

No. 13138

Supreme Court of Illinois

Sutherland et al

vs.

Ryerson

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division

No. 35.

Repaud

1859

Anthony

Ryan

10

SUPREME COURT.

JOHN E. SUTHERLAND, *et. al.*, in *Error*,
vs.
MARTIN REYERSON, in *Error*. } *Plaintiff's Points.*

I.

We say, in the first point which we make in this case, that the decree entered in the court below, so far as the same relates to the plaintiffs in error, was and is contrary to law, and equity, and reason—the answer of the plaintiffs in error being responsive to the allegations in the complaint, and being upon oath, and no replication thereto having been put in, and no testimony thereon having been taken, the answer must be taken as true.

See 1 Barb. Ch. Pr., 145.

1 Gilman Rep., 433, 434, and 435

II.

We say, in the second point, that the court below erred in adjudging the allegations in the complainant's bill of complaint to be true, and confessed against the sworn answer of said plaintiffs in error. This being an equitable proceedings.

2 Dana, 253—1 Barb. Ch. Pr., 133.

III.

We say, in the third point, that the court below erred in decreeing that the rights and liabilities of the petitioner and defendants are respectively as stated and set forth in the complainant's bill of complaint. This proposition is too plain to require authority. See complaint, answer, and decree, on pages of case 3, 4, 9, 10, and 14.

35-16
Supreme Court

John E. Sutherland

et al

Martin Ryerson

et al

Authentic

A. Garrison

Atty

Filed May 28, 1860

Leland

Clark

Printed by Beach & Barnard, 14 Clark St.

IN THE SUPREME COURT,

Third Grand Division.

APRIL TERM, A. D. 1860.

MARTIN RYERSON, et al,	}	
ADS.		
JOHN E. SUTHERLAND, et al,		
		<i>Appellees.</i>
		<i>Appellants.</i>

APPELLEES' POINTS.

The petition shows that the appellees, Ryerson, Miller & Co. had a lien upon the lot in question, for \$748.17, and says that Sutherland & Co. also claim that they have a lien for \$325.03, but says that not more than \$200 of their claim is for lumber furnished to be used on the premises, and that they have not a lien for over that sum.

The answer of Sutherland & Co. says that they have a lien for the whole amount, *but does not state facts which would authorize the Court to come to any such conclusion.* It does not show that any time was agreed upon within which the lumber was to be furnished. It is evident, from the answer, that they did not expect to get their pay, by means of that suit, but relied upon the suit which they had previously commenced in the Circuit.

The appellees made them parties so that they could come in and establish and insist upon their claim, if they had one. They do not state facts which show

a claim, nor do they ask for relief, but say they have a prior suit pending for the same matter. The appellees thought best to leave them to pursue their remedy in the forum they had chosen. If such prior suit was pending, it was probably judicious for Sutherland & Co. to prosecute it further, and not to allow it to be displaced by the new suit of Ryerson & Co. If they had not made Ryerson & Co. parties to such suit, it was not too late to do so. What became of that old suit does not appear, nor would it be pertinent to inquire.

Scoville, Buschick & Co. were the debtors and principal defendants. They admit the correctness of the claim of the petitioners, but say nothing about the claim of Sutherland & Co. who file no cross bill nor take any steps to establish their claim, if they have one. It is difficult to see how any decree could have been properly entered different from the one of which the appellants complain.

It is not for the appellants to complain of the proceedings, as between the appellees and Scoville, Buschick & Co. It is no concern of theirs, as to whether or not the answer of Scoville, Buschick & Co. was properly signed and verified. It was sufficient if not objected, and no objection was made to it by any one.

FARWELL, SMITH & THOMAS,

Attorneys for Appellees.

(³Supreme Court
Martin Ryerson et al
Appellus
ads
John E. Switzerland et al
Appellants

Appellus Ponits

Fawell Smith & Thomas
Atty for Appellus

Filed May 25: 1860
L. Leland
Clerk

SUPREME COURT.

JOHN E. SUTHERLAND, *et. al., in Error*,
 vs.
 MARTIN REYERSON, *in Error*. } *Plaintiff's Points.*

I.

We say, in the first point which we make in this case, that the decree entered in the court below, so far as the same relates to the plaintiffs in error, was and is contrary to law, and equity, and reason—the answer of the plaintiffs in error being responsive to the allegations in the complaint, and being upon oath, and no replication thereto having been put in, and no testimony thereon having been taken, the answer must be taken as true.

