was rough, plaintiff

+ How much was it worth to put the basement wall in condition so that 2 Coat Work would finish it, to which question the defendant answered I don't know. the plaintiff then asked witness the following question would it cost as much as to put one Coat of plastering throughout the basement to which the witness answered Yes it would cost more, The plaintiff ^{then} asked the witness, would it cost half as much more to which the witness answered Yes I think it would, to each of the foregoing questions the defendant at the time they were asked respectfully objected, The Court overruled each of said objections and allowed said questions to be answered to each of which decisions of the Court in overruling said objections the defendant at the several times when said decisions were made excepted, Lee made the cistern, don't know who furnished the materials, the brick walls of the house were all crumbled, they were filled up with mortar, don't know who built the walls for front steps never made an estimate of the quantity of plastering in the building could not do it now, The

plastering was well done the roof leaked & spoiled it the material was good, The Halls, Rooms, & Closets were all plastered so far as I knew, The 1st & 2^d Stories were hard finished ready for paint (Cross examined) Don't know how much filling up between the joists Lee did, saw Lee at work at two Chimneys, ~~Lee~~ ^{Saw} Lee plastering in the attic, Can't say how much Lee worked on the Cistern he was laying the brick don't know that he worked for Cadwell was at the house when it was completed, There is no Cornice nor Center pieces in any of the rooms,

(Direct examination resumed) Higgins was there often when I was at work did not hear him object to leaving off the Cornice or centres, The plaintiff then called as a witness Mr Grundy who testified as follows I am a carpenter worked on the Chambers House plaintiff did the plastering I think the height of the basement is 10 or 12 feet don't know the height of 1st story Lee furnished material for doing that plastering Some alterations was made in the fire places I believe there was ten or twelve of them every fire place was cut down, Lee cut the Chimneys down some 8 in dining room could not say as to parlors Considerable extra work was done in tearing off the lath over several doors a different kind of work was put on over the doors, this was done in the story over the dining room, Lee topped out a kitchen ^{Chimney} put on not less than two feet may have been be three or 4 feet, there was a well built to support a portico on the North entrance to the building The building was done at that time There was also an area

wall the whole length of the north front as
 foot or a foot and a half from the main build-
 ing same 3 feet high 8 inches thick at top
 Cant say how thick at bottom, The Portico
 wall was same three feet high may be more
 built of brick two side walls 5 or 6 feet long
 three walls under the portico, The portico was
 some wider than a common folding door, See
 filled in between the joists in dining room
 floor over the Cooking department filled in
 with boards & plastered over, Cant say how much
 it was worth dont know that the joists were
 filled in the basement stories, See had men
 to work for him then, See cleaned out the flues
 on the inside, See built the Cistern to meet
 house it was a very large one plastered &
 cemented both, The roof of the building leaked
 very bad, The plastering fell from the ceilings
 sometimes more than half the plaster and a
 ceiling fell at a time, Mr See put them on again
 Spent several weeks at it it was worth I
 should think from one to three hundred dollars,
 There was a privy put up 2 stories high ten feet
 wide & from 18 to 20 feet long, the ceilings are
 lathed & plastered my brother in law lathed
 and plastered it, he was working for defendant
 by the day it is of brick one side of the vault
 in lower story was lathed and plastered, See worked
 some on the privy dont know how many days
 Cant remember, See made some for some
 Stucco work which was not put on, he had a
 plasterer from Chicago who understood Stucco
 work got him on that account, The Company
 concluded not to have the Stucco work done,

(Crop examined) It was Brewster & Higgins concluded not to have the Stucco work done I heard them talking about it when I was at work there can't tell what they said not the exact words They did not say they would not have it done but as I understood them that they ~~concluded~~ came to the conclusion that they would let the Stucco work go, Brewster put Lee to work on the area wall Don't know as Higgins had any thing to do with the ^{wall} ~~work~~ The Chimney was topped out after tenant went into the house or about the time can't say that there was more than 8 fire places There was a foot or two of lath taken off from each door think it was in middle brick story one in Hall, at work upon them several days, saw lath taken off and put on again there was one or two partition walls moved after they were lathed, Lee tore away a wall in the basement The wall was 4 or 5 feet long, Lee fixed a sill of front door ^{or} replaced fixed or raised the window sills in basement they were crooked Some 6 or 7 sills Lee fixed several hearths set two grates in Parlor The work done that was not in the Contract must have been worth several hundred dollars from two to five hundred dollars (Crop Examined) I know Lee fixed the window sills levelled up 50th I saw him at work at them, there was a partition moved in north wing of living room floor, The bill for extra work ^{shown} ~~done~~ was made out by my brother in law Cistern Could not be done under \$100 or \$200 Estimated no price for filling up joints taking down plaster - During the examination Lee admitted that he did not furnish the material for the Cistern,

