

13628

No. _____

Supreme Court of Illinois

Claycomb

vs.

Cecil

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 68

Chapman
71

Prill

Wagner

62

13628

Supreme Court of New Jersey
Mudgumddumma
April Term 1862

Samuel Blagden

^{vs}
William N. Seal

Enoch P. Slone being duly sworn
says -

That he has heard the affidavit
of George P. Harding this day sworn to be-
fore him, and that the statements of the
same are true so far as affiant has
any knowledge or recollection on the
subject. - Affiant further states that
said Bill of exceptions which said Harding
states was presented by him to said court
at November Term 1860 was in the possession
of affiant & among the papers in said
case in said court, at March Term 1861,
Affiant further states that he well remembers
said occurrences in regard to said Bill of ex-
ceptions at the March Term 1861 of said court -
& that his recollection of the same agrees
with the statements of said Harding in said
affidavit. - Affiant further states that the
Record Book on the files of said Supreme Court

was made out by him & his employees in great haste in consequence of the enormous length of the same & the press of business to make similar records, & time was not given to compare the same as usual. Affiant further states that said Record is in all respects as he believes correct, & the arranging of the pages of said Record and dispo-
(& filling some blanks) almost all the objections that exist thereto. That said answer to original petition was omitted because the same was thought immaterial no issue being made up thereon, & no use being made of the same on the Court below & after consultation with appellants' Counsel who stated to affiant that he thought the same was unnecessary & might be left out: —

Affiant further states that to draw a new record in said case is almost impossible for the next three weeks & cannot be done in less time; Court arising on or about one week, & all his force being engaged in preparing for the same. —
Affiant respectfully requests & asks the Court to permit him to have the Record now in said Court, & notes that he can in two days time have the Record a perfect transcript

of the papers & proceedings in said
Case - Affiant further states that
the extreme haste in which he was com-
pelled to make out ^{said} record will also ap-
pear from his former affidavit on file
in said county, & he here states that
nothing but the urgent & repeated
solicitations of expressed anxiety of
Appellants Counsel for the same
induced him to undertake to get out
the same in time to comply with
the extended time given by the
Court, & to do so he was compelled
to employ different persons &
when their work was put together
some mistakes were made in
arranging the pages & this with
a few blanks to rectify all
the correction the Record now needs
with the addition of said answer to
original petition -

Enoch Bloom,
 sworn to & subscribed
 before me this 27th
 April 1861 -

Charles Kettelle Clerk of the County Court
Pound Co.
Illinois

Supreme Court of Missouri

257
Samuel Claycomb

William V. Leach

affidavit of
Each Person

Filed April 30, 1861
L. Leland
Clerk

Supreme Court of Illinois
Third Grand Division
April Term 1861

Samuel Kelloggcomb

v Appeal from Province
William v. Cecil

George F. Harding being sworn says - That he was the attorney for the appellants in the Province Circuit Court where said case was tried at November Term 1860, and as such attorney prepared a Bill of Exceptions containing substantially the evidence on said case as now exhibited in the Bill of Exceptions filed on April 3^d 1861 - That at said term of said Court he presented said Bill of Exceptions to Hon E. S. Powell Judge of said Court for his signature; that said Judge stated to affiant that he would like to have H. M. Weadery appellee's attorney examine said Bill before he signed it and would call his attention to it. Affiant then stated to the Court that he would hand the Bill to the Clerk of said Court so that it might be examined by appellee's Counsel if desired & that the Court might sign it, & did so hand the same instantly to said Clerk in the presence of the said Judge & while said Court was in session calling the attention of the Judge to the fact, and stating that he had

now done all he could do or was
incumbent on him in the matter.
That just before said Court adjourned
to sit about the 2nd day of January
A.D. 1861 said affiant again in
open Court requested said Judge
to sign the same, and the Judge
then had said Wead called at the
door, & on being informed he
was in Chicago at Court the Judge
then said that said Wead ought to
have attended to the matter, & after
some more parleying entered some
order extending the time for filing the
Bill of exceptions - said affiant
then objecting to the same & asking
that his Bill might be signed -
That the Judge made no objections
to the Bill presented, & the sole & only
reason why the same was not
signed as signed by said Judge was
that Wead might have an oppor-
tunity of examining the Bill -
Affiant further states that he had
no opportunity of exhibiting said
Bill to said Wead or attempting to
agree with him in regard to the same,
said Wead being as he believes absent
after said Bill was drawn at all
times during the remainder of
said Term, or at any rate absent
from said Court.

Affiant further states that

he afterwards repeatedly called the attention of the said Judge to the matter requesting him to sign said Bill, & he said that he had not yet been able to see said Wead & plead ignorance of the evidence given on the trial - Affiant further states that at said March Term of said Court he again requested said Court to sign the same, & after sometime the Court informed affiant that said Wead had asked for time to get the minutes of testimony kept by a lawyer in Monmouth, & said Wead actually came in & moved for time to obtain the same & the Court gave him time to do so; and afterwards said Court drew the present Bill of exceptions, said Wead making a multitude of objections to the Bill drawn by affiant, & filed & signed the same during the March Term of said Court, after entering a further order that said Bill might be signed in vacation. That as soon as affiant learned that said Bill was drawn signed & filed, (which said Bill affiant never saw till so filed), he ordered out the Record therein now on the files

of said Court - That the sole reason why the answer to the original petition was not put in the Record was to avoid encumbering the same by useless matter, said answer being as the Court will see wholly & entirely immaterial - no issue tried in this case & decided by said Jury having been made up thereon, & no use of said answer being made by either party in the Court below, and a perfect amended petition & answer being in the said Record on which the said issue made by the Repleader was tried.

Affiant further states that the present Bill of Exceptions was made by said Court after said Wead had presented the Minutes of the testimony as taken by Appellee's Counsel -

Sworn to & subscribed
before me this 27th
April 1861
Enoch Hoan, clk

George F. Harding

257 68
Samuel Claycomb

vs
William T. Cecil

Affidavit of Geo.
F. Harding

Filed April 30. 1861
L. Deland
clerk

Supreme Court of Missouri
April Term 1861

State of Missouri
Circuit Court

Samuel Blagden

" Appeal from Rona
William V. Cecil

Enoch P. Sloan being duly sworn
says

That he is the Clerk of the
Circuit Court of Rona County,
Missouri -

That the Bill of Ex-
ceptions in said Case having been
signed according to the order of the
Court ~~in fact~~ was filed in
said Court on April 3rd 1861 -

That since said time he has been
constantly engaged in making
out Records in other cases having
the precedence of said Case for
said Supreme Court - & has been
unable to make out said Re-
cord although he has employed
assistances in the matter -

That the Record was ordered
out on the Case by the acting

for appellant in ample time
to have allowed affiant to make
out the same, & the reason why
said record is not now made out
is solely attributable to the press
of similar business having the
precedence.

That the record in said case
is voluminous, & is now partially
prepared & will be ready for
filing within one week —

Emory Sloan

Summits & Dubuque
before me this
17th April 1861.

Attest
M. J. Foyel
J. P.

²⁶⁷
Journal of
n

William V. Cecil

Affidavit of
Cecil

Filed Apr 18. 1861

A. L. Cecil

Clerk

Samuel Claycomb } In the Supreme Court
vs } of the State of Illinois
William D. Leelit } Third Grand Division
April Term AD 1861
Appeal from Peoria

It is hereby agreed that the above
Cause be continued until the next Term
of said Court —
May 1st 1861

Attest for appellee
Crestwood for appelland

68
Supreme Court Illinois

257

Samuel Leleycomb
vs
W. C. Leell

Stipulation

Filed May 3^d 1851

L. Deland
clerk

Supreme Court of Illinois
April Term A.D. 1861

Samuel Claycomb

vs

William V Cecil

} Appeal from Peoria

And now comes the said appellee William V Cecil by Struttend his Attorney suggests a diminution of the record sent up from the Court below in this case, and moves the Court for a Certiorari to send up a full & complete record in the case, and that this cause stands continued until such record arrives & a proper abstract is made & filed herein by the Appellant. By Weud his Atty

~~And the said appellee suggests further that said record does not contain in the Bill of Exceptions the evidence introduced on the trial of said case on the part of said Appellee, & does not contain all the facts set forth in the original Bill of Exceptions, and the Certificate of the Clerk does not show or purport that it is a full and complete record of all the transcript of the record~~

Struttend
for R.M.

(over)

Saml Mead being duly sworn doth
depose that he was attorney & counsel
for William V Cecil on the ^{last} trial of the
case in his favor against Samuel Clayscomb
~~to~~ in the Peoria Circuit Court to enforce
a Mechanic's Lien a copy of the record
of which has been filed in this case, and
that upon said trial the depositions of
Alexander M Warwick, John ^W Montgomery
James Hill, Joseph A Bogutore
John Baker Ardel Mc Mahon
Simon ^S Hill, & Benjamin F Hobbs, were
as near as deponent can now recollect
read in evidence on such trial, ^{by the plaintiff below} and
this affiant thinks & believes that
the original Bill of exceptions so
states

He further deposes that according
to his best recollection there was filed
in said ^{cause in the court below} two answers to the plaintiffs
petitions, only one of which is copied
into the record in this case — that
he suggested to Geo F Hooding the
attorney for Clayscomb that one of
said answers did not appear in
the record, and said Hooding replied
that he did not have it copied
because he did not want it, and
that if I (this deponent) wanted it

I might get it

This deponent further swears that he thinks the Bill of Exceptions is not correctly copied in the record in this case — that certain blanks left in the copy are filled in the original. He further says that the original record filed in this case is so much misplaced, or so incorrect that he ~~thinks~~ cannot tell what it means & particularly cannot tell what some of the words swear to, & he points out ~~the~~ some of the difficulties in the suggestions herewith filed

Subscribed & sworn to before
me April 25, 1861

Amos Wood

L. Selaw Clk.

Judges Clagouny
vs
Wm & Cecil

In relation to

The record filed in this case is in an anomalous condition & cannot be understood & the Appellee insists as follows

1st One of the answers of defendant below is not in the record ~~is~~

2. The evidence is not contained in the Bill of Exceptions & therefore cannot legally be noticed by the Court. It is partly copied into the record, but not into the Bill of Exceptions. The Bill of Exceptions shows that some of the Depositions were read, & some not. ~~The~~ ^{Boynston} ~~Stanton's~~ ^{deft} name is left out, also the first name of Mc Mahan

But the objection is, that this evidence does not appear in the Bill of Exceptions. The filing of the Depositions did not entitle them to be read in evidence, & hence the filing & copying into the previous part of the record does not get their contents legally before the Court

On Page 66 begins Deposition of Ardell
Mc Mahon continued on Pages 67, 68, 69
& ends abruptly on Page 70, without
being signed, The signature of Mc
Mahon is found 74, where it ought not
to be

On Page 71. Simeon Hill begins
his deposition

On Page 72. Benjamin S. Foster deposition com=
mences but ends abruptly at the foot of
the page - another deposition there
commences.

On Page 81, is somebodies deposition,
but whose? It is continued on Pages 83
84, ⁺ 85 & is not signed by any one, I
cannot tell whose it is. The whole
thing is a jumble a mass of incongru=
ities inescapable, crude, & evidently
not correct.

~~For these reasons I ask for~~

The Clerk in his certificate on Page
112, does not certify that it is a full
& complete copy of the record, but that
it is a copy from the records, not
full or complete, The thing is an

absurdity & ought not to be tolerated
& the idea expressed by Mr Harding
that he did not have the other answer
copied because he did not want it
is tantamount to an assertion that
it is not the duty of the appellant to
bring up a full & complete record
but only so much of it as he likes
If this be true, then law is but trickery
and justice a mockery

As witness
for W. Cecil

^{257 68}
Samuel Clagcomb

^{v2}
William T Cecil

Motion, Affidavit &
suggestions for appellee

by

Samuel

Filed Apr. 25, 1866.
d. Deland
Clk.