See 1 Barb. Ch. Pr., 145.
1 Gilman Rep., 433, 434, and 435

II.

We say, in the second point, that the court below erred in adjudging the allegations in the complainant's bill of complaint to be true, and confessed against the sworn answer of said plaintiffs in error. This being an equitable proceedings.

2 Dana, 253—1 Barb. Ch. Pr., 133.

III.

We say, in the third point, that the court below erred in decreeing that the rights and liabilities of the petitioner and defendants are respectively as stated and set forth in the complainant's bill of complaint. This proposition is too plain to require authority. See complaint, answer, and decree, on pages of case 3, 4, 9, 10, and 14.

IV.

We say in the 4th point we make, that the Court below erred in receiving the answer of Buschick & Co. as evidence against Sutherland & Co., the same not having been signed by Buschick & Co., nor sworn to, neither was there any proof of its truth given. See page section of the Statutes of Ill.

Also, in assuming that the petitioners had proved their lien upon the land in question as against the Plaintiffs in Error.

1 *Gilman*, 433, 434 & 435, *Stat. Ill.*

V.

We say in the 5th point, That the Court below erred in not decreeing that Sutherland & Co. had a lien for the amount stated and set forth in their answer \$325.03. Also in ordering that the land be sold, and that the proceeds be applied to the payment alone of the petitioners' claim.

1 *Gilm., Id.*

1 *Story Equity Juris.*, p. 27, sec. 28, 437, 439.

A. GARRISON, *Attorney.*

Sup Court ²³⁻¹⁶
John E. Sutherland
vs
Martin Ryerson
et al

Poerty

A. Garrison Feb

Supreme Court

John E Sutherland & al

vs Plaintiffs in Error

Martin Ryerson
Walter T Miller &
Robert Morris } Defendants in Error

Clerk

Please issue a writ of Error
to the Cook County Court of Common Pleas
bringing up for review on the records & proceedings
Evidence & decree
in said Court in a cause or proceedings upon
petition for Mechanics Lien, in which the above
named defendants in error were the
petitioners and August H Buschick Washington
L Scoville William J Johnston Jr Alexander Tiller
Francis A Hoffman Charles Rappig Gustav E Buschick
John E Sutherland James B Sutherland & David R
H Sutherland were defendants

And a Scire facias to the Sheriff of
Cook County requiring defendants in error
to appear at the next Term of this
Court

A Garrison


#3 35-16

Supreme Court

John E Sutherland

vs Peff in Error

Martin Ryuson

Watts J Miller &

Robert Morris

Defts in Error

rec

Filed March 30, 1839
L. Leland
clerk

A Garrison

Atty for

Sutherland

State of Illinois }
County of Cook } *Es*

Pleas before the Honorable John M. Wilson, Judge
of the Cook County Court of Common Pleas in and
for said County and State at a regular term of
said Cook County Court of Common Pleas begun
and holden at the Court House in the City of
Chicago in said County and State on the first
Monday being the fourth day of February in the
year of our Lord one thousand eight hundred and
fifty six and of the Independence of the United
States the Eightieth.

Present The Honorable John M. Wilson Judge
 Daniel Mc Henry Prosecuting Attorney
 James Howard Sheriff

Attorn

Walter Kimball. Clerk.

Be it remembered that heretofore to wit on the nineteenth day
of January A.D. eighteen hundred and fifty six came Martin
Ayerson, Watts, J. Miller and Robert Morris, and filed in the
Office of the Clerk of said Court, their Petition for Mechanics

And which said Petition is in the words and figures following to wit:

"State of Illinois

Cook County Court of Common Pleas

To the Honorable John M. Nelson Judge of the
Cook County Court of Common Pleas.