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The Plaintiff then called Valentine Creeting as a witness who testified, I am a mason I worked for &c on the Chambers House made mortar flues were put in dining room story and in story above, There were six chimneys all fixed same way, Cross Examined All I know that was done to the chimneys was clearing out the flues and topping one out, The Plaintiff then called Seth W Hardin who testified as follows = I had the Contract for the Carpenter work on the Chambers House, the Mason work on the house had been let when the Contract in this case was signed, The plaintiff asked the witness the following Questions, what was the condition of the attic at the date of the Contract read in evidence in this case, to which question the defendant objected the Court overruled the objection & the defendant ^{excepted} there to, and, it was all one room without any studding in it, it is seventy feet long Lee plastered it the partitions are nine feet long each way =

In the basement under the dining room there ^{were} 4 sixteen foot partitions 12 feet high, these 4 partitions were put ^{up} after the 21st Decr 1852, In the first brick story there were three partitions the partition enclosing the stairs was not on the 21st Decr 1852. The plaintiff then asked the witness the length of the last mentioned partition, to which the defendant objected the plaintiff insisted that all the partitions not actually set up in said House on said 21st day of December 1852 was extra work* the Court overruled the objection & admitted the testimony & the defendant excepted stands answer, about 16 feet there was 7 cross partitions sixteen by twelve, there were two partitions over

* and stated that his object in proving the same was to recover pay for such extra work

the parlors, they were taken down, down & others put up
 in their places 8 cts per yard is the usual price of taking
 off both & putting it on again, there were about
 150 yards, The partition beside the stairs is about
 12½ feet long, Lee set 4 grates it would be a days
 work for a man with a tender to set two & put
 in the hearths, Lee filled up some Lee filled up
 some doors in the basement and in the dining
 room one was filled with brick & one with studding
 There was one filled up in the basement with
 stone, it was worth \$2.75 to fill a door with brick
 Lee took out the door in the dining room &
 raised it up some & turned an arch over it,
 worth \$5, Fixing the door over the dining room
 worth \$7.50 I do not remember about the story
 above, Lee dug the cistern, Higgins said he had
 made a bargain with Lee to do it, The plaster
 fell off on account of the roof leaking, think it
 was worth from \$30 to \$40 to patch up the
 plastering when it fell off from beginning to
 end (Crop examined) The 7 Crop partitions
 in the attic were put in on the 21st Dec 1852,
 The attic was put up in December that is the outside
 roof, The partitions over the parlors taken out,
 I saw them out, saw Lee setting grates, saw him
 at work on but one grate, There were 4 grates in
 the House, The doors were filled up in rear of
 V Cratty Called as a witness by Plainiff
 testified as follows, Saw Lees Team hauling stuff,
 Lime stand to the building Joe Hight team
 hauled sand for privy Lee paid him he
 worked over one & ¼ days & over 3 days worth \$2.50
 per day Lee pd 50 cts ferriage Lee worked 5 & ¼ days
 laying brick on privy,

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Burrell recalled by plaintiff testified. I was not present when the contract for plastering was made heard talk of one being made, I know the plastering came off every time it rained. There were two fireplaces in the dining room there were six in the west end and twelve above. There was one fire place left in the office in the north wall they were all altered in the dining room and west end - (Cross examined)

All the Chimneys that I saw Lee at work at altering were from after a rain the ~~water~~ water used to stand on the roof. I commenced work in June, Mr Grundy recalled by plaintiff testified. The door leading into the dining room was raised the door above was also altered Lee did the work. I went to work about 14th April Lee hauled some lumber & some Lash to the building,

(Cross Examined) I don't know how much lumber & Lash were hauled by Lee there was other teams hauling. I know of one pile of 3 or 4 loads hauled by Lee & one load of Lash don't know where they were hauled from - (Cross Examined) I am Son in Law of Lee, the brick walls of the Chambers House were not lathed no lath put on the brick walls of the rooms or halls, the House had three stories of brick above the basement,

(Direct examination resumed) I don't remember how thick the brick walls are there was no studding or furring in the walls to lath to, brick walls which are to be lathed are built different from this, Lee put from 40 to 50 timbers in the flues.