In the Supreme Court at Ottawa
April Term 1862

Samuel Claycomb }
vs } Appeal from Peoria.
William F. Cecil }

Argument for Appellant.

This was a petition for a mechanics lien brought by appellee against a lot of the appellants. It has been repeatedly decided in this court that the party seeking to avail himself of this cumulative remedy must bring himself strictly within the terms of the statute.

Cook vs Heald 26 Ill. 429

Senior vs Prober 22 Ill. 252

3 Johnson's Cases 109.

Phillips vs Stone 25 Ill. 77.

7 Cases cited.

The record in this case shows that two if not three of the essential requirements are wanting to establish a lien.

1st There is no time alleged or proven in which the money was to be paid.

Muller vs Smith 3. Scam. 544

21 Ill. 425; *Ibid* 431; 24 Ill. 112

2^d. There was no amount specified to be paid, and the only allegation in this respect is that defendant was to pay what it was worth

3^d. There is nothing in the contract specifying the time when the contract was to be completed; or the time when the lien attached

Muller vs Smith 3^d Scam. 544.

Williams vs Chapman 17. Ill. 425.

Gaty vs Casey 15. Ill. 192.

Cook vs Heald 21 Ill. 430

Cook vs Ireland 21 Ill. 431

Senior vs Brebner 22 Ill. 252

On the first two points there is not a word of proof of any contract unless the statements of Appellant to the witness McMahon when the building was nearly completed should be construed as evidence of a prior contract in which he is reported to have said

that he was to pay what it was worth. This is no evidence of a contract but on the contrary it tends to prove that no contract was made in the sense of the Statute. He was to pay whatever it was reasonably worth in the nature of an implied contract.

According to the Statute and the decisions of this court the contract which is made the foundation of this action must have some definite terms. The time when the contract is to be completed and the ~~the~~ time when the money is to be paid must both be fixed by the terms of the Contract. This is necessary in order to fix the time within which the action must be brought in order to be of any avail as against subsequent incumbrancers. The terms of the dealing between these parties were entirely too indefinite in order to fix the limits of the lien.

The only proof of the time within which the contract was to be performed is that the appellant stated in a complaining manner that appellee had agreed to have the building finished so as to get the roof on and the windows in before the cold weather set in

See McMahons deposition p 67. 68

There is no proof whatever of the time when the lien attached by the delivery of the materials. This also is necessary in order to determine the rights of others dealing with the defendant. The priority of liens depend wholly upon the time of delivery; not upon the time of the making of the contract.

Williams vs Chapman 17 Ill 425
Gaty vs Casey 15 Ill 192
above Cited

Neither is there any allegation to that effect in the petition.

A new trial should have been granted in the case. There was in fact no evidence before the jury to sustain the contracts which are the foundation of the action. General evidence of work labor and materials furnished is not sufficient to establish a lien. ~~They~~ must be furnished on a contract the terms of which are well defined, and with reference to some particular lot. The appellant in this case denies the contract declared on and sets up a different contract with Warwick & Cecil. Warwick an interested witness as the evidence shows contradicts him in this particular. The only proof of the contract

set up in the petition is the declaration of Mc Mahon. By this evidence they seek to contradict the sworn answer of the Appellant. In other words they seek to contradict his sworn statement by a declaration made by him months before when not under oath; and this from the recollection of one witness. The rule is that it requires the testimony of two witnesses, or the testimony of one witness and strong corroborating circumstances to overcome the sworn answer of the defendant.

Monison vs Stewart 24 Ill. 24

In this case the statements of the defendant are corroborated by the evidence of Andrew Claycomb, E. A. Paine & others, and he stands uncontradicted by any witness except Warwick who contradicts him only on one point.

Again the decree is erroneous from the fact that the jury found greater damages than what were claimed in the original petition. The petition was sworn to and only claimed \$821.25 as the amount due, whereas the jury found \$1156.60, for which amount the decree was rendered. For this alone the decree should be reversed.

Manning & McCulloch
Attys for Appellant

Claycomb 68-25
and
Cecil

Argument for Appellant

Given May 8, 1862
J. Seland
et al

Manning Wentworth

Supreme Court of Missouri
April Term 1861

Samuel Blaylock
vs Appeal from Board
of Missions & Council

The appellant
moves for further
time in which to file
Record for reasons
shown in affidavit
on file

W. C. Standing
for appellant

68
257
H. H. Laguard
vs

William V. Leval

appeal from
~~the~~

proceedings

Filed Apr. 18. 1861

d. Kiland
Clerk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

SAMUEL CLAYCOMB }
vs. } *Appeal from Peoria.*
WILLIAM V. CECIL. }

BRIEF, BY H. M. WEAD and A. G. KIRKPATRICK.

This was a petition to enforce a mechanic's lien against a building situated on lot one, (1) in block ten, (10) in Monmouth, Illinois, filed in the Warren Circuit Court, on the 15th February, 1858.

The original petition sets forth that the petitioner was employed by the defendant to burn a kiln of brick, to be used in erecting a building on lot No. 1, in block No. 10, in Monmouth, in said county, and also to lay up a large quantity of brick and stone in a building on said lot, and specifies the nature of the contract, &c.

To this petition an answer was filed on the 29th day of Sept. 1858, which denies that the defendant ever made any such contract with Cecil, the petitioner, as is alleged in said petition, but asserts that he made a contract with one Alexander Warwick and the petitioner, by which they were to burn a kiln of brick for defendant, in the year 1856, and denies that he ever made any other contract with Cecil, the petitioner, in relation to said brick, or putting up said building.

On the 13th day of June, A. D. 1859, by leave of Court, the petitioner filed his amended petition, in which he sets forth, in several distinct paragraphs, the several contracts made by him with Claycomb for burning brick, for laying up brick or putting them in the wall, for laying stone caps and sills in the wall, and for furnishing lime and sand, &c., for the wall.

- 19 *1st Paragraph.* The petition alleges, (Record page 19,) that on or about the 1st day of May, 1857, Claycomb, who was the owner of lot one, in block ten, in Monmouth, engaged the petitioner to make and burn 84,000 brick, for the purpose of building and erecting, in part, a building on said lot, and that Claycomb agreed to pay him what the making and burning of the brick was reasonably worth, *within* a reasonable time thereafter, to wit: on or before the 10th day of July, A. D. 1857; that he did make and burn the brick before that time; that the brick were put into and used for the erection of a building on said lot, and which "is now on the lot," and said brick forms a part of the material of said building.

The petition further alleges, that the making and burning of said brick was worth \$1 50 per thousand; that the whole amount is \$126 00, which Claycomb refuses to pay, and which is now justly due to petitioner.

- 21 *Paragraph 2d.* Sets forth that on or about 1st July, 1857, defendant employed petitioner to build, lay, and put 357,996 brick into a wall, for the purpose of erecting said building on said lot, and agreed to pay therefor, when the work was completed, what it was reasonably worth, *and the wall was to be built* during the summer and fall of the year 1857; that he did build, lay, and put said brick into a wall on said lot, within the time specified; that it was worth \$4 00 per thousand, and amounted to \$1,431 98, which defendant refuses to pay.

- 22 *Paragraph 3d.* That on the 1st June, 1857, defendant purchased of petitioner 700 bushels of sand, and agreed to pay what it was reasonably worth; that the sand was bought for and used in the erection of said building on said lot, and was worth 12 cents per bushel, amounting to \$84 00, which defendant refuses to pay.

Paragraph 4th. That on or about the 1st day of July, 1857, defendant employed petitioner to raise, set, and put in 49 pair of cut stone window and door caps, and door sills in said building, which was erected on said lot, and promised to pay therefor what it was reasonably worth; that they were to be set in said building, as the erection of the same progressed, and, when finished, petitioner was to be paid; that the building was put up by petitioner, and the caps and sills put in and finished during the fall of 1857, and was reasonably worth 75 cents per pair, amounting to \$36 75, which defendant refuses to pay.

Paragraph 5th was abandoned on the trial.

The petition then alleges, that all of said contracts were parol contracts, and not in writing, and that the whole amount due petitioner is \$1,702 73.

This petition was demurred to, but the demurrer was withdrawn, page 45.

44, 45 The case was tried in the Warren Circuit Court, on the 13th day of April, 1859, and the jury failed to agree, and leave was given both parties to amend their pleadings.

46 The defendant filed his application for a change of venue, on the 7th day of November, 1859, and the cause was removed to Peoria county.

Answer.

29 The answer of the defendant to the amended petition was filed in the Peoria Circuit Court, on the 9th day of February, 1860.

The answer denies that defendant employed the petitioner to make and burn 84,000, or that he employed him to burn any brick whatever, or that he ever did make or burn any brick on any contract with him.

Denies that he did employ petitioner to build, lay, and put 357,996 brick into a wall, for the purpose of any building whatever.

30 Admits that he was the owner of lot 1, in block 10, in the city of Monmouth, and expressly denies that he ever employed petitioner to raise, set, and put in 49 pair of cut stone window and door caps and sills in the building described in the petition, and denies any agreement to pay for the same.

The answer then alleges, that on the 12th day of April, 1856, defendant made a written agreement with Alexander M. Warwick and Cecil, the petitioner, (who were then in partnership,) to make and burn 250,600 brick during the year 1856, and lay them up; that under this agreement, Warwick & Cecil burned about 150,000 brick, which they afterwards used in building a school house; that defendant paid Warwick & Cecil for burning those brick;

32 "That Warwick & Cecil were to lay all of the brick that would be necessary to build a large hotel, several stories high, and were to lay said brick at \$2 50 per thousand, as set out in said agreement."

He admits that he was to pay petitioner \$1 25 per thousand for burning about 84,000 brick, which brick were put in said building, and said Cecil "began, continued, and completed said building, under the agreement made with Warwick & Cecil, and under no other agreement whatever;"

That Cecil & Warwick afterwards pretended to dissolve partnership, but as defendant had paid them a large amount, they did not pretend that they were working under any other contract;

34 That he made out an account against Warwick & Cecil, and presented it to Cecil before the building was completed, and Cecil acknowledged it to be correct. The account is appended to the answer.

A replication was filed, denying all the matters set forth in the answer.

51 The case was tried at the November Term, by the Peoria Circuit Court, and a verdict rendered for the plaintiff for \$1156 60, and a decree entered that the same be a lien on said lot, and the lot sold to satisfy the same, &c.

Before proceeding to give a synopsis of the testimony, it is proper to inquire what issues there were for a jury to try.

The answer substantially admits that said work was done under a contract with Warwick & Cecil, and insists that Cecil cannot recover alone therefor.

The words of the answer are: and said Cecil "began, continued, and completed said building under the agreement made with Warwick & Cecil, and under no other agreement whatever."

This is an admission that the work was done, as alleged by Cecil, (i. e.) that the building was put up by him, as he states in his petition, but that the defendant ought not to pay him, because it was done by him under a contract made with him and Warwick.

The real and only question then was, whether the work was done under the old contract, or under a new one; if under the old one, then the petitioner ought not to recover, but if under a new one, then his right of recovery is clear and indisputable. Let us bear this in mind as we progress with the testimony; no other question ought to have been raised; but in whatever light it may be viewed, the evidence would seem to be ample to justify the verdict.

Answer to Points made by Appellant.

1. The proof shows that appellee did make and burn the brick, and Andrew Claycomb testifies, that there was 84,000 brick, (see page 100;) other witnesses state from 70,000 to 90,000. Claycomb, it is true, testifies that the price was to be the same as that a former kiln burned by plaintiff and Warwick, which was, "I think," \$1 25 per thousand. But the testimony of Ardel McMahan shows, that Claycomb agreed to pay what it was worth. McMahan's testimony sustained the allegations of the petition, and it was fairly left to the jury by the instructions.

2. The second contract set up in the petition is fully sustained by the testimony of Ardel McMahan, James Hill, and others. The appellant seems to admit its sufficiency, as well as the proof to sustain it.