Your Petitioners Martin Ryerson, Watts, J. Miller and
Robert Morris respectfully show unto your honor,

That your Petitioners are partners doing business under
the name and style of "Ryerson, Miller & Co." and as such
partners, have for a long time been engaged in the sale of
lumber in the City of Chicago, in the County of Cook and State
of Illinois, that in the month of July last past, and on or
about the nineteenth day of said month, your Petitioners sold
and delivered to August J. Buschick, Washington, L. Scoville
and Gustavus E. Buschick, who at that time composed a firm
doing business in Chicago aforesaid, under the name and style
of "Scoville, Buschick & Co." a large quantity of lumber of
the value of Seven hundred and forty eight dollars & seventeen
Cents, a correct Bill of which lumber and of the price at
which the same was sold as aforesaid is hereto annexed and
is made a part of this Petition; that at the time of such
sale said Scoville, Buschick & Co. promised and agreed to
and with your Petitioners, to pay to your Petitioners for said
lumber in two months from the time of such purchase, to wit,

on the nineteenth day of September then next, the paid sum of \$748¹⁷/₁₀₀ with interest on the same from the time of such purchase

And your Petitioners further show that said lumber was sold to said Scoville, Buschick & Co. as aforesaid for the purpose of being used, and was used by them in erecting certain buildings on a certain piece of land situate in said City of Chicago, in said County of Cook and State of Illinois and known & described as being the South One hundred feet of the South East quarter of Block number Fifty five (55), School Section Addition to Chicago, said parcel of land commencing at the South East corner of said Block, running thence North on the West side of Canal Street One hundred feet, thence West to the Centre of the Block, thence South One hundred feet, thence East to the place of beginning; that the buildings so erected on said piece of land still remain there and are the only buildings situate thereon

And your Petitioners further show that said sum of \$748¹⁷/₁₀₀ has not been paid nor any part thereof; that the whole of said sum together with interest thereon from the 19th day of July A. D. 1855, is now due and owing to your Petitioners from said Scoville, Buschick & Co. and that as your Petitioners are informed and believe, your Petitioners have a lien upon said buildings and upon the said piece of land upon which the same are situate for the amount so due them as aforesaid which lien your Petitioners seek to enforce by this suit

Your Petitioners further show that John E. Sutherland, James B. Sutherland & David R. H. Sutherland who compose a

firm doing business in Chicago aforesaid under the name & style of Sutherland & Co., also have a claim against said Scoville Buschick & Co. for lumber sold and delivered to them during the year 1855. amounting in the whole to the sum of Three hundred and twenty five and $\frac{3}{100}$ dollars, that said Sutherland & Co. allege that the whole of said sum is a lien upon said piece of land and upon the buildings thereon.

And your Petitioners further show upon their information and belief, that a portion, but not all of said last mentioned lumber was furnished to be used and was used for erecting said buildings or the appurtenances thereto, that the value and purchase price of the said lumber so used was about the sum of Two hundred dollars and not over that sum; and that said Sutherland & Co. have not any just claim or lien upon the above described piece of land or buildings, for more than said sum of Two hundred dollars.

Your Petitioners further show that on or about the 27th day of June A. D. 1855 one William S. Johnston Esq. of the City of Chicago, he being at that time seized and possessed of an Estate in fee simple in and to the piece of land above described, made and entered into an Agreement in writing with said Scoville Buschick & Co., in and by which it was among other things agreed on the part of said Johnston that he would sell to said Scoville, Buschick & Co. the piece of land above described for the sum or price of Ten⁽¹⁰⁾ thousand dollars, of which the sum of Five hundred dollars was paid down at the time of making such agreement and said Scoville, Buschick & Co. agreed on their

part, among other things, in and by said agreement to pay the remaining Nine thousand five hundred dollars at certain times in said Agreement specified.

And your Petitioners further show that under and by ~~a~~ virtue of said agreement the said Scoville, Buschick & Co., entered into possession of said piece of land, and made certain improvements upon the same and erected the buildings before mentioned and that said Scoville, Buschick & Co. and one or more person claiming under them ever since then have been and still are in possession of said piece of land under said agreement.

And your Petitioners further show that on or about the 28th day of June A. D. 1855 the above named persons composing the said firm of Scoville, Buschick & Co., executed and delivered a trust deed upon said piece of land to one Alexander Siller as trustee to secure the payment of a certain Note dated that day for One thousand five hundred and fifty seven dollars and fifty cents, payable to one Francis A. Hoffmann or order ninety days from date, which Note was then and is still held and owned by said Francis A. Hoffman and on which there remains unpaid and now due the sum of Three hundred and fifty three dollars or thereabouts and not over that sum: that said Hoffman holds in his hands certain Notes and rights in action heretofore turned out to him by said Scoville Buschick & Co. as collateral security to secure the payment of said Note first above mentioned, and of certain other demands which said Hoffman had against said Scoville, Buschick & Co.; that the said Notes and rights in action so turned out and still held by said

Hoffman, are sufficient to pay the whole amount of all just claims which said Hoffman has against said Serrille Buschick & Co. and more than sufficient, when collected, for that purpose.