S. N. Harding recalled by plaintiff, the brick walls did not have any blocks or studding put in to them for furring, the Casings of the windows were

not put in with the intention of having the walls
furned. The wall is a solid wall 20 inches thick,
Crosby examined - none of the brick walls of the house
were lathed it is worth 8 cents per yard to lath & find
the materials,

Here the plaintiffs rested their case
The defendant introduced Theron D Brewster
as witness who testified as follows -

I was one of ~~the~~^{the} Company organized to build
the Chambers House, I was one of the building
Committee and was appointed to Superintend
the work, There was no change in the plan
of the building after Dec 21st 1852, except that
some of the partitions were moved, There was
no change in the attic, there was no more
partitions in basement than was in the plan
of the house Dec 21st 1852 - Some of the partitions
were moved a little, The attic now stands just
as I divided it off prior to Dec 21st 1852, I emp-
loyed Morse to make the area wall spoken
of by the witness and paid him for it, I
suppose it is less work to take out the fire places
& plaster over, than to plaster round the fire
places. Masons tell me so, There was no change
in basement that added to expense of plastering
Caldwell built the brick work of that building
by contract, The defendant asked the witness
the following question, was there any plan of the
basement of the Chambers House agreed upon and
existing between the building Committee &
Higgins on 21st Dec 1852 answer there was, the
defendant then asked the witness the following
question, was there any Change^{made} in the plan
of the basement after Dec 21st 1852 if so what change

was made to which question the plaintiff objected the Court sustained the objection & the defendant excepted to the opinion of the Court in so doing - The number of ^{the} rooms in the basement as it was planned and being built Dec 21st 1882 was kitchen, entry, 2 bed rooms wash room in the one part in the other there was 3 rooms & a closet, all the change there was was moving one partition so as to throw the bed room off from the wash room & into pantry no more partitions put in, no additional plastering the angles of the walls were not made straight in plastering the casing of the windows shows a variance of from $\frac{1}{4}$ to $\frac{3}{4}$ inch in a single window, Mr Lee told me since this trial began that he & Higgins had settled for the patching of the walls where the plastering had fallen off, said Higgins had paid him for some and he had put on some himself & it was all settled for, The materials used in plastering the Chambers house were very poor sand come from the river where it had been washed there was no grit in it, there was not hair enough in the mortar, the plastering fell off all over the house on the walls where it never was wet it fell off after we had put a new tin roof on the house that did not leak, the falling of the plastering was not caused by water a man named Mead worked in plastering 3 or 4 weeks, no cornice was put on round the dining room or parlors, no center pieces at all put on only 2 $\frac{1}{2}$ or 3 feet of basement wall taken out six feet high, Lee set but two gables in that house, the brick walls of the house were not loathed, the witness here contradicted his testimony

as follows. I was mistaken this morning in reference to partitions there was a partition enclosing the stairs & another in ironing room in basement, the partitions over the parlor are double and never were removed the lath was taken off them & it was found they could not be moved & they were related, Don't think I had any talk with Higgins in the house in relation to stucco work as stated by Grundy don't know of any agreement between Higgins & Lee that the stucco work should not be done (Cup examined) It was agreed between me and Higgins after the plastering was done that stucco work should ~~not~~ be ~~done~~ dispensed with for the reason that there was not time to do it, Lee had a man there who put some mouldings round one door & made an arch of stucco over a passage way he was a very long time doing it & it was very badly done, Lee built a false chimney carried it up about 10 feet Higgins was gone away I told him to build it & if Higgins did not pay him I would, I think the false chimney is in Higgins contract Lee laid 4 hearths in the house & topped out the kitchen chimney by carrying it up higher no other chimney, there was no timbers built into the brick wall to receive the lath, The plan of the basement was on paper it was drawn by Mullany, all the studding that was up in the basement 21st Dec 1852, was the long partition under the dining room The partition under the parlor was up, The attic was first plastered of any part of the building, it has usually been the case that when the river sand was used that the plastering would fall

off a good tin roof was put on the building in the fall of 1853. The plastering done was finished fore part of July 1853, I did not examine the material before it was put on,

Defendant Called George Low who testified, I am acquainted with the Chambers House, I kept it 3 months, the plastering fell off very badly I examined the plastering it was very thick & had very little hair in it, some fell from the sides when it never got wet while I was there it was not wet when it fell about think it had been wet in some places at least, The Mortar was $1\frac{1}{2}$ inch thick. Some fell off in the attic while I was there but not much the attic did not leakage much leaked a little in one place,

The defendant Called A. S. Shepherd who testified I was in the employ of Higgins in the years 1852-3 in 1853 Lee looked over the account of monies which had been paid to him by Higgins the amount of the payments were \$2047 Some Cents less a credit of \$12.75 Lee said the account was all correct except about \$30, which he claimed was a mistake Lee handed me a bill of extra work which he had done for Higgins & it was credited to him in his presence (witness identifies the bill the defendant then read said bill in evidence it is as follows, Mr E Higgins,