3. As to the third contract, the abstract and points of appellant are incorrect. The petition does state, (see page 21,) "that on or about the 1st day of June, 1857, said Claycomb purchased of your orator, and your orator then and there delivered the same to said Claycomb, 700 bushels of sand, and then and there promised and agreed to pay your orator whatever the said sand was reasonably worth," etc.

The point made here is, that the allegations are insufficient, and that the proof fails to sustain the allegations.

The allegations, we think, are amply sufficient.

The testimony of J. Hill shows that the sand was furnished, and the testimony of Ardel McMahan shows that Claycomb was to pay what it was worth.

4. The appellant's abstract and brief erroneously state the 4th contract.

The petition states that, by the terms of agreement between the parties, "the stone caps and sills were to be set in said building as the erection of the same progressed, and that, when finished, the same should be paid for, as aforesaid," i. e., "what the setting of said stone caps and sills were reasonably worth," (see page 22 of Record.)

The contract for building and laying the brick, shows when the building was to be completed, and the stone caps and sills were to be put in as the "erection" thereof "progressed."

The testimony of Ragland, Baker, McMahan, and others, fully sustains this 4th contract.

The evidence of John Baker and Ardel McMahan, in regard to delay, was permitted for the purpose of excusing the plaintiff in the completion of the work as to time, as some of the witnesses testified that it was not completed until the month of November; it was therefore proper. Besides, only a general objection was made to the depositions, without stating reasons.

The sand, stone caps and sills, etc., were, by mistake, omitted in the original petition; by adding these to the amount claimed in the original petition, the verdict of the jury will be seen to be right.

The affidavits filed, both for and against the motion for a new trial, are not incorporated into the bill of exceptions, and form no part of the record.

The point made by appellant, that the first, third, and fourth contracts were not made with reference to the lot described in the petition, is erroneous. The testimony of Andrew Claycomb and A. McMahan establishes this, and the defendant nowhere denies the fact in his answer, but admits that these contracts were made with reference to the said lot, claiming, however, that the work was done under a prior contract made with A. M. Warwick and the petitioner, which claim is completely overthrown by the evidence of A. M. Warwick and Ardel McMahan.

The point then made, that the evidence is unworthy of belief, and in all is contradicted by the answer, the weight of which is not overcome, is erroneous, because it is admitted, in the answers of defendant, that the work was done and material furnished, substantially as alleged in the petition; defendant claiming, as aforesaid, that the work and material was done and furnished under the contract with Warwick & Cecil.

The appellee therefore claims that, inasmuch as appellant substantially admits the furnishing of the material and doing the work as alleged in the petition, except that the work was not done and material was not furnished under a contract with petitioner alone, but with petitioner and Warwick, and this having been completely overcome by the testimony of Warwick and McMahan, his case is clear from all doubt.

As to whether the work was done by plaintiff under the contract made between him and Warwick and Claycomb, this was a question to be decided upon the testimony of the witnesses. The evidence of Andrew Claycomb was thoroughly contradicted by Warwick and McMahan, and the jury chose to disregard the testimony of Claycomb, as they had a right to do.

It was a question for the jury to decide, upon the weight of evidence, and their verdict ought not to be disturbed. Their decision is clearly justified by the testimony, and as the case has been in court many years, and tried two or three times, strong reasons should be adduced to overturn a conclusion reached after so much delay, and at very great expense.

H. M. WEAD,
A. G. KIRKPATRICK,
For Appellee.

25 - 68

Samuel Clay comd

7

Wm. V. Cecil

11

Points of

Appella

Given May 6. 1842

J. J. [unclear]

clock

Proceedings in the Circuit Court, within and for the County of Peoria and State of Illinois, on the 28th day of December A.D. 1860. in a certain Cause wherein William V. Cecil was Complainant and Samuel Claycomb was Defendant.

Be it remembered that heretofore to wit, on the 9th day of February A.D. 1860. there were filed in the office of the Clerk of said Court, a Bill, Summons, Demurrer, Answer, Replication, Amended Petition, Demurrer to Amended Petition, Replication, two affidavits (or Change of Venue), answer to Amended Petition and Transcript, in the words and figures following to wit:

Bills

State of Illinois } In the Circuit Court of said County
Warren County } Ill. March Term A.D. 1858.

To the Honorable John S. Thompson Judge of the tenth Judicial Circuit in Chancery sitting, Humbly sheweth unto your Honor, your orator William Cecil of the County of Warren and State of Illinois, that heretofore to wit in the months of May & June One thousand eight hundred & fifty seven one Samuel Claycomb owner of Lot one in Block ten in the City of Monmouth of the aforesaid County & State employed your Orator to make & burn brick for the purpose as the said Claycomb informed your orator of erected a building in the City of Monmouth on the south end of Lot number one in Block number ten, And upon the special request under a promise from the said Deft to your orator that he would pay your orator whatever the making & burning said brick was worth. Your Orator positively alleges that he did upon the promise of said Deft to your Orator which was that he the Deft would pay your orator whatever the labor was worth for the making & burning of the aforesaid brick. Your Orator distinctly and positively alleges that he in good

Filed February 13th 1858
Wm. C. Coker

Faith made & burned eighty four thousand bricks
worth one dollar & twenty five cents per thousand
the sum for making & burning said amount of brick
is worth one hundred & one dollar which sum
of money your petitioner has received a small
amount as part payment for said labor

Your petitioner further sheweth
unto your honor that in the month of July
1857 the ^{said} S. Claycomb engaged & employed & then
& then promised to wit in July one thousand
eight hundred & fifty seven in said Warren County
and in the City of Monmouth and on Lot No.
one in Block No. ten in said Warren County
& State of Ills. that if your Orator would build
said bricks into a wall or walls for the erection
of a house on said lot said lot of land is
owned by ^{said} S. Claycomb to wit lot number one
in Block number ten in said City of Monmouth
in the abovesaid County & State that he the said
S. Claycomb would pay to your petitioner
whatever the work was worth for laying the
aforesaid bricks up in a wall or walls
for the erection of said house to wit on lot
ten in Block one in said city. Your petitioner
distinctly & positively alleges that he did lay up
& build the walls of said house on the south
end of lot number one in Block No. ten in
said city & the bricks made & burned by your
petitioner are in the walls of said house.

Your orator further sheweth unto your
Honor that the said S. Claycomb hath
purchased & received from your Orator for the

aforsaid house) and is now in the walls apart of the material in said house six hundred bushels of sand upon an agreed price of six & half cents per bushel making thirty nine dollars due your Orator for said sand

Your Petitioner distinctly & positively alleges that he has in all things performed all and every thing pertaining to is part of the several agreements above set forth

Your Orator further sheweth unto your Honor that in addition to the several agreement on which large amounts are due your Orator from the said Deft^r for work labor & material on the lot to wit on Lot one in Block number ten in said city and which lot is owned by said S^r Claycomb and said agreement was made by your Petitioner with the said S^r Claycomb owner of said lot by said agreement; Your Orator paid to one of the hands working with him for said deft the sum of ten dollars while making said brick under said agreement making in all due your Orator for work & labor sand & cash paid in the performance of said labor in making & burning said brick the sum of twelve hundred & twelve dollars of which sum of money & articles the said Claycomb has paid your Petitioner as follows, to wit July 1857 11 1/2 cords of wood at \$3.50 per cord making \$40.25 July 1857 L^r lime & mortar 50 cts August 1857 one Spint^r Seven \$(1.75) Sept 1857 \$(92.50) Sept 1857 Cash & good at J. D. Demmans (\$36.40) Oct 1857 Cash (\$35) Oct 1857 cash by A. Dickson \$20 " " " " (\$15) " " " " (\$12)

Nov Cash \$ 5) Nov cash by A. Blaycomb (40)
 Oct. 1857 To 50 soft bricks at 80 cent per hundred
 (40 cts) & at different times from July to Oct 1857
 two hundred & fifty soft soft bricks at 80 cts per
 hundred making (\$2) and twenty seven dollars
 in flour & one dollar & fifty cents The whole
 amount paid by def^t or any one for him to your
 Orator is the sum of three hundred and ninety
 two dollars and fifty cents leaving a balance due
 your Orator eight hundred & ^{twenty five} ~~twenty one~~ dollars &
 cents which sum of money the said S. Blay-
 comb def^t agreed to pay your Orator as soon as
 said work & labor was performed by your Orator.
 And for the price of the said Sand to wit
 Six hundred bushels at Six & half cents per bl
 the said Blaycomb agreed to pay your Orator
 on the delivery of said Sand, the amount being
 thirty nine dollars

Your Petitioner distinctly & positively
 alleges that he did deliver said Sand & that he
 also performed every and all the agreements
 in full as made by your Orator with the said
 def^t as set forth in this petition and although your
 petition as in all thing performed each & all the
 agreement on his part & that this suit is brought
 within six months since the completion of said
 work & agreement. The said S. Blaycomb
 utterly refuses to pay your petitioner all or any
 part of the money balance due your Orator
 And although your Orator has often requested
 the said Blaycomb to pay him the sum of money
 due him to wit the sum of \$849 & 50 balance

5

du your petitioners. That the said debt, ^{wholly} ~~entirely~~ disregarding his said promise has & does still refuse to pay your petitioners or any one for him all or any part of the said sum of money, to wit, the sum of eight hundred & forty nine dollars & fifty cents.

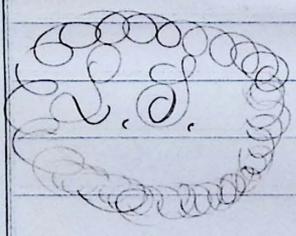
Your Petitioner now prays that the said Samuel Blaycomb defendant in this case be Compelled to come into court and that he be required to answer fully all the matters & things herein alleged by your petitioners and that on a final hearing of this case your Honor you order & adjudge and decree that said premises, to wit the lot ^{one} on which the house or building now stands be sold according to the statutes in such cases made and provided and the proceeds of said sale be first applied to the payment of your petitioners debt and that all transfers conveyances sales and incumbrances shall be held upon said house or building subject to your petitioners lien & that as in duty your petitioners will ever pray &c.

Geo W. Savage Attorney for Petitioner
W. V. Cecil

State of Illinois
Warren County
Personally appeared before me Elisha Nye a Justice of the Peace within & for said County William V. Cecil the signer of the above petition and made solemn oath that the matters and things stated therein are true to the best of his knowledge and belief, Subscribed and sworn to this 13th day of February A. D. 1858.
Elisha Nye J. P.

Summons

"State of Illinois, 3 Oct.
 Warren County, 3 The People of the State of Illinois
 To the Sheriff of said County Feeling;
 We Command you to Summon Samuel Claycomb
 if to be found in your County, personally to be
 and appear before the Circuit Court of said
 County, on the first day of the next term thereof,
 to be holden at the Court house in Mornmouth,
 on the third Monday in the month of March next
 to answer a bill of complaint, filed in our said
 Circuit Court, on the Chancery side thereof against
 him by William V. Cecil And have you then
 and there this writ, and make return thereon
 in what manner you execute the same.



Witness Wm Laferty Clerk of our
 said Circuit Court and the Seal
 thereof, at Mornmouth, this 13 day
 of February in the year of our Lord
 one thousand eight hundred and
 fifty eight
 Wm Laferty Clerk."

(Endorsed)

"I have served the within summons by deliv-
 ering a copy to the within named Samuel
 Claycomb February 20th 1858

C. M. Mills Sheriff Warren Co. Ill."

"Filed Feb'y 20. 1858 Wm Laferty clk."

~~amended
 petition~~

~~State of Illinois 3 Warren Circuit Court
 Warren County 3 October 7
 William V. Cecil 3 Amended petition for
 Samuel Claycomb 3 Mechanics lien.~~

7

Demurrer
Filed March
30th 1858
Wm. Safety etc.