Your Petitioners further show that Charles Reissig hath no claim to have some lien, claim or interest in and to the said piece of land or upon the buildings thereon, or to some portion thereof. Which lien, claim and interest, if any such exists, is subject to and should be postponed to the said claim and lien of your Petitioners.

Your Petitioners further show upon their information and belief; that said Serrille, Buschick & Co., have failed in business and declare themselves to be and are insolvent and unable to pay their debts and that your Petitioners are powerless in the premises, unless they shall be able to enforce their lien above mentioned, and proceed in collecting the amount due them out of said piece of land and the improvements and buildings thereon as they now seek to do by the aid of this Honorable Court.

Your Petitioners therefore pray this Honorable Court that an Order may be made directing the sale of said piece of land and of the said improvements and buildings thereon, and for such different further or other Order or relief as to this Honorable Court shall seem meet, and as shall be agreeable to Equity.

And also that the Peoples Writ of Summons be issued under the Seal of this Court against the above named August F. Buschick, Washington L. Serrille, Gustavus & Co.

Brochick, John E. Sutherland, James B. Sutherland, David R.
H. Sutherland, William J. Johnston & Alexander Siller,
Francis A. Hoffman and Charles Reising, commanding them
and each of them to be and appear at a certain day in this
Honorable Court according to the course and practice thereof, to
answer the premises and to stand to, abide by and perform
such Order and decree as your Honor shall deem meet,

And your Petitioners will ever pray &c

(Signed)

Martin Ryerson.

Goodrich, Farwell and
Scoville Solicitors for
Petitioners

Watts J. Miller

Robert Morris.

" Messrs Scoville & Brochick

Bought of Ryerson, Miller & Co.

1855

July 19

To 26 ft 6 x 6 20 1560 ft.

" 1241 " 2 x 10 20 4092 "

" 241 " 2 x 6 20 480 "

" 1641 " 2 x 6 22 3608 "

" 18 " 3 x 4 20 360 "

" 26 " 2 x 4 20 338 " 10438 ft. of 20 x 208.76

" 15000 ft. Con Boards " 16. 240.00

" 15000 " 1 1/2 inch Sec Clear " 25 37.50

" 9600 3 x 10 20 " 20 192.00

" 19 ft 3 x 4 22 418 ft.

" 12 " 3 x 4 22 264 "

" 6 " 3 x 4 24 144 "

To	4	3	4	26	182	f.		
"	1	3	4	20	20	1628	f. @ \$20	\$ 20 " 56
"	2868	f.	18	f	Com: Boards	"	16	45 " 89
"	18	3	2	6	12	216	f.	" 16
								3 " 46
								<u>\$ 448 " 17</u>

And thereupon on the said nineteenth day of January A. D. Eighteen hundred and fifty six, there accordingly issued out of and under the seal of said Court, Peoples Writ of Summons in the words and figures following, to wit,

"State of Illinois }
County of Cook } ss.

The People of the State of Illinois to the Sheriff
of said County Greeting.

We command you that you summon August, F. Buschick, Washington L. Scoville, Gustavus E. Buschick, John E. Sutherland, James B. Sutherland, David R. H. Sutherland, William S. Johnston Jr, Alexander Siler, Francis A Hoffman and Charles Reising if they shall be found in your County personally to be and appear before the Cook County Court of Common Pleas for the County of Cook on the first day of the next term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of February next to answer unto Martin Ryerson, Watts Y. Miller & Robert Morris in their certain Petition for Mechanics Lien filed in the said Court.

And have you then and there this Writ with an

Enforcement thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court
and the Seal thereof at the City of Chicago aforesaid
this 19th day of January A. D. 1856.

Walter Kimball - Clerk."

(Enclosed) "Served this Writ on the within named John E. Sutherland, Francis A. Hoffman, and Charles Reising by delivering a copy hereof to each of them this the 22nd day of January 1856. Also to David R. H. Sutherland, William S. Johnston and Alexander Siler by delivering a copy hereof to each of them this the 23rd day of January 1856, the within named August F. Buschick, Washington L. Scoville, Gustavus E. Buschick and James B. Sutherland not found in my County this the 1st day of February 1856.