To Joseph Lee for work done on the Custom

Feb 3 ^d 1853	To 1 attendant $1\frac{1}{2}$ d days at \$1 per day	1,50
" " "	" " " 2 $\frac{1}{2}$ " " " " "	2,50
" 7 "	" " " 2 " " " " "	2,00
" " "	" " " 6 " " " " "	6,00
" 14 "	" " " 5 " " " " "	5,00

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" " "	" " "	1/4	" " "	25
" 21 "	" " "	1 1/2	" " "	1.50
" " "	" " "	2	" " "	2.00
" 25 "	" " Mason	2	" " \$2	4.00
" " "	" " "	2	" " "	4.00
Feb 28 1853	to 1 Mason	3 3/4 days	at \$2 per day	7.50
" " "	" " "	3 3/4	" " "	7.50
March 7 "	" " "	1	" " "	2.00
" " "	" " "	1	" " "	2.00
				<u>\$47.75</u>

Work done brickling up between the joists

Feb 16 1853	to 1 Mason	1 1/2 days	at \$2 per day	3.00
" " "	" 1 attender	3/4	" " "	1.75
				<u>3.75</u>

Work done on Chimney flues

Feb 21 1853	to one Mason	2 days		4.00
March 8 "	" " "	1 1/2	"	3.00
				<u>7.00</u>

Work done with teams

Feb 24 1853	12 1/2 days	at \$2.50 per day	\$ 11.25
			Whole amount 69.75
in pencil left on teams work 187-			\$ 68.50

The defendant then called John Mulhany who examined the specifications in evidence. I am the architect of the Chambers House drew the Specifications, it was worth one dollar per running foot to put the cornice mentioned in Contract in dining room there would have been 198 feet the 3 Centre pieces in dining room worth \$15 dollars each, The cornice in hall worth 75 cts a foot running foot would have been 162 feet long Centre pieces in Hall worth \$10 Each I have examined the quality of the plastering I think the man who did it intended to do

it well but he did not work up to the Specifications, I made the above measurements myself. The lath even ~~put~~ on the building entirely too thick, it was not as far apart as Specifications called for all I saw was put on too thick in some places I could not put my knife between the lath there was not hair enough in the plaster. The sand was not fit to use, I could crush up the mortar in my hand. There was not a wall in the house that was hard finished fit to receive paint. There was no good hard finish in the building, there is not a room in the ^{whole} building where the plastering has not fallen off more or less, (Carp Examined) I examined the building last week my testimony is to the present condition of the plastering ^{direct examined, when I looked at this plastering} I could readily tell the old from the new. I have spoken only of the plastering first put on. I think the present value of the stucco work would be as I have stated above calling the plastering & stucco work worth \$2000. The defendant then called Mr Jones as a witness who testified I am a plasterer by trade have followed it for thirty years have examined the Chambers House neither the material used in plastering or the work compared with the Specifications. The main fault is that the lath is too close. There is too little hair used in the mortar. The sand is very poor water alone will not make good mortar full off, the sand was what we call quick sand this kind of sand takes very little sand. I am sure none of the plastering first put on that building on lath will stay on. It is worth 8 Cts per yard.

to lath brick walls for plastering finding laths & nails to do the Stucco work mentioned in the Contract is worth about \$400. The plastering on the brick walls may stay on, some of the work on the lath will stay on. I examined the whole house carefully, the plastering has come off in every room not only on the ceilings but on the side walls none of the work is hard finished ^{fit} to receive ^{fit} paint. I had rather have the mortar off from the building than on it. Should think it worth nothing to the owner. Cross Examined - And 48 years old ^{learned} ~~learned~~ my ^{travels} ~~land~~ in Dublin, I have worked in many of the large cities in the United States Higgins was at the house with me when I examined the work I did not know of this suit at the time. The Mortar used in that building is not such mortar as is generally used in this Country. Should think the angles were tolerably well done. The defendant then called Cushman Cadwall who testified I had the Contract to build the Mason work of the Chambers House. Lee worked for me on the building.

(Cross Examined) I did not employ him to make the walls for the portico or to top out the chimneys or make a cistern or spring. Should think the portico well worth from 12 to 15 dollars - Here the defense rested.