State of Illinois Circuit Court
Warren County, March Term 1858.
Wm. V. Cecil Mechanics Lien

vs
Saml Clay comb

And now comes the said defendant to said petition and does demur thereunto and for cause of demurrer shows that by the said petition the said petitioner does not show that said petitioner did institute his suit within six months after the last payment became due, as said petitioner by the statutes in such cases made and provided requires, but on the contrary the filing of the petition which is the institution of suit herein was more than six months from the time the last payment became due and payable as appears by said petition. And for further cause of demurrer this defendant shows to the court that said petitioner only prays for the sale of the house or building described in said petition which is contrary to the statute in such cases made and provided as by the 1st section of said statute the lien given by said statute is upon the tract of land or town lot and not upon buildings or tenements. And the prayer of said petition should be for the sale of the lot therein described as required by said statute, and this court cannot order the sale of said building or house separate from said lot as prayed for in said petition. Wherefore by reason of the many imperfections and irregularities and errors above set forth and other manifold errors and imperfections in said petition contained this defendant doth demur in law thereunto and thereby craves the judgment of this court whether they ought to make any answer to the said petition, and thereby pray to be hence dismissed with their costs in this behalf wrongfully sustained &c.

C. A. Paine atty
for Deft.

In answer,
Filed September
27, 1858,
Wm. Liberty, cl

State of Illinois, Circuit Court
Warren County, Sp. September Term 1858

William V. Cecil vs
Samuel Claycomb
Mechanics Lien
Defendants Answers

The said defendant Samuel Claycomb answers said Plaintiff as follows

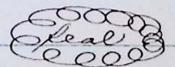
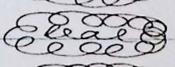
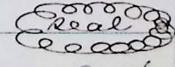
He denies ever having entered into or ever having made any contract with said plaintiff, as said plaintiff has set forth in his said petition

But this defendant does not deny that he made a contract with the firm of Warwick & Cecil which said firm consisted of Alexander Warwick & said William Cecil and which said contract is in the words and figures following, to wit -

"This agreement made this twelfth day of April A 1856 between Alexander Warwick and William Cecil of the firm of Warwick & Cecil and Samuel Claycomb witnesseth that the said Warwick & Cecil agreed to make and burn in a good workmanlike manner upon the lot of land belonging to said Claycomb and lying East of Joseph Weaver and known as the Webster or Kirk's land for the said Samuel Claycomb two hundred and fifty thousand good merchantable bricks suitable to put into a large hotel several stories high for the sum of six dollars per thousand at the kiln and the said Claycomb agrees to pay said price and receive the bricks at the kiln and towards paying for said bricks said Claycomb agrees to

They said price and receive the brick at the kiln and towards
 laying for said brick said Claycomb agrees to furnish said Warwick
 & Cecil two thousand feet of suitable pine lumber for covering
 the kiln and such other lumber as they may need for sheds
 at the usual market prices and said Claycomb further
 agrees to furnish at the kiln two hundred cords of fire
 wood in due time for burning said bricks at three dollars
 per cord and agrees that said Warwick & Cecil may cut
 and haul fire wood from said lot to be used in said busi-
 ness and to have the same for one dollar and seventy five cents
 per cord and said Claycomb further agrees to furnish said
 Warwick & Cecil a good horse of the value of one hundred
 and thirty dollars and said Claycomb is not to receive any
 bricks before the first day of August 1856 and when he does
 commence taking bricks then he agrees to pay said Warwick
 & Cecil the sum of one hundred dollars as part of the
 payment on this contract and said Claycomb further
 agrees to pay said Warwick & Cecil for laying said
 brick the sum of two dollars and fifty cents per thousand
 running measure and said Claycomb is to furnish lime
 & sand for laying said brick

And the said Warwick & Cecil agree to take
 of said Claycomb all of the flour corn meal and
 meat that they may need in the business towards pay-
 ment for said brick and said Claycomb furnishes the
 same at the market price - In witness whereof, the
 parties hereto have hereunto set their hands and seals
 the day and year first above written

A. M. Warwick 
 William Cecil 
 Saml Claycomb 

Received this 1st day of June 1856 the horse called for in

this Contract at \$130."

And this defendant avers that he has fulfilled in each & every part said contract required to be fulfilled by him by said Warwick & Cecil and prays that said contract may be made a part of his answer hereto and makes proof of the same to this Honorable Court.

And this defendant avers that said Warwick and Cecil did not on their part fulfill in any particular the conditions by them agreed to be fulfilled in & by said contract

And this defendant avers that he has paid said Warwick & Cecil on said contract and largely over paid them thereon in the following manner and prays your Honorable Court that the account following may be taken as part of this answer

" Warwick & Cecil to Samuel Claycomb D^t 1856

| | | | |
|--------------------|----|---|---------|
| Apr 19 | To | 4913 feet Lumber 2 ^c | \$98.26 |
| " | " | 108 " " | 2.34 |
| " | " | 335 " " | 7.14 |
| 30 | " | 1430 " 2 ¹ / ₄ | 31.60 |
| May 1 | " | 195 " " | 3.90 |
| 3 ^d | " | 530 " " | 11.70 |
| 8 | " | 396 " " | 8.90 |
| 15 | " | 1 Hooves & halter | 131.00 |
| " | " | Order to Gilbert & Frymire | 50.00 |
| 15 | " | 50 lbs Meat by Bob Marsh | 3.50 |
| April 30 | " | 56 lbs ham meat 10 ^c | 5.60 |
| " | " | 51 Shoulder 8 ^c | 4.08 |
| May 5 ^c | " | 694 feet lumber 2 ¹ / ₄ | 14.77 |
| " | " | 22 lbs ham by Fuller | 2.20 |

| | | | | |
|--------------------|----|--|-----------------|--------|
| 7 | " | 24 lbs Ham | 10 ^c | 2.40 |
| 8 | " | 61 lbs " | 10 ^c | 6.10 |
| 8 | " | 54 " Shoulder | 8 ^c | 4.16 |
| 16 | " | 84 " " | 9 ^c | 7.56 |
| | " | use of horse 7 days | | 7.00 |
| Cecil 30 | " | use of horse & top buggy | | .75 |
| Oct | " | Bill of lumber for Church | | 26.08 |
| Cecil 11 | " | use of Top Buggy 1 day | | 1.75 |
| Cecil 18 | to | use of horse & top bug 1 day | | 2.50 |
| | " | 47 cords of wood at 3 ^{ff} | | 141.00 |
| | " | 42 " " " " " | | 126.00 |
| Nov. 4 | " | Check to McCoy & Quinby's Bank | | 100.00 |
| Cecil 4 | " | use of horse & top bug 1 day | | 2.50 |
| | 12 | Check on McCoy & Quinby's Bank | | 40.00 |
| Cecil | " | use of top buggy 2 days | | 3.50 |
| | " | Keith's Order (Shoemaker) | | 5.00 |
| | " | use of 2 horses & top buggy 1 day | | 3.50 |
| Warwick | " | 8 bushels lime & Sand | | 3.20 |
| " | " | 23 cords wood at 3 ^{ff} | | 69.00 |
| Dec. 12 | " | 66 " " by Warwick Cecil | | 105.50 |
| | " | Cash | | 23.00 |
| | " | 5 ³ / ₄ Cords wood 1.75 pr ^{co} | | 10.04 |
| Cecil | " | use of horse & buggy | | 1.25 |
| " | " | " of 2 horses, carriage 1 day | | 3.50 |
| " | " | " horse & cutter 1 day Cecil | | 2.25 |
| April 16 | " | 100 lbs flour | | 4.00 |
| | 27 | 3 Bushels Bran | | .25 |
| | 28 | 2 ¹ / ₂ " " " | | .30 |
| May 2 ^d | " | 117 lbs flour | | 2.92 |
| | 6 | 1 bushel bran | | .08 |
| | 8 | 71 lbs flour | | 2.66 |
| | " | 2 bushels bran 8 ^c | | .16 |

| | | | | |
|---------------------|---|------------------------------|----------------|------|
| | " | 92 lbs flour | 4 ^c | 3.45 |
| 9 | " | 1 Bushel Corn Meal (Warwick) | | .40 |
| | " | 2 Bushels bran | | .16 |
| 14 | " | 3 " " | | .24 |
| 23 | " | 3 " " | | .24 |
| May 23 ^d | " | to 1½ bushels corn meal | | .60 |
| | " | 80 lbs flour | | 3.00 |
| June 5 | " | 100 lbs flour (Warwick) | | 3.75 |
| 6 | " | 114 lbs " | | 4.28 |
| 14 | " | 1 Bushel (meal) | | .35 |
| 7 | " | Order to Colman | | 3.00 |
| 23 | " | 157 lbs flour | | 5.89 |
| | " | 3 bushels bran | | .24 |
| July 5 | " | 100 lbs flour | | 3.75 |
| 5 | " | 2 bushels Corn meal | | .70 |
| 9 | " | 2½ " " " | | 1.00 |
| 15 | " | 3 bushels bran | | .28 |
| 26 | " | 103 lbs flour | | 3.59 |
| | " | 3 bush bran | | .28 |
| Aug 5 | " | 1 " Corn meal | | .35 |
| 15 | " | 50 lbs flour | | 1.50 |
| 21 | " | 127 " " " | | 3.81 |
| | " | 3 bush bran | | .28 |
| Sep 4 | " | " " " " | | .28 |
| 5 | " | " " " " | | .28 |
| 19 | " | 132 lbs flour | | 3.96 |
| Oct. 2 ^d | " | 61 lbs flour | | 1.83 |
| 15 | " | 2 Bush bran | | .16 |
| 23 | " | 3 " " " | | .24 |
| 25 | " | 117 lbs flour | | 3.51 |
| 30 | " | 80 " " " | | 2.40 |
| 31 | " | 300 " " " | | 9.00 |

| | | | |
|--------------------|---|---|--------|
| Nov 30 | " | 3 bush bean | .24 |
| Dec. 1 | " | 139 lbs flour | 4.47 |
| Dec. 4 | " | 5 Bushels Bran | .50 |
| | " | 60 lbs flour & 1 bushel Meal | .92 |
| 26 | " | 4 bush bran & 1/2 bush meal | 2.20 |
| | " | 140 lbs flour | 4.20 |
| 1857 | | | |
| Jan 3 ^d | " | 300 " " | 9.00 |
| | " | Wanicks Livery Bill | 24.80 |
| | " | 470 rails of C. Hardin | 19.00 |
| | " | rent of Sand bank | 15.00 |
| Sep 19 | " | Dennis Cash | 50.00 |
| | " | Doria Haley Cash | 40.00 |
| | " | Wm Cecil | 2.50 |
| 27 | " | Baker | 45.00 |
| | " | Wm Cecil | 35.00 |
| Oct. 4 | " | Pa by Andrew Dixon | 20.00 |
| 17 | " | " to Cecil | 25.00 |
| | " | " " " | 15.00 |
| | " | Cash by Dixon | 5.00 |
| 10 | " | Cecil's livery bill to Claycomb & Dixon | 23.75 |
| | " | amt paid at Gilbert & Frymire's store | 10.00 |
| | " | " " " " Demmans Store | 5.75 |
| | " | 10 Cords | 17.50 |
| | " | amt accepted for Hazard board lice | 217.50 |
| | " | " " J ^d C. P. Strickland carrying bricks | 2.25 |
| | " | " " Cash J ^d Burns | 6.00 |
| | " | " " " " Cocora | 11.00 |
| | " | " " " " Dennis Kiefer | 16.00 |
| | " | " " " " Wm Wignot | 4.75 |
| | " | 3 days work by And Claycomb's hand | 3.75 |
| | " | Cash by H. Claycomb | 2.00 |
| | | To Mortar Sold to Rice | .50 |

Jas. B. Smith & Co.
No. 27 S. Second Street,
Philadelphia.