James Andrew, Sheriff

By John H. Dart - Deputy."

And thereafter to wit on the twenty second day of March A. D. Eighteen hundred and fifty six the said John E. Sutherland and David R. H. Sutherland, filed in the Office of the Clerk of said Court, their Answer to said Petition in the words and figures following to wit.

"Martin Ryerson Et al } Cook County Court of Common
(22) } Pleas - of February Term 1856.

August F. Buschick et al }

The general Answer of John E. Sutherland and David

R. H. Sutherland two of the Defendants to the Petition (in the above entitled cause) of Martin Ryerson et al against August J. Buschick et al Defendants.

These defendants now and at all times saving and reserving to themselves all advantages and benefit of Exception to the errors and imperfections contained in the said Petition of said Martin Ryerson et al for answer thereto or to so much thereof as they are advised it is material for them to make answer unto they answering admit that John E. Sutherland James B. Sutherland and David R. H. Sutherland compose the firm of Sutherland & Co doing business in Chicago as stated in said Petition have a claim against said Seville, Buschick & Co for lumber sold and delivered to them during the year 1855 amounting in the whole to the sum of Three hundred and twenty five $\frac{3}{100}$ dollars, and your defendants herein allege and claim that the whole of said sum (of Three hundred and twenty five $\frac{3}{100}$ dollars) the amount of the bill for said lumber is a lien upon the said piece of land & the buildings thereon mentioned and described in said Petition.

And your Defendants deny the allegation in said Petition that a portion, but not all of said mentioned lumber was furnished to be used for erecting said building and the appurtenances thereto. But insist and claim that the whole of said Bill of lumber to said amount of Three hundred and twenty five $\frac{3}{100}$ dollars was purchased for and used in and about the construction of the building and appurtenances on said piece of land mentioned in the Petition herein, & is now a lien thereon.

And your defendants further say that on the 3rd day of January A.D. 1856 they filed their Petition as such herein against August J. Buschick, Washington, L. Scoville & Gustavus, E. Buschick defendants also herein, in the Cook County Circuit Court before George Manwire. And also to recover for said Bill of Lumber and also asking that the said Bill of Lumber be declared a lien upon the said piece of land and buildings & appurtenances thereon and that such proceedings or suit is still now pending and undetermined and such Petition was filed and suit commenced and defendants therein summoned previous to the commencement of the proceedings herein, or the filing of the Petition herein as your defendants are informed and verily believe

H. Garrison

Solicitor for Defendants."

"Cook County Jo.

John E. Sutherland one of the Defendants above named being duly sworn says that he has heard read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to what is therein stated on information and belief, he believes to be true.

Subscribed and sworn to before }
me this 21st day of March A.D. 1856 } John E. Sutherland.
Calvin D. Wolf J. P. }

And thereafter to wit on the twenty-fourth day of March A.D. Eighteen hundred and fifty six the said Washington, L. Scoville, Gustavus, E. Buschick & August J. Buschick filed

in the Office of the Clerk of said Court, their Answer to said petition, in the words and figures following, to wit:

Cook County Court of Common Pleas.

February Term A. D. 1856.

The joint and several Answerers of Washington, L. Scoville, Gustavus E. Buschick and August, F. Buschick defendants, to the petition for a Mechanics Lien filed in the Cook County Court of Common Pleas by Martin Oyerom, Watts, J. Miller and Robert Morris petitioners

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors & insufficiencies in the said petitioners said petition contained for answer thereunto or to so much and such parts thereof as these defendants are advised by counsel is material or necessary for them to make answer unto, answering say - That they admit the partnership and business of said petitioners as charged in said petition & the sale to these petitioners of the lumber & at the prices and on the terms set forth in said petition amounting to the sum of \$448.11 & that said lumber was purchased by these defendants of said petitioners for the purpose of erecting buildings on the premises described in said Petition & was used for such purpose as alleged in said Petition.

These defendants further answering admit the purchase of said piece of land described that they have not paid any thing to said petitioners on said lumber & that the whole amount of said purchase money therefor, with interest as

charged in 'said' petition, is due & owing to said Petitioners.