The Plaintiff called again Mr Barrell who testified I don't ^{know} what time the roof of the attic was put on but the Studding of the attic was not up when this Contract was signed. Lee about that time went to Wisconsin a day or two before he went he & I were up in the attic

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I went up for some tools. The Plaintiff recalled Mr Gundy who testified I never saw any Studding for partitions set on the joists before the floor was laid, The Plaintiff recalled J. M. Hardin who testified that the studding dividing the Attic into rooms was set up on 21st Dec 1852 after the plastering was on I was in there in a heavy shower I saw the water run down into the dining room stony through 3 Ceilings the East wall is 104 feet long the width of the north wing is 35 feet the length of the north front is 65 feet

This was all the evidence

The Court at the request of the plaintiff instructed the jury as follows =

1st That for whatever work the plaintiff did on the Chambers House for the defendant & at his request express or implied which is not embraced in the Special Contract which has been read in evidence the plaintiff is entitled to recover a fair Compensation according to the Market value of the work done and materials furnished at the time when the same was ^{so} done & finished -

with the following qualifications asked by defendant - If such extra work has been paid for by Higgins the plaintiff cannot recover for the same -

2^d That if the jury believe from the evidence that the work embraced in the Special Contract was accepted by the defendant as a full compliance with the contract on the part of the plaintiff with a full knowledge on the part of defendant of the manner in which the work

mentioned in the Special Contract had been done then the defendant can not set an alleged insufficient performance of the ^{Special} Contract as a defense to this action in whole or in part, The 2^d instruction was given with the following qualification - But in such case it must be shown by the evidence that defendant agreed to waive a full compliance with the Contract and the damages he might have sustained by reason of the work not having been done according to Contract, Higgins had the right to take possession of the house and insist upon a deduction for work not done and the damages he might have sustained by reason of the work not having been done according to Contract if it was not so done -

3^d If the defendant dispensed with the performance of the Stucco work and accepted the work done under the Special Contract as a full compliance therewith then the cost of the Stucco work cannot be allowed to the defendant Higgins in this action, The Court gave the 3^d instruction with the following qualification -

* But if Higgins did not accept the work as a full performance and only so far as done then the plaintiff cannot claim pay for the work not done, To this 3^d instruction the defendant asked the Court to give the following qualification - Before the jury can find that Higgins accepted the work actually done as a full compliance with the Contract including the Stucco work they must believe that it has been proven that Higgins agreed to pay the

*

price of the Stucco ^{4³} work without the work having been done, which qualification the Court ~~refused~~ ^{did not} to give but gave the first qualification above mentioned in lieu thereof,

4th If the jury find the truth to be that plaintiff at defendant's instance did extra work for defendant, that is work not provided for in the written contract and for which there was no special contract as to price in such case Plaintiff is entitled to an allowance for said work at its reasonable worth and no failure on the part of Plaintiff (if any) in the performance of said written contract can in this action be set off against or deducted from what may be due to plaintiff for extra work as aforesaid, The 4th instruction was given with the following qualification - Yet if the jury believe that defendant has paid ^{to} plaintiff a sufficient sum to pay for the work done under the contract & also for the extra work then the law is for defendant, - To the giving of each of the aforesaid instructions as aforesaid and to the refusal of the Court to give the aforesaid qualification asked by defendant to the 3^d instruction given on the part of Plaintiff the defendant then & there excepted -

The defendant asked the Court to instruct the jury as follows to wit -

1st If the doing the Stucco work mentioned in the contract was dispensed with ^{by} the mutual consent of the parties and such Stucco work was not done the jury should deduct from the contract price of the work the pro rata ~~price~~ worth of doing

the Stucco work and the materials there for

2^o Even if ~~all~~ the Contract work has all been done by the plaintiff in the manner specified in the Contract except the Stucco work and the doing of the Stucco work was dispensed with by the parties & the work actually done has been paid for by Higgins and a sufficient sum over and above paying for the work actually done under the Contract to pay for all the extra work done by plaintiff has been paid by Higgins the law is for defendant -

3^o Unless the plaintiff has proved that he has fully completed the work mentioned in the Contract as stipulated in the Contract or has been shown ^{doing the same or prevented him from} that Higgins released him from ^{doing} the work the jury should allow the plaintiff nothing for work done under the Contract and if defendant has paid ^{to} plaintiff a sufficient sum to pay for all extra work done by plaintiff the law is for defendant

4th If the plaintiff did the plastering that he agreed to do by the Contract but did not do it as well as he agreed to do it the defendant had a right to take the building and in that case the plaintiff cannot legally claim the full Contract price for such plastering but the jury should deduct from such Contract price the difference between the value of the work as it was done and the value of the same work if it had been done according to the Contract,

The 1st 2^o 3^o & 4th instructions asked by the defen-

1857

-dant were given by the Court.