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| | | | |
|----------------------|---|--|-------|
| | " | lot Soft bricks | 2.00 |
| | " | 1 Chopping axe & helve | 1.50 |
| June 11 | " | Cash pd to Cecil | 12.00 |
| Cecil | " | use of horse & buggy his order on Foot | 2.50 |
| July 23 ^d | " | Mrs Cecil order on Foot | 6.00 |
| | " | " " " Gardeners store | 3.75 |
| | " | Spirit level | 1.75 |
| | " | 11 1/2 Cords wood at \$3.50 | 40.25 |
| Aug 12 | " | Cash pd B. F. Foot | 9.50 |
| | " | Cash | 10.00 |
| | " | Am't pd B. F. Foot | 1.60 |
| | " | " " Norman (barber) | 9.00 |
| | " | " " Allen & Co for lumber | 10.75 |
| | " | One wheel barrow | 4.00 |
| | " | Order on Demmans store | 40.00 |
| Aug 29 | " | 100 lbs flour | 3.25 |
| Sep 3 ^d | " | 10 bush bran | 1.00 |
| | " | 100 lbs Ship stuff | 1.00 |
| 16 | " | 125 lbs shats & 6 bush bran | 1.54 |
| Oct. 5 | " | 200 lbs flour | 5.50 |
| 10 | " | 8 bush bran & 100 lbs Ship stuff | 1.55 |
| 15 | " | 10 " " | 1.00 |
| 26 | " | 300 lbs flour @ 2.50 | 7.50 |
| Nov. 20 | " | 250 " " " | 5.62 |

All of which said account this defendant avers is justly charged to said Norman & Cecil which this defendant is ready to prove to this Honorable Court

And this defendant denies that he ever made such or any bargain with said plaintiff as he has set out in his Petition in his proceeding for the

enforcement of his pretended mechanics lien to which Cause this is intended for answer -

And that the only bargain or agreement ever entered into by this defendant wherein the said Plaintiff Cecil was a party was & is the contract hereinbefore set forth in this answer, which was with him as a copartner in the said firm of Warwick & Cecil as therein set forth -

And this defendant avers that all labor done or materials furnished for this defendant by said Cecil was under & by virtue of the said Contract between this defendant and the said firm of Warwick & Cecil

And this defendant prays your Honorable Court to be discharged from this proceeding with his reasonable costs in this behalf by him most wrongfully sustained

Saml Claycomb

State of Illinois, 3
Warren County, 3
On this 28th day of September A D 1858 personally appeared Samuel Claycomb the signer above and made oath to the same that the said answer is true according to his best knowledge, remembrance & belief before me Elisha Dye Justice Peace.

amended petition

~~"State of Illinois 3
Warren County 3
Warren Circuit Court
October Term A.D. 1859
William D Cecil 3
vs Samuel Claycomb 3
Amended petition for
Mechanics Lien."~~

Replication
Filed April 8th
1859
Wm. Safety Clerk

William V. Cecil } Warren Circuit Court
vs. } March Term A.D. 1859
Samuel Claycomb } Mechanics Lien

This replicant saving and reserving unto himself all and all manner of advantage of Exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true certain & sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this replicant, without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto Confessed and avoided traversed or denied is true all which matters & things this replicant is & will be ready to aver & prove as this honorable Court shall direct and humbly prays as in & by his said bill he hath already prayed

W. G. Kirkpatrick,
for Petitioner

Amended
petition

State of Illinois } Warren Circuit Court
Warren County } October Term a. d. 1859.

William V. Cecil }

vs. } Amended petition for
Samuel Claycomb } Mechanics Lien

7

To the Hon John S. Thompson Judge of the 10th
Judicial Circuit in & for the County of Warren
& State of Illinois

Your Petitioner William V. Cecil of
Warren County Illinois respectfully represents
unto your Honor that heretofore, to wit on or about
the first day of May A. D. 1857 at said County of
Warren one Samuel Claycomb of the same
County who was then & there the owner & has
ever since been & now is the owner of lot num-
ber one in Block number ten in the city of
Monmouth in said Warren County & said
State of Illinois, engaged & employed your
petitioner to make and burn eighty four
thousand brick for the purpose of building &
erecting in part a certain building on said
lot and that said Claycomb then & there
promised & agreed with your petitioner to pay
him when the same brick was made and burnt for
the making & burning thereof whatever the making
and burning of the same brick was reasonably worth.

That under & by the terms of said contract your petitioner
was to burn & make said brick within a reasonable time thereafter
to wit on or before the 10th day of July A. D. 1857 and your
petitioner alleges that he did make & burn said brick and
finished the making & burning thereof within a reason-
able time, to wit at & before the time agreed upon and
that he has in all respects done & performed each & every
agreement which he made with said Claycomb in re-
gard to the burning of said brick, and that the said
same brick were put into and used for the erection in part
of a certain building which was erected on said lot

Filed June 13th 1857
W. Lafayette clk
By J. O. Tomblott Deputy

and which now stands on said lot as aforesaid & now forms a part of the material thereof, And your petitioner further alleges that the making & burning of said 84 thousand brick was reasonably worth the sum of one dollar & fifty cents per thousand making the sum of one hundred & twenty six dollars which sum the said Claycomb has utterly failed & refused to pay your Orator either at the term agreed for or at any other other time and that the same now remains due & unpaid

And your petitioner further represents that on or about the first day of July A.D. 1857 at said county of Warren aforesaid the said Samuel Claycomb employed your petitioner to build lay & put three hundred & fifty seven thousand nine hundred & ninety six brick into a wall for the purpose of the erection of the said building in said lot as aforesaid and that said Claycomb then & there promised and agreed to pay your Orator when the same work in buildjg laying & putting said brick into said wall was completed whatever the same was reasonably worth, and that said wall was to be built by the term of said contract in & during the summer & fall of the year 1857, And your Orator alleges that he did under said contract with said Claycomb build lay & put said three hundred & fifty seven thousand nine hundred & ninety six brick into said wall which was then & there erected & which now stands on said lot and that said buildjg laying & putting of said brick into said ~~at~~ wall was done at the time agreed upon

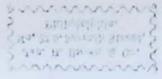
Jas. B. Surr & Co.
No. 27 S. Seventh Street,
Philadelphia.

9 21

to wit in & during the summer & fall of 1857 and was fully completed in the fall of A. D. 1857, and that your Orator fulfilled & performed each & every part of said contract with said Claycomb in regard to building laying & putting said bricks into said wall, And your Orator states that the building, laying & putting of said bricks into said wall was reasonably worth the sum of four dollars per thousand brick amounting to the sum of fourteen hundred & thirty one dollars & ninety eight cents which sum said Claycomb has utterly refused & failed to pay you Orator either at the time agreed upon or at any other time and that the whole of said sum is now wholly unpaid & remains & is now still due to your Orator from said Claycomb

And your Orator further states that said Claycomb on or about the 1st day of June A. D. 1857 at said County of Warren purchased of your Orator & your Orator then & there delivered the same to said Claycomb seven hundred bushels of sand & then & there promised & agreed to pay your Orator whatever said sand was reasonably worth that said sand was bought for & used in the erection of said building on said lot as aforesaid & now forms a part of the material of the same - That said sand was reasonably worth 12 cents per bushel amounting in all to the sum of eighty four dollars which sum has never been paid by said Claycomb and the same is now due & unpaid.

And your petitioner further states that on or about the first day of July A.D. 1857 at the county of Warren aforesaid said Samuel Claycomb employed your Orator to raise set & put in 49 pair of cut stone window & door caps & sills in said building which was erected on said lot as aforesaid and then & there promised to pay your Orator what said setting of said stone caps & sills were reasonably worth when completed and that by the terms of said agreement said stone caps & sills were to be set in said building ~~in~~ ⁱⁿ the erection of the same progressed and that when finished the same should be paid for as aforesaid That under said contract your Orator did at the time agreed upon raise set & put in said 49 pair of stone door & window caps & sills in said building which was erected on said lot as aforesaid and that the same now forms a part of the material of the Dam building on said lot and that the same was completed & finished during the fall of A.D. 1857 and that said raising setting & putting in of said door & window sills & caps was reasonably worth ~~(77.75)~~ ^(77.75) seventy five cents per pair amounting in all to the sum of thirty six dollars & seventy five cents, That said work in raising setting & putting in said window & door sills & caps was fully completed in the fall of A.D. 1857 in accordance in every respect with the terms of said contract and that said sum of money is wholly unpaid & that the same is now due Said Claycomb having utterly



Failed & refused to pay your Orator for the same -

And your Orator further represents that on or about the 1st day of July A.D. 1857 said Claycomb employed the use of certain scaffolding lumber of & from your Orator for the erection of said building & also employed your Orator to cut & affix poles for use in & about the erection of said building & also bought wires & nails to use in & about the erection of said building of your Orator and then & there promised & agreed to pay your Orator what said scaffolding lumber scaffolding poles & w^{ire} & nails ^{w^{ere}} reasonably worth, that under said contract your Orator did furnish and deliver said scaffolding lumber to said Claycomb & that said Claycomb used the same for the purpose of the erecti^{on} of said building on said lot as aforesaid and that the same was reasonably worth the sum of ten dollars, that said scaffolding poles were also cut & furnished as aforesaid & used in the erection of said building as aforesaid by your Orator & that the value of the same was reasonably worth the sum of two dollars & fifty cents and that said wire & nails w^{ere} also furnished by your Orator & used in & about the erecti^{on} of said building & that the same is reasonably worth the sum of one dollar & fifty cents all of which said sums said Claycomb has failed & refused to pay your Orator & the same is now due & unpaid

And your Orator further represents that each and all of said contracts betweⁿ your

Orator and said Claycomb were parcel contracts and not in writing

And further that your Orator has fully performed each & every agreement in full & in every part with said Claycomb as aforesaid and that said Claycomb has utterly failed & refused to perform his part of said several agreements or any part or portion thereof and that there is now due & owing & was at the time of the commencing of this suit from said Claycomb to your Orator the sum of Seventeen Hundred & two dollars & seventy three cents

all of which sum of money is due for said work said labor & said material furnished by your Petitioner for & in & about the erection of said building on said lot as above described

Your Orator therefore prays your Honor upon a final hearing that your Honor will adjudge & decree that said lot be sold according to the Statute in such case made & provided and the proceeds of said sale be first applied to the payment of said sum due your Orator from said Claycomb & the balance if any remain be paid to him & your Orator will ever pray

William D. Cecil

by Geo. H. Kirkpatrick
his atty."

" Copy of Account "

" Samuel Claycomb

| | |
|------------------------|----------|
| To William D Cecil Dr | |
| To Buggy & making 84 m | |
| brick at \$1.50 for m. | \$126.00 |
| laying \$357.996 | 1431.98 |

| | | |
|---|---|------------|
| " | 700 bushels sand at 12 cts p. B. | 84.00 |
| " | My paid Alexander | 10.00 |
| " | Setting 49 cub feet stone window & door caps & sills at \$ 75 p. ft. | 36.75 |
| " | case of scaffolding lumber | 10.00 |
| " | Cutting scaffolding poles | 2.50 |
| " | wire & nails | 1.50 |
| | Whole amount due | \$ 1702.73 |

Demurrer
Filed Oct 26
1859
Wm. C. Coffey clerk

State of Illinois } Warren County Circuit Court
Warren County } vs. October Term AD 1859.
William V. Cecil

vs.
Samuel Claycomb

And now comes the said
defendant Samuel Claycomb by his attorney E. A.
Paine and demurs to the said Plaintiffs now last
amended Bill and says that the same is not sufficient
in law or equity to answer unto and of this he puts
himself upon the judgment of the Court.

By E. A. Paine Deft. attorney

- And for further demurrer sets down the following causes
- 1st That by said last amended Bill said Pff. does not
set out any specific Contract.
 - 2^d Also does not set out any payments.
 - 3^d Also multifariousness & uncertainties insomuch
that the Court cannot render final decree on the same.
 - 4th By the Statute the Petition must contain a statement
of all the material facts and circumstances

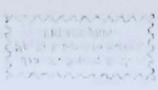
necessary to full understanding of the rights of the parties, but no such statement is made, and nothing appears in said petition to show the balance due said petitioner for which said petitioner asks for a decree

William V. Beech } Warren Circuit Court
vs } October Term A.D. 1859
Samuel Claycomb } Mechanics Lien

Replikation
Filed Nov 27
1859.
Wm. S. G. G. Clerk

This repliant saving & reserving unto himself all & all manner of advantage of exceptions to the manifold insufficiencies of the said answer & replication thereunto saith that he will aver and prove his said bill to be true certain & sufficient in the law to be answered unto and that the said answer of the said defendant is uncertain untrue & insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto confessed & avoided traversed or denied is true all which matters & things this repliant is & will be ready to aver & prove as this honorable court shall direct and humbly prays as in & by his said bill he hath already prayed

A. G. Kirkpatrick
for Petitioner



State of Illinois } Warren County Circuit Court
Warren County } P. October Term A.D. 1859

William V. Beech

vs.