These defendants further answering admit the purchase of said piece of land described in said petition of said William S Johnston Jr at the time and on the terms alleged in said petition & the payment of \$500 thereon at the time of such purchase

Washington, L. Seville

August, F. Buschick

Gustav E. Buschick

By A. Voss, their Atty "

And afterwards to wit on the second day of April (being one of the days of the said February term of said Court). At Eighteen hundred and fifty six the following proceedings were had in said cause and entered of record in said Court to wit

"Martin Ryerson, Wm. J. Miller
and Robert Morris

(22)

August F. Buschick Washington, L.
Seville, William, S. Johnston Jr Alex
Siler, Francis, A. Hoffman, Char Reussig
Gustav E. Buschick, John E. Sutherland
James B. Sutherland & Daniel R H. Sutherland

Petition for
Mechanics Lien.

And now at this day come the said Petitioners by Goodrich Farwell & Seville their Solicitors and it appearing to the Court now here that the above named Defendants William, S. Johnston Jr

Alexander Siler, Francis A. Hoffman & Charles Reissig were each of them served with process of summons issued in this cause more than ten days before the first day of this term, and they being three times called in open court do not appear but make default. On Motion of said Petitioners Solicitors It is Ordered that the Petition be taken as confessed against the said Johnston, Siler Hoffman and Reissig.

And it also appearing to the Court from said Petition and from the Answers and papers on file in this suit that the allegations and statements in said Petition contained are true. On like Motion it is further Ordered adjudged and decreed as against all of the Defendants that have been served with process or have appeared to wit, all except James B. Sutherland, that the rights and liabilities of the Petitioners and of the defendants respectively are as stated and claimed in said Petition - That said Petitioners do have a Mechanics Lien upon the premises in their Petition set forth, and that the said Petitioners do recover of the said August J. Buschick, Washington, L. Scoville and Gustav E. Buschick the sum of Seven hundred and seventy nine dollars and eighty four cents; that the premises in the said Petition described to wit, All the right title and interest of the said August, J. Buschick, Washington, L. Scoville and Gustav E. Buschick in and to all that certain piece or parcel of land situate in the City of Chicago, County of Cook and State of Illinois and known and described as being the South One hundred feet of the South East quarter of Block number fifty five (55) School Section Addition to Chicago, said parcel of land commencing at

the South East corner of said Block running thence North on the West side of Canal Street One hundred feet, thence West to the Centre of the Block, thence South One hundred feet, thence East to the place of beginning, and all the buildings and improvements thereon, and all the appurtenances therunto belonging be sold by the Coroner and acting Sheriff of Cook County, that the proceeds of such Sale be applied to the payment of the sum so due the Petitioners as aforesaid and the Costs of this suit, and that the Petitioners are to be at liberty to apply to this Court as occasion may require in this matter.

And thereafter to wit on the twenty ninth day of April A. D. Eighteen hundred and fifty six there was issued out of and under the Seal of said Court special Writ of Execution in said suit, in the words and figures following to wit.

"State of Illinois }
County of Cook ... } ss.

The People of the State of Illinois to the Coroner and acting Sheriff of said County, Greeting.

We command you that of the Lands and Tenements of August. F. Buschick, Washington, L. Scoville and Gustav. E. Buschick " to wit, all the rights title and interest of the said August. F. Buschick, Washington, L. Scoville and Gustavus E. Buschick, in and to a certain piece of land situate in the City of Chicago, in said County of Cook and State of Illinois and known and described as being the South one hundred feet

of the South East quarter of Block Number Fifty five (55)
 School Section Addition to Chicago said parcel of land commencing
 at the South East corner of said Block running thence North
 on the West side of Canal Street One hundred feet, thence West
 to the Centre of the Block, thence South one hundred feet, thence
 East to the place of beginning" and all the Buildings and
 improvements thereon and all the appurtenances thereunto
 belonging, defendants in said County, you cause to be made
 the sum of Seven hundred twenty nine dollars and eighty
 four cents, which Martin Ryerson, Watts, J. Miller and Robert
 Morris plaintiffs, lately in the Cook County Court of Common
 Pleas of said County, at a term thereof begun and held at
 Chicago in said County, on the first Monday of February
 A.D. 1856 recovered against the said Defendants, and which by
 the said Court was adjudged to the said Plaintiffs for their
 damages And also the further sum of Eleven dollars and
 eighty five cents which were adjudged to the said Plaintiffs
 for their Costs and charges in that behalf expended, whereof the
 said Defendants were convicted, as appears to us of Record. And
 have you these moneys ready to render to the said Plaintiffs
 for their Damages and Costs aforesaid and make return of
 said Writ with an endorsement thereon in what manner
 you shall have executed the same in Ninety days from
 the date hereof.