The defendant asked the Court to instruct the Jury as follows -

5th
11

By the Contract in this case the plaintiff was bound to lath all the Halls Rooms & Closets on the first and second floors of the building and all the rooms halls passages apartments Closets & stairs in the 3rd floor the attic & the basement as well on the brick walls as on the partition walls walls of the same and if the lathing on the brick wall was dispensed with by the understanding of the parties then the jury should deduct from the Contract price the pro rata value of such lathing if it was not worth as much to do the work in the way it was done as it would have been to have done it according to the Contract. The Court gave the Instruction last aforesaid to the jury and at the same time remarked in the hearing of the jury as follows - I don't know whether it is written ~~right~~ according to the Contract or not the Counsel have taken the responsibility of writing it but it is to arrive at this point that if the work is not done which the Contract called for the defendant is entitled to a deduction. Plaintiff asked qualifications to the 5th first instructions asked for by defendant, all of which qualifications were on a single piece of paper opposite each of the 4 first of said qualifications the Court wrote the words not given - The fifth qualification was as follows, To the fifth instruction, "It might be the Law if the defendant had pleaded or given notice of set off but under the general issue which is the only issue in this case the Jury

{ can deduct nothing from the Contract price for not lathing the walls - which qualification was neither marked given or refused but was handed to the Jury by the Court with the other instructions to the giving of which qualification to the 5th instruction of defendant in manner aforesaid and handing it to the Jury without marking it refused the defendant then and then excepted. The defendant also asked the Court to instruct the Jury as follows

6th By the Contract the Plaintiff was bound to plaster the Chambers House and if the walls of such house required either in the basement or on the brick walls more plastering to finish the same according to the Contract by reason of the walls being crooked such plastering to straighten the wall is within the Contract and not extra work

7th If the Jury believe from the evidence that there was a plan of the Chambers House according to which the House was being built - on the 21st day of December 1852 then the plaintiff under his Contract with defendant was bound by said Contract to plaster all the work required to be plastered by the said plan whether all the partitions were up at that time or not unless it is shown that the defendant ~~particularly~~ fraudulently deceived the plaintiff in relation to such plan

8th That if Higgins did not object to the materials used in the plastering, yet unless it is proved that he was called on to approve or ~~disapprove~~ such materials, the fact that he did not object

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does not preclude him from insisting and proving that such materials were not such as the Contract required and having damages allowed to him on account of the insufficiency of such materials, The Court gave the 7th instruction above asked, and refused the 8th instruction to which decision of the Court in refusing to give said 8th instruction the defendant then & there excepted, The defendant also asked the Court to instruct the jury as follows

9th If the doing of the Stucco work was dispensed with by the mutual agreement of the parties then the plaintiff is not entitled to receive payment for the preparations he had made to do the Stucco work unless it is proven that Higgins agreed to pay the plaintiff for making such preparations the Court refused to give said instruction as asked but qualified the same as follows, "~~plaintiff~~ ^{pltf} would be entitled to pay for work he had done relative to putting on Stucco work up to the time parties concluded that it should not be put on if they did so conclude, So which decision of the Court in refusing the instruction as asked in qualifying the same and in giving the same with said qualification the defendant then & there excepted,

The jury found a verdict for the plaintiff the defendant moved the Court for a new trial which motion the Court overruled, the defendant then & there excepted to the decision of the Court in overruling said motion for a new trial and prays that his bill of exceptions may be signed, sealed & made ^{part} of the record

48
which is done

Henry J. Cotton

Attest
Clerk

On the 26th day of March 1855 a bond was filed in the office of the Clerk of said Court in the words and figures following, to wit,

Know all Men by these presents, that we Ebenezer Higgins by his attorney in fact William Chamorro as principal and William Chamorro of the County of LaSalle and State of Illinois are held and firmly bound unto Joseph Lee of the Same County and State in the penal sum of Two hundred fifty Dollars Current Money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents, Witness our hands and seals this 26th day of March 1855

The Condition of the above obligation is such, That whereas the said Joseph Lee did at the March Term A.D. 1855 of the LaSalle County Court recover a judgment against the above bondsmen Ebenezer Higgins for the sum of Sixty two dollars and fifty cents besides costs from which judgment the said Ebenezer Higgins has taken an appeal to the Supreme Court of the State of Illinois - Now if the said Ebenezer Higgins shall prosecute his appeal with effect, and shall pay whatsoever judgment may be rendered by the Court on the trial or dismissal of the said appeal in the said Supreme Court then the above obligation to be

void, otherwise to remain in full force and effect

Ebenezer Higgins

Taken and entered into before

me at my office this 26th

day of March A.D. 1855,

J. M. Raymond Clerk

} By his attorney in fact

} ~~Mr~~ Chumarsen

} ~~Mr~~ Chumarsen

Seal

Seal

Seal

Endorsed (Filed March 26th 1855 J. M. Raymond Clerk)