Samuel Claycomb

Samuel Claycomb being first duly sworn says that he is defendant in the above entitled suit now pending in said Warren County Circuit Court and that he fears and believes and so the fact is that the minds of the inhabitants of said County are so prejudiced against him that he cannot expect or have a fair & impartial trial in said suit in said County and further deposes that the same cause exists against him in said suit in each of Henderson & Mercer Counties and prays this Honorable Court that a change of venue may be granted in said suit to some County where the said cause of complaint does not exist

Subscribed & sworn to Samuel Claycomb
before me this 3^d day of
Nov. 1859. Wm. Lafayette Clerk

affidavit
filed Nov 3^d
1859.
Wm. Lafayette Clerk

Affidavit.
 Filed Nov 7th
 1859
 Wm. Safety Clk

State of Illinois }
 Warren County }
 Circuit Court

(Oct. Term A.D. 1859)

William V. Cecil

vs
 Mechanics Lien
 Saml. Claycomb

And now Comes said Defendant
 And being first duly sworn upon his oath says
 that he does verily fear that he will not receive
 a fair trial in this case in the Circuit Court
 of Warren County Illinois in which this action
 is now pending on account that the Judge thereof
 is prejudiced against him, said defendant, and
 also that the inhabitants of said County are
 prejudiced against him so much so that he said
 defendant cannot expect a fair trial herein and
 said affiant further says that the knowledge of
 the above causes for change of venue have been ascer-
 tained, and learned by this defendant since the
 last term of this Court, and as to the Judge since
 this present term of this Court and within ten days
 last past, said affiant therefore prays a change of
 venue in this case to some Circuit and County
 where the above causes do not exist, and as in duty
 bound will ever pray,

Subscribed and Sworn to
 this 7th day of Nov. 1859.
 Wm. Safety Clk.

S. Claycomb

13 29

| | |
|--|----------|
| 780 bushels Sand at 12 cts p B | 84.00 |
| My paid Ryand | 10.00 |
| Setting 49 cut for stone ^{window} and ^{door} | |
| door caps & sills at \$.75 p p | 36.75 |
| use of scaffolding lumber | 10.00 |
| cutting scaffolding poles | 5.50 |
| wires & nails | 1.50 |
| Whole amount due | \$182.75 |

State of Illinois } Circuit Court Oct. Term
Warren County } A. D. 1859

William T. Cecil }
vs } Amended Petition for
Samuel Claycomb } Mechanics Lien.

And now comes the said Samuel Claycomb said defendant and to said amended petition of said plaintiff answers and says, that it is not true as represented and alleged in said amended petition that said petitioner and this defendant on the first day of May A. D. 1857 made a contract by which said petitioner was to make & burn for this defendant eighty four thousand bricks, neither is it true that this respondent at any other time or place ever made any kind of contract either written, printed or verbal by which this defendant "engaged or employed" said Petitioner to make and burn any number or quantity of brick, neither did this defendant ever agree to pay said petitioner what the burning and making of said brick was reasonably worth and further this defendant emphatically denies

Answers
Filed Feb 9th 1860
Entered by J. B. Surr

that said Cecil said petitioner made and burnt said brick on any contract made with said petitioner by this defendant

And this defendant further answers and says that it is not true that on or about the first of July A.D. 1857 he employed said petitioner to build lay & put 357,996 bricks into a wall for the purpose of any building whatever - and it is not true that this defendant agreed to pay for any such laying of bricks nor the prices charged as charged in said petition or at the time set forth therein or at any other time.

Your Respondent now admits that he was the owner of Lot 1 in Block 10 in said City of Monmouth, and said defendant expressly and positively denies that he ever employed said petitioner to raise set and put in 49 pairs of cut stone window and door caps and sills in the building described in said petition or any other building and as positively denies any agreement to pay said petitioner for any such labor. Your respondent further denies that he ever employed the use of any scaffolding and further denies that he ever employed said petitioner to cut any scaffolding poles, and denies ever having agreed to pay for use of scaffolding or for cutting the poles, as positively denies the charge for wire & nails and any agreement to pay for any of said items above referred to.

Your respondent further answering says

157 31

that on the twelfth day of April 1856 your respondent entered into a written agreement with one Alexander M. Warwick and said petitioner to make and burn 250,000 brick in a good workmanlike manner suitable to put into a large Hotel several stories high a copy of which agreement marked Exhibit "A" is filed herewith and which your respondent prays may be taken as a part of this answer.

By said agreement your respondent was not to receive any of said bricks until the month of August 1856. That under said agreement said Warwick & Cecil immediately prepared the brick yard on the premises described in said agreement and made and burned about 125,000 to 150,000 bricks, exact number not known to this defendant. That they had engaged to build a large three story brick school house for the city of Monmouth in said county and thereupon they used all of said bricks in said town upon said school house and for other purposes, that this respondent furnished the the wood, the lumber and the horse called for in said agreement to said Warwick and Cecil, besides paying them a large amount in cash, store goods, flour and other property as charged in the account filed with this answer, said Warwick and Cecil had the use of the premises described in said agreements.

That said Warwick & Cecil did not finish said school house until late in the fall or beginning of the winter of 1856 & 1857, to late to begin on any building for this

of said kiln is unknown to this respondent, he has been informed that there were about 84,000 but this respondent requires strict proof of the number of said brick, and this respondent strictly & distinctly answers and says that said last mentioned brick were put in said building being used for face brick and the soft brick burned the fall before used for the inside of said wall, and said Cecil used all of said brick, and began, continued and completed said building under the agreement made with said Warwick & said Cecil and under no other agreement whatever said Cecil and said Warwick did or pretended to dissolve their partnership some time after the burning of the second kiln of brick and after having received a large amount of the pay from this respondent at least thirteen hundred and fifty dollars and perhaps more as this respondent does not know the exact time said Warwick and Cecil dissolved, and also after having used the premises of this respondent to make & burn their first kiln of brick, and having been furnished the lumber and horse called for in said agreement, and at no time did said Warwick or Cecil pretend that they were not making & burning said brick or receiving said pay except under and by virtue of said agreement and neither they nor either of them ever received a dollar or any amount, or received or used lumber or the premises or mix and lay the brick of said two kilns except under said agreement.

This respondent further answers that said scaffolding and the poles for the same and the said wire & nails were as necessary to said Warwick & Cecil as their trowels or mortar boards and as by said agreement they were to have two dollars and fifty cents per thousand running measure for laying the walls of said building they were by the custom of brick masons to furnish their own conveniences for laying the ^{said} walls, and are ^{such things} not legally nor equitably chargeable to this respondent. Also said window & door caps and sills were furnished by this respondent and were laid in said building under said agreement the same as the brick and mortar put in the same, and counted in in the running measure. This respondent admits that a large amount of sand was furnished by said Cecil & Warwick at least there was sand used that this respondent did not furnish and which said Warwick & Cecil are entitled to, and this respondent is willing to allow for the same.

And now this respondent answers further and says that he made out the account of said Warwick & Cecil and presented the same to the said Cecil before said building was completed and said Cecil examined it and admitted that said account ^{was correct}, a copy of which is filed with this answer and which this respondent prays may be taken as a part thereof and never made any objection to it because he or said Warwick did not receive the amount charged. But the objection

19 35

Made by said Cecil was that said Warwick had received more than he was entitled to by their partnership and before the completion of said building said Cecil examined said agreement and then went on and finished said job under & by virtue of said agreement.

And this respondent answers further & says that said account is true and just, and that he has paid all there is due on said contract and there is justly a balance due this respondent from said Petitioner under said Agreement

Warwick & Cecil in apc
with Samuel Claycomb

| | | | |
|-----------------------------|-------------------------------|-------|--------|
| April 19 th 1856 | To 4913 feet Lumber | 20 | 98.26 |
| " " " | " 108 " do | " | 2.34 |
| " " " | " 335 " do | " | 7.14 |
| Apr 30 th 1856 | " 1430 " do | 2 1/4 | 31.60 |
| May 1 st 1856 | " 195 " do | " " | 3.90 |
| " 3 ^d " | " 520 " do | " " | 11.70 |
| " 8 th " | " 396 " do | " " | 8.91 |
| " 15 th " | " 1 horse & halter | | 131.00 |
| " " " | " Order to Gilbert & Frymore | | 50.00 |
| " " " | " 50 lbs meat by Bob Marsh | | 3.50 |
| April 30 th 1856 | " 56 lbs ham & meat | 10 | 5.60 |
| " " " | " 51 lbs shoulder (meat) | 8 | 4.08 |
| May 5 th " | " 694 feet lumber | 2 1/4 | 14.79 |
| " " " | " 22 lbs ham (meat) by Fuller | 10 | 2.20 |
| " 7 th " | " 24 " " " | 10 | 2.40 |
| " 8 th " | " 61 " do " | 10 | 6.10 |
| " 8 th " | " 54 " shoulders | 8 | 4.16 |
| " " " | " 85 " ham | 10 | 8.50 |

| | | | | |
|--------------------------------|--|-------------------------------|-------|--------|
| " 19 " | " 84 " | do | 9" | 7.56 |
| " " " | " | use of horse 7 days | 1.00" | 7.00 |
| Cecil, 30 th | " " " | " & top buggy | | .75 |
| October 30 th 1859 | | bill of lumber per Church | | 26.05 |
| | | amt., | | 436.64 |
| Cecil | | amt., carried over | | 436.64 |
| Oct. 11 th 1856 | | use of top buggy 1 day | | 1.75 |
| " 18 th " | To " " " | " & horse 1 day | | 2.50 |
| | | Bill of lumber by H. J. Henry | | 90.03 |
| " 18 th " | To 47 cords wood | \$3.00 a | | 141.00 |
| " 18 th " | To 42 " " | " " | | 126.00 |
| Nov. 4 th " | To check on McCoy & Quinby's Bank | | | 100.00 |
| " " " | To use of horses and Top Buggy | | | 2.50 |
| " 12 " " | check on McCoy & Quinby's Bank | | | 40.00 |
| " " " " | Cecil use of Top Buggy 2 days | | | 3.50 |
| " " " " | Ruth's Order (Shoemaker) | | | 5.00 |
| " " " " | Use of 2 horses & Top Buggy 1 day | | | 3.50 |
| "Warwick" " | 8 Bushells lime and land | | | 3.20 |
| " " " " | 23 cords wood | @ \$3.00 | | 69.00 |
| December 12 th 1856 | 66 " " | (By Warwick & Cecil) | | 105.50 |
| " " " " | Cash | | | 23.00 |
| " " " " | 5 ³ / ₄ cords wood | \$1.75 a | | 10.04 |
| "Cecil" " " | use of horse and buggy | | | 1.25 |
| " " " " | " of 2 do " do 1 day | | | 3.50 |
| " " " " | " " horse & cutter | | | 1.25 |
| April 16 th 1856 | " 100 lbs Flour | | | 4.00 |
| | " use of horse & buggy | | | 2.25 |
| " 27 th " | To 3 bushels bran | @ 8 | | .25 |
| " 28 " " | 2 ¹ / ₂ " " | 20 a | | .20 |
| May 2 ^d " | " 117 lbs Flour | | | 2.92 |
| " 6 ^d " | " 1 Bushell Bran | | | .08 |
| " 8 ^d " | " 71 lbs Flour | | | 2.66 |