Seal

Witness Walter Kimball Clerk of our
 said Court and the Seal thereof at
 Chicago in said County this 29th day
 of April A.D. 1856
 Walter Kimball. Clerk

17

(Sheriffs return thereto attached)

"By virtue of the annexed Writ of Execution No 5786 I did on the 9th day of May 1856 levy upon all the right title and interest of said defendants in and to the following described property to wit, The South One hundred feet of the South East quarter of Block Fifty five, School Section Addition to Chicago, said piece of land commencing at the South east corner of said Block running thence North on the West side of Canal Street One hundred feet thence West to the Centre of the Block, thence South One hundred feet thence East to the place of beginning and all the buildings, improvements, and all appurtenances thereunto belonging, and on the second day of June 1856 between the hours of nine in the morning and the setting of the Sun of the same day at the North door of the Court House in Chicago in said ^{6th} County (the time and place of Sale having been duly advertised according to law) I did sell at public Vendue, to the highest and best bidder at said Sale, the property levied upon as aforesaid for the sum of Seven hundred and fifty dollars, To Martin Ryerson And after deducting my fees &c on execution \$15.00 and the amount of Defendants fee Bill 1.40 I have paid the balance including Plaintiffs

Costs to Plaintiff 733.40 \$750.00

And I return the said annexed execution satisfied for Seven hundred and twenty one ⁶⁵/₁₀₀ dollars - No property found to make the remainder.

James S. Bench, Coroner & Acting Sheriff
By Ira Snow, Deputy.

(17)

18
State of Illinois
Cook County } S

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the County and State aforesaid Do hereby certify the foregoing to be a full true and correct Transcript of the papers now on file in my Office, together with the Order of judgment or decree entered of record in said Court in a certain suit for Mechanics lien in said Court wherein Martin Ryerson and others are Plaintiffs and August, F. Buschick and others are Defendants.



In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this thirty first day of March A. D. 1859,

Walter Kimball Clerk

Supreme Court

John E. Sutherland

vs et al

Martin Ryerson

et al

And now coming the said John E. Sutherland
by A. Garrison his atty and says
there is manifest error in the foregoing
record & proceedings in said cause
to wit

- 1st The petition in this case is insufficient
- 2^d The same does not show that Ryers
were entitled to any lien
- 3^d The Court erred in judging as against
Plffs in error the allegations in said
petition to be true
- 4th Erred in taking said petition as correct
or proceeding against Plffs in error
- 5th The Court should have decreed
that Plffs in error had a lien & the
answer in their answer stated
- 6th Court ~~erred~~ decreed contrary to Equity
& the law of the case
- 7th The Court should have decreed
that Plffs in error had a lien & the
~~answer~~
- 8th The decree is unjust & inequitable &
Plffs in error were not entitled to any decree as against
said land - no proof

- 9 The Court Writ in decreeing the rights of the parties were as stated in the Petition ^{and they} ~~are~~ ^{in the} ~~order~~ ^{decreed} ~~by said Court~~
10. The answer of Plff in Error was true & should so have been ^{been} ~~decided~~ - no replication was filed & proof taken
- 11 - Plff in Error right & equity were not protected
- 12 The court erred in taking the answer of Buschick & co as true
- 13 - That way no proof of any kind upon the land & premises as against Plff in error
- 14 The court taking the answer of Buschick & co as evidence against Plff in error erred And said decree ~~is~~ ^{is} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~respects~~ ^{respects} ~~respectively~~ ^{respectively} manifestly wrong informal irregular & unjust - Therefore Prays said judgment be reversed in all things where it

Aganivou

Alff in. Erwer

And now comes the Defendant's answer by
Harrell Smith & Thomas & says there is not error in
the decree judgment & proceedings upon it & the
same should affirm.

Donnell Smith & Hammer
attys for Sept Ex Emor

~~173~~ 35-
State of Illinois

Cook County

Court of Common Pleas

John E. Sutherland

vs

Martin Ryerson Et als

— vs —

August, J. Buschick
Et als.

Record.

Filed Apr. 21. 1854.
L. Ireland Clk.

Garrison

Trans: \$5.00
Crydenes \$5.00 Id by 34th atty
in error
McKimball atty