And on same day & at same time a power of attorney was filed which is in the words & figures, ^{following} to wit -

I hereby authorize and empower ~~Mr~~ Chumarsen for me as my attorney and in my name to execute an appeal bond in case tried in LaSalle County Court at March term 1855, wherein Joseph Lee was plaintiff and Ebenezer Higgins defendant - Said case having been appealed to Sup Court by me Peru March 23rd 1855

Ebenezer Higgins, (Seal)

Endorsed

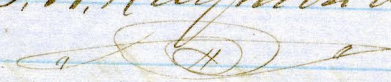
" Filed March 26th 1855

J. M. Raymond Clerk

State of Illinois
LaSalle County } p

I Samuel N. Raymond Clerk of
the County Court in and for said County do hereby
certify that the foregoing transcript is a true full and
correct copy from the record of all the proceedings
which have been had in said County Court
in the aforesaid case of Joseph Lee vs Ebenezer
Higgins

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at my Office in
Ottawa ~~in~~ said County this 3^d
day of May A.D. 1855

S. N. Raymond Clerk


clerk's fees on Record \$17.50 paid by Deft

Ex²

5 Higgins
appellant
vs
Lo Lee appellee.
Record.

Filed June 11, 1855
L. Nelson Clerk

page 37, Payment proven 2204, 50
 page 38-9, 40 Worth of Stucco work not done 400, 00
 page 39, 33 value of plastering not done at least 300, 00
 page 35, 40 manner of doing the plastering 35
 Barrels evidence pay 33, 34, 37, 38
 40,
 value of extra work

Was there any plan of the basement of the Charles
 House agree upon & existing before the build-
 -ding Committee Higgins on 21st Dec 1832
 Was there any change in the plan of the
 basement after the 21st Dec 1832. if so what
 change was made Boston pay 34,
 see inst & pay 46

page 42

The qualification to the 3^d instruction should have been given

page 45

The qualification to the 5th instruction of depts was wrongly given

page 46

The court should have given the 8th instruction asked by defendants
for the evidence which made it necessary 28 page

Court should have given 9th instruction

See page 29, 36

Higgins
See

abstract

page 32 team work

" 24.27 return

See page 30 set 100 to 200

" 28.28 Tearing down wall in basement & fixing chimneys

" 27.29 Filling up return closets

all the above were settled long before the commencing

see page 3708 most of this suit, included in the bill rendered by

See page 4 Higgins

page 29 area wall

\$ 30 & Bruster Bruster paid for that
medium

page 28 Repairing fallen plastering

" 35 This was settled See Bruster on page 35

page 28 Wall underneath North portico 12.00

" 30 Fixing stone sills in basement 3.00

" 32 building up 2 doors 5.50

" 28 extra plastering on doors 2.50

" 32 altering doors 12.50

" 32 tearing down & re-lathing partition 150 lbs 8.50

" 28 topping out chimneys 5.00

" 36 blind chimneys 3.00

" 29 work on privy 12.75

" 32 setting 4 Gates 8.00

\$ 74.75

Higgins as Sec

~~page 8~~
By the terms of the contract the appellee was to do all the work in plastering & stucco work required to be done in plastering & stucco work on the building now being built known as the Chambers House & find all the materials which were to be of the best quality and to be approved before they were used. The work was to be done according to the specifications of ~~the~~ ^{the} architect which are as follows

~~page 15~~
All the halls & rooms & closets on the 1st & 2^d floors lath & plastered browned & have finished fit to receive paint all angles perfectly straight all plastering evenly & smoothly laid on, Mortar of best quality and approved of before laying on the dining rooms to have a good dentat cornice & ^{three} centre pieces with raffles ~~twist~~ of foot leaf in each the parlor to have a good cornice of approved Mod ~~xxx~~ with ^{two} centre pieces with ^{one} scroll & foot leaf, Hall to have ^{two} centre pieces with plain cornice & leaf of the ^{attic} floor attic & basement with all the rooms, halls, passages, apartments, closets, Stairs &c, to have lath & plaster two coats, & finish smooth with good materials in proper proportions, finished white fine & workman like,

~~page 6~~
Higgins to pay 1200 of which 400 was paid down and the balance to be paid as work progresses Higgins having the right to retain as much as he may think would secure the performance of the contract all materials to be of best quality and approved before being used.