| | | | | | | | | |
|-----------------------|--------------------|---|---|-------|----------|------------------------|-------|---------|
| " | " | " | " | 92 | " | do | 4 a | 3.45 |
| May 9 th | " | " | " | 1 | Bushell | Corn meal (By Warwick) | | .40 |
| " | " | " | " | 2 | Bushells | Bran | | .16 |
| " | 8 th | " | " | " | do | do | | .16 |
| amt. 1185.68 | | | | | | | | |
| amt. carried over | | | | | | | | 1185.68 |
| Rec'd | Order to Collected | | | | | | | 3.00 |
| May 14 th | 1856 | " | " | 3 | Bushells | | 8 a | .24 |
| " | 23 | " | " | " | Do | | " | .24 |
| " | " | " | " | 1 1/2 | Bushells | Corn meal | 4.0 a | .60 |
| " | " | " | " | 80 | lbs | Flour | | 3.00 |
| June 5 th | 1856 | " | " | 100 | " | (By Warwick) | | 3.75 |
| " | 6 th | " | " | 114 | lbs | Flour | | 4.28 |
| " | 14 | " | " | 1 | Bushell | meal | | .35 |
| " | 23 | " | " | 157 | lbs | Flour | | 5.89 |
| July 5 th | " | " | " | 3 | Bus | Bran | 8 a | .24 |
| " | " | " | " | 100 | lbs | Flour | | 3.75 |
| " | " | " | " | 2 1/2 | Bus | Corn meal | | .70 |
| " | 9 th | " | " | 2 1/2 | " | do do | | 1.00 |
| " | 15 th | " | " | 3 | " | Bran | | .28 |
| " | 26 | " | " | 103 | lbs | Flour | | 3.59 |
| " | " | " | " | 3 | Bus | Bran | | .28 |
| Aug. 5 th | 1856 | " | " | 1 | " | Corn Meal | | .35 |
| Aug 15 th | " | " | " | 50 | lbs | Flour | 3 a | 1.50 |
| " | 21 st | " | " | 127 | " | do | | 3.81 |
| " | " | " | " | 3 | Bus | Bran | | .28 |
| Sept. 4 th | " | " | " | " | " | do | | .28 |
| " | 5 th | " | " | " | " | do | | .28 |
| " | 19 th | " | " | 132 | lbs | Flour | | 3.96 |
| Oct. 2 nd | " | " | " | 61 | " | do | | 1.83 |
| " | 15 | " | " | 2 | Bus | Bran | | .16 |
| " | 23 | " | " | 3 | Bus | Bran | | .24 |

| | | | | | |
|---------------------------|----|------|---|------------------|-----------------|
| " 25 | " | " | 117 lbs Flour | | 3.51 |
| " 30 | " | " | 80 " do | | 2.40 |
| amt 1235.47 | | | | | |
| Cecil | | | amt Carried over | | 1235.47 |
| Oct 31 st 1856 | To | 3.00 | lbs Flour | 3 ^o w | 9.00 |
| Nov 30 th | To | 3 | Bus Bran | 8" | 2.14 |
| Dec 1 st | " | " | 139 lbs Flour | | 4.47 |
| " 4 th | " | " | 5 Bus Bran | 10 ^o | .50 |
| " | " | " | 60 lbs Flour & 1 Bus Meal | | 2.20 |
| " 26 | " | " | 4 Bus Bran & 1 1/2 Bus Meal | | 2.20 |
| " | " | " | 140 lbs Flour | | 4.20 |
| Jan 3 rd 1857 | " | 3.00 | " do | | \$9.00 |
| " | " | " | Warwick's Livery Dill | | 24.80 |
| " | " | " | 4.70 rails of C. Harding | | 19.00 |
| " | " | " | Rent of Sand bank | | 15.00 |
| Sep. 19 th | " | " | Dennis Cash | | 50.00 |
| " | " | " | David Haley Cash | | 40.00 |
| " | " | " | William Cecil Cash | | 2.50 |
| Sep 27 th | " | " | Baker Cash | | 45.00 |
| " | " | " | William Cecil Cash | | 35.00 |
| Oct 4 th | " | " | Paid by Andrew Dixon | | 20.00 |
| " 17 th | " | " | To Cecil " " | | 25.00 |
| " | " | " | Cecil by Claycomb | | 15.00 |
| " | " | " | Cash by Dixon | | 5.00 |
| " 10 th | " | " | Cecil's livery bill to Claycomb & Dixon | | 23.75 |
| " | " | " | Amount paid Gilbert & Frymire's Store | | 10.00 |
| " | " | " | " " Dennis's store | | 5.75 |
| " | " | " | 10 cords wood | 1.75 w | 17.50 |
| " | " | " | x amount accepted for Hazards book & bill | | 217.50 |
| " | " | " | " " per C. D. Strickland | | 2.25 |
| " | " | " | Cash for Burns | | 6.00 |
| amt. 1845.05 | | | | | |

RECEIVED
 1857
 Wm. Cecil

23 39

| | | | |
|-----------------------|------|--|---------|
| | | amt. Carried over | 1845.25 |
| Oct. 10 th | 1857 | To Cash Pa Carson | 11.00 |
| " | " | " Cash " Dennis Kufel | 16.00 |
| " | " | " Cash " William Nigant | 4.75 |
| " | " | " 3 days work by Andrew Claycomb hand | 3.75 |
| " | " | " Cash by A Claycomb | 2.00 |
| " | " | " Mortar sold to Rice | .50 |
| " | " | " Lot of Soft Brick | 2.00 |
| " | " | " 1 chopping ax and halve | 1.50 |
| June 11 th | " | " Cash paid Forts for Cecil | 12.00 |
| Cecil | " | " use of horse & buggy his order on Fort | 2.50 |
| July 23 rd | " | " Mr Cecil's order on Fort | 0.00 |
| " | " | " Mr Cecil's order on Gardeners store | 3.75 |
| " | " | " Spirit level | 1.75 |
| " | " | " 11 1/2 Cords wood 3.50 a | 40.25 |
| Aug 12 th | 1857 | " Cash paid P. J. Fort | 9.50 |
| " | " | " Cash | 10.00 |
| " | " | " Amount paid P. J. Fort | 1.60 |
| " | " | " do (Norman) Barber | 9.00 |
| " | " | " do Allen & Co for lumber | 10.75 |
| " | " | " One Wheel Barrow | 4.00 |
| " | " | " Order on Demaris store | 40.00 |
| Aug 29 th | " | " 100 lbs Flour | 3.25 |
| Sept 3 rd | " | " 10 Bus Bran | 1.00 |
| " | " | " 100 lbs stuff | 1.00 |
| Sept 10 th | " | " 125 " Shorts & 6 Bus Bran | 1.54 |
| Oct. 5 th | " | " 200 " Flour | 5.50 |
| " 10 th | " | " 8 Bus Bran 100 lbs chopped stuff | 1.55 |
| | | amt. " | 2051.47 |
| | | amt. Carried over | 2051.47 |
| Oct 15 th | 1857 | To 10 Bus Bran | 1.00 |
| " 26 " | " | " 300 lbs Flour 2.50 a | 7.50 |

| | | | | | | | |
|----------------------|---|-----|---|----|-----|------|---------|
| Nov 20 th | " | 250 | " | do | 250 | " | 5.62 |
| | | | | | | Amt. | 2065.61 |

1856 To use of brick yard
and Materials in burning
about 200,000 brick

200.00

\$ 2265.61 "

" Copy "
Exhibit A.

This agreement made this twelfth day of April A.D. 1856 between Alexander Warwick and William Cecil of the firm of Warwick and Cecil and Samuel Claycomb, witnesseth; that the said Warwick & Cecil agree to make and burn in a good workmanlike manner, upon the lot of land belonging to said Claycomb and lying east of Joseph Weaver, and known as the Webster & Kirkland, for the said Samuel Claycomb two hundred and fifty thousand good merchantable brick suitable to put into a large Hotel several stories high for the sum of six dollars per thousand at the kiln and the said Claycomb agrees to pay said price & receive the brick at the kiln and towards paying for said brick, said Claycomb agrees to furnish said Warwick & Cecil two thousand feet of suitable pine lumber for covering the kiln, and such other lumber as they may need for sheds at the usual Market price and said Claycomb further agrees to furnish at the kiln two hundred cords of fire wood in due time for burning said brick at three dollars per cord, and agrees that said Warwick & Cecil may cut and haul fire wood from said lot to be used in said business and to have the same for one dollar and seventy five cents per cord and said Claycomb further agrees to furnish said

Warwick & Cecil a good horse of the value of one hundred and thirty dollars, and said Claycomb is not to receive any brick before the 1st day of August 1856. and when he does Commence taking brick then he agrees to pay said Warwick & Cecil the sum of one hundred dollars as part of the payment on this contract, and said Claycomb further agrees to pay said Warwick & Cecil for laying said brick the sum of two dollars and fifty cents per thousand running measure and said Claycomb is to furnish lime and sand for laying said brick, and the said Warwick & Cecil agree to take of said Claycomb all of the flour, corn meal and meat that they may need in their business towards payment for said brick and said Claycomb furnishes the same at the market price.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written

(Signed) A. M. Warwick Seal
" William Cecil Seal
" Sam Claycomb Seal

" Received to "

" Called "

" State of Illinois)
Warren County)
I, Sam Claycomb being duly sworn say that the matters & things in the above answer set forth are true in substance & fact.

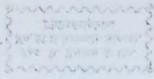
Sworn to & subscribed
before me this 30th day
of October A. D. 1859.

Wm Safety Clk. Sam Claycomb "

Filed
Feb. 9th 1860
Emek P. Stone
vs J. B. Schulz

State of Illinois }
Warren County }
vs

Pleas before the Honorable
John S. Thompson Judge of the tenth judicial circuit of
the state of Illinois. At a circuit court began and
held at the Court house in Mansmouth within and for
the County of Warren and state of Illinois, on the year
of our Lord One thousand eight hundred and fifty eight
It being the fifteenth day of said month.



Present Hon^{ble} John S. Thompson Judge
James H. Stewart States attorney
Charles W. Mills Sheriff
Wm. Laferty Clerk

Be it remembered that heretofore to wit on the 23^d day of March A. D. 1858 an order was entered upon the records of said which is in the words and figures following," to wit

William V. Cecit }
vs } Mechanics Lien
Samuel Claycomb }

This day came the defendant by his attorney and moved the court for a rule on the plaintiff to file security for costs

"And afterwards to wit on the first day of April A. D. 1859 (being at the same term of court) the following order was entered upon the records of said which reads as follows to wit,

William V. Cecit }
vs } Pet for Mech's Lien
Samuel Claycomb }

This day came the defendant by his attorney and withdraws his demurrer to the plaintiff's Petition and by agreement the defendant is to answer within 60 days and the plaintiff has leave to amend his Petition filed herein

"And afterwards to wit on the 9th day of April A. D. 1859 at a term of the court then holden the following order was entered upon the records of said court, which reads as follows to wit

William D. Cecil

vs

Samuel Claycomb

Mechanics Lien

This day came the defendant by his attorney, and moves the court to strike the plaintiff's replication from the files. Thereupon it is ordered by the court that the motion be overruled.

"And afterwards to wit on the 13th day of April A. D. 1859 at a term then holden an order was entered upon the records of said Court, which reads as follows to wit:

William D. Cecil

vs

Samuel Claycomb

Mechanics Lien.

This day came the parties and their attorneys and issue being joined for trial put themselves upon the country. Thereupon came a jury to wit: Samuel Douglas, French Brownlee, J. S. Herbert, J. W. Johnson, Wm. C. Maly, B. Booth, A. J. Eby, P. J. Murphy, Thomas M. Payton, Mark L. Hubbard, J. L. Miller & David R. Shelton who being elected, tried and sworn to well and truly try the issue joined herein, and after hearing the evidence and argument of counsel retired to consider of their verdict.