page 15. The contract was misdescribed in the special count
& excluded, & read in evidence only under the
common counts = ~~because the law says nothing of~~
~~Higgins right to retain as security~~

1st Question objected to = John Barker = State whether according to Your
page 25. best recollection there was half of the inner surface
of the wall of the basement was filled up or more or less

2nd Question How much was it worth to put the basement wall in
page 27 condition so that a coat work would finish it

3rd Question Would it cost as much as to put one coat of plastering
page 27 throughout the basement Answer Yes it would cost more

4th Question Would it cost half as much more Answer Yes
page 27

5th Question to Mr. Harkin. What was the condition of the other
page 31 at the date of the contract read in evidence
in this case and it was all one room
without any studding

6th Question to Mr. Harkin The pty asked the witness the length
page 31 of said partition See Brewster's testimony
The pty insisted that all the partitions not actually
set up in said house on 21st day of December 1832
was extra work & stated his object in proving the same
was to recover pay for such extra work

Higgins v Lee

Higgins for Plaintiff

- 7 Barb S.C.R. 169. Instrument inadmissible under R.S.L.
Couch - which were performance - & proof in general
- 2 Blatch R 22 } Performance avoided - extension
3 Term R 590 } of time or excuse under such an
avowment - are inadmissible
- 3 Bibb R 99.26 } Same
- 1 Marsh 135 or 155. 195 }
- 7 Wend R 121 } As to right to recover only the
3 Porter Ia 148 } Contract price or in under Com-
Do 59.72 } mon Comits
- 14 B. Monroe 178 }
- 12 Fredell 282 }
- 12 Vermont 625 }
- 25 Do 9 }
- 7 Rich 180 }

Def't's Instructions erroneous & voiding

- 3 Porter Ia R 72 Def't may recoup damages for breach
of contract under general issue, without
being compelled to resort to his cross-action
- 12 Vermont 625 } Def't may recoup damages for
7 Rich 180 } breach of contracts
- 5 Rich 76 } (3 Porter did not decide us to doing so
18 Rich 555 } under the general issue)
- 12 Lay or Rawl 275 }
- 14 Ills R 424 May recoup under the general issue

Wallace for Defendant

Book for Poff in conclusion

Record 25 See certain questions asked and evidence offered & rejected

12 N Hamp 171 } New trial will be granted when record
27 Mass 351 } is against the testimony
11 Ill 142 }

Yergins
See
Brief

Ebenezer Higgins

JP

Joseph Lee.

I = The verdict was wholly
unsupported by the evidence;

I was contrary to the evidence - The first
count is on the special contract and
alleges that there was an entire performance

But the proof offered is of an excuse
for the non performance - This was not
admissible under the pleading & did not
support it = 7 Barb S.C. 169 Crandall &
Clark - 3 Blackf 22 Smith & Brown -
3 Term 540 - 3 Bish 267 - 1 Marsh 193 -

Author 155 = Besides the judge had
& properly ruled out the proof under the
first count - The contract was variant
from the first count - Defendant was
authorized to retain an amount sufficient
to secure the faithful performance of
the contract - And that amount Lee
could not recover from him - By the
terms of the contract, he was authorized
to retain it for his security - This was
a material qualification of the terms
of the contract which the plaintiff
was bound to notice & declare
upon it -

II = Even if it were conceded that the

plaintiff could abandon his special
contract & recover on the common
count; still he could only recover
for the work done according to the
contract price as far as the same
can be traced - 7 Wend - 121 =

3 Porter's Ind. Rep 148. 59-72 = 14 B. Mon. 178 =

12 Vermont - 625 = 25 Vermont - 9 =

12 Fredell, June Rep 282 =

111 It was not necessary to plead a set off -

3 Porter's Ind. Rep 72 = 12 Vermont - 625 =

5 Hill, 76 = 18 Pick 555 = 12 Serg O'Rand - 275 =
7 Pick - 180 =, Besides the contract says

in 4 prep terms, that Higgins may
retain money enough to secure the
faithful performance of the contract.

"See could not recover this sum until
he had faithfully performed his contract -
Higgins could retain it - & this was a good
defence under the case issue - 14 Illinois 424 -

118 = New trial will be granted where the
verdict is against the testimony - 12 N. H. 171
27 Maine 351 = 11 Ill 142 =

11 Instructions were clearly wrong
for penmanship

V1- Refusal to give 8 & 9 the instructions
for dependent was clearly wrong.

E. Higgins }
JP }
Joseph Lee - }

Prints & authorities.

344
136

E. Higgins
vs
Joseph Lee

12

1855

12

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