"And afterwards to wit, on the 14th day of April A. D. 1859, the following order was entered upon the records of said Court, which reads as follows to wit

William V. Cecil 3
vs 3 Mechanics Lien
Samuel Claycomb 3

This day again the Jury empan-
nelled herein on yesterday and represent to the court
that they cannot agree upon a verdict. There-
upon it is ordered by the court that the Jury be
excused ~~for~~ ^{from} rendering a verdict herein, and are dis-
charged from the further consideration of this case.

Then came the Petitioner by his Solicitor and on
his motion leave is given him to amend his bill
filed herein. Amended bill to be
+ filed within sixty days from the date here
of and leave is given by the court to the
- Petitioner to amend his pleadings and papers
generally within the time aforesaid, and leave
is also given the Respondent to amend his
answer, and this cause is continued until
the next term of this Court.

"And afterwards to wit on the 31st day of
October A.D. 1859 at a term of the Court
then holden, the following order was entered upon
the records of said Court, which reads as fol-
lows, to wit:

William V. Cecil 3
vs 3 Mechanics Lien
Samuel Claycomb 3

This day came the de-
fendant by his attorney and filed his demurrer
to the Plaintiffs Amended Petition, and after hearing
the same it is ordered by the court that the demurrer

be sustained, and that the plaintiff have leave to amend his Petition.

Thereupon came the defendant and withdraws his demurrer, and on his motion it is ordered by the court that he have leave to answer herein.

"And afterwards, to wit on the 15th day of November A.D. 1859 an order was entered upon the Records of said Court which reads as follows, to wit:

William V. Cecil }
 vs } Mechanics Lien
 Samuel Claycomb }

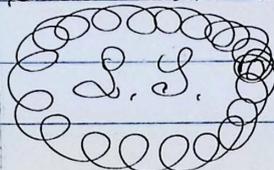
This day came the plaintiff by his attorney and moves the court to strike the defendants affidavit filed Nov. 7th 1859 from the files of this Court, and after hearing the same it is ordered by the Court that the motion be overruled. Thereupon came the defendant by his attorney and moves the Court for a change of venue herein. Thereupon it is ordered by the Court that the motion be allowed, and that the venue herein be changed to Peoria County, and that the Clerk of this Court make out and transmit to the Clerk of the Circuit Court of Peoria County a Copy of the record herein, together with all the papers filed in this cause.

State of Illinois }
 Warren County } J. J. Wm Laferty Clerk of the
 Circuit Court within and for said county and
 State, do hereby certify that the above and
 foregoing is a true and full and correct copy
 of the record in said cause, and the accompanying

31 47

Papers numbered from 1 to 90 are all the papers on file
in said cause.

Witness Jm Laferty Clerk of our
said Court and the Seal thereof at Morristown this



16th day of December A. D. 1859

Jm Laferty, Clerk

Peoria Circuit
Court
Process in 97

Proceedings at a term of the Circuit Court began and held at the Court house in the City and County of Peoria and State of Illinois, on the first Monday in the Month of March in the Year of our Lord one thousand eight hundred and sixty, it being the fifth day of said month. Present, the Honorable Elisha Powell Judge of the 16th Judicial Circuit in the State of Illinois, John Bryner Sheriff and Enoch P. Sloan, Clerk, to wit:

Tuesday March 6th A.D. 1860

William V. Cecil

vs Lien = Venue from Warren Co.

Samuel Claycomb

By agreement this cause is continued.

Proceedings at a term of the Circuit Court began and held at the Court house in the City and County and of Peoria in the State of Illinois on the seventh day of May in the year of our Lord one thousand eight hundred and sixty, it being the first Monday of said month. Present the Honorable Elisha V. Powell Judge of the 16th Judicial Circuit in said State, John Bryner, Sheriff and Enoch P. Sloan, Clerk, to wit:

Tuesday May 8th A.D. 1860

William V. Cecil

vs Mechanics Lien

Samuel Claycomb.

This day come the petitioner by his attorney, and moves the court for leave to amend his petition, and the Court being fully advised in the premises, overruled said motion.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City and County of Peoria, State of Illinois, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty, it being the third Monday of said month.

Present the Honorable Elhu W Powell Judge of the 16th Judicial Circuit, in said State, John P. Bryner Sheriff and Crook P. Hoan clerk, to wit:

Friday, November 2nd A.D. 1860,
William T. Cecil

vs Lien = from Warren Co.
Samuel Blaycomb

This day came the Complainant by Kirkpatrick and Mad his attorneys and the defendant by Payne, Harding and Mannings's attorneys, and it is ordered by the court that a jury be imparnelled to try the issues in this cause, whereupon come a jury of twelve good and lawful men to wit: Jacob Dawson, Wm O'Neil, David Hooper, Joseph Miller Sr, Isaac Davis, Jacob Rench, W. W. Miller, A. Perkins, Abed Daniels, William Giles, Joseph Osborn, and G. W. Miller who were duly chosen, tried and sworn to well and truly & try the issues joined in this cause and a true verdict give according to the evidence

And the said jury not having heard all the evidence &c in this cause, were adjourned to meet the court at half past eight o'clock to-morrow morning

Jas. B. Smith & Co.
No. 27 S. Seventh Street,
Philadelphia.

37 57

Saturday November 24th A. D. 1860
William V. Cecil
vs Lien - from Warren Co.
Samuel Claycomb

This day came the parties to this
suit by their respective attorneys and also came the
jury impanelled and sworn on yesterday to
try the issues herein and a true verdict give
according to the evidence, and the said jury
upon their oaths aforesaid do say, that the jury
find the issues for the Complainant and assess
his damages at the sum of one thousand one hun-
dred and fifty six dollars and sixty cents.

Defendant by his attorney moved the court
for a new trial.

Friday December 28th A. D. 1860
William V. Cecil
vs Mechanics Lien.

Samuel Claycomb
In this case it appearing to
the court from the verdict of the jury, that the
said defendant is indebted to the said plaintiff
in the sum of eleven hundred and fifty six
dollars and sixty cents which is a lien upon
the premises described in the plaintiffs declaration
viz: - Lot number One in Block number ten in
the City of Monmouth in the County of Warren,
in the State of Illinois, with all the privileges and
appurtenances therunto belonging, It is therefore
ordered, adjudged and decreed that said premises
be sold by the Sheriff of Warren County at auction

to the highest bidder for cash - that said Sheriff give the same notice of the time, place and terms of sale as is required by law to be given on sale of real estate on execution at law, that said sale be made at the door of the court house within ninety days after the receipt of a copy of this order by said Sheriff, which copy shall be furnished to said Sheriff, and that said Sheriff execute to the purchaser a good and sufficient deed of said premises - that he pay over to the plaintiff in this case, the amount of his debt with interest thereon at six per cent, and that he bring the balance of the money after deducting his fees, into court, to abide the further ^{verdict or} ~~order~~ of court.

Ordered by the Court that the motion for new trial herein be overruled; whereupon the said defendant by his attorney prayed an appeal to the Supreme Court of this State, which is allowed on his giving bond, in the penal sum of twenty two hundred dollars, payable to said plaintiff, with William H. H. Claycomb as security, and filing the same with the clerk of this court in thirty days.

It is agreed by the parties that the Bill of Exceptions may be signed in vacation.

Monday December 31st A.D. 1860

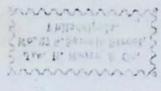
William T. Cecil

vs

Lein. from Warren Co.

Samuel Claycomb

Agreed by the parties that the Bill of Exceptions herein may be signed in vacation.



Proceedings at a term of the Circuit Court begun
and held at the Court house in the City and County
of Peoria, State of Illinois, on the fourth day of March
in the year of our Lord One thousand eight hundred and
sixty one it being the first Monday of said month, Present
the Honorable Oliver N. Powell Judge of the 16th Judicial
Circuit in said State, James Stewart Sheriff and
Conrad S. Shaw, Clerk, to wit;

Wednesday March 27th A.D. 1861,

William V. Cecil

vs.

Samuel Playcomb

On motion it is ordered that
the Bill of Exceptions herein may be signed in
vacation

Affidavit

On the twenty eighth day of November in the year of Our Lord one thousand eight hundred and sixty there was filed in the office of the Clerk of said Court an affidavit in the words and figures following to wit:

W. V. Beech

vs

Samuel Claycomb

} Peoria Circuit Court

} Nov. T. 1860.

Charles H. Low after being first duly sworn deposes and says that he is the same person, who made the affidavit at the request of the defendant in this case, that the conversation referred to in said affidavit as taking place between said parties therein referred to is not now recollected by this affiant but he supposed the same to refer to this suit,

That he is not acquainted with the Plaintiff and may be mistaken in the man. This is the whole story & all there is about it.

Sworn to before me this
28th day of November A.D. 1860.

Chas H. Low

Crook P. Hoan Clk.

Jas. B. Surr & Co.
No. 27 S. Seventh Street,
Philadelphia.

affiant

On the third day of December in the year of our Lord one thousand eight hundred and sixty three was filed in the office of the Clerk of said court in said cause an affidavit in the words and figures following, to wit:

| | | |
|--------------------|---|----------------------|
| "State of Illinois | 3 | Circuit Court |
| Peoria County | 3 | Nov. Term A. D. 1860 |
| William V. Cecil | 3 | |
| " | 3 | Mechanics Lien. |
| Samuel Claycomb | 3 | |

C. H. Low being first duly sworn says that he was in attendance upon that Court, summoned as a witness, during the week ending Nov. 24, 1860. This affiant stopped at the Central House in said city, that after the Jury was sworn and pending the trial of a case to wit on Friday evening Nov. 23, 1860 after the adjournment of the court for that day at said Central House, this affiant heard a middle sized, red haired and red whiskered man, whom this affiant was informed and believes was the plaintiff in the case then on trial, and who was trying to obtain a judgment against a brick building or for the sale of said building in Monmouth conversing with one of the jurors in said case, about his said plaintiffs right to recover in said case, said conversation was continued for some time, and this affiant enquired of an attorney in attendance upon this court from Mason Co. whether a party had a right to talk to a juror during the trial of the case about the same. This affiant does not know the name of said plaintiff in said case;

neither does he know the name of the Juror but does know that the person who was conversing with said plaintiff was a Juror juror in said case, that said Juror was a tall dark complexioned man dark hair and wore a cap - and boarded at said Central House.

Chas H. Lew "

Subscribed and sworn to

this 28th day of Nov. 1860

Enoch P. Sloan, Clerk. "

And on the same day to wit; on the third day of December in the year of our Lord one thousand eight hundred and sixty there was filed in the office of the Clerk of said Court in said cause a motion for a new trial in the words and figures following, to wit:

"State of Illinois } Peoria Circuit Court
Peoria County } Nov Term 1860
Cecil

vs

Claycomb

The defendant moves for a new trial herein

- 1st Because the verdict is against the evidence
- 2nd Because it is against the instructions of the court
- 3^d Because the plaintiff improperly tampered with the jury - See affidavit on file

And for other reasons

Manning & Morrison
Prur & Harding
for def. "

Affidavit

And afterwards, to wit: on the 17th day of December in the year of our Lord One thousand Eight hundred and sixty there was filed in the office of the Clerk of said Court, an affidavit in words and figures as follows, to wit:

William V. Cecil

vs.

Peoria Circuit Court

Samuel Chaycomb

November Term A.D. 1860

Joel C. Ragland of Warren County Illinois after being first duly sworn deposes and says that he attended the Peoria Circuit Court during a part of said Term as a witness in behalf of the Plaintiff in said Cause (as well as a witness in two other cases) and while in attendance & sitting in the Court house on the benches back of the Bar a person whom this affiant afterwards found out to be C. H. Low came & sat down near this affiant, and this affiant had some conversation with said Low in regard to said Cause he asked this affiant whether this affiant had any interest in said Cause, ^{This affiant said that he had not} then said Low said that he had just made an affidavit in the case, This affiant asked him what it was and what he knew about it, The Low said that he saw a red whiskered man come into the Court house and have a conversation with a juror during the trial of said Cause, but he said he did not know the Plaintiff and did not hear any of the conversation but supposed they were talking about the case, This affiant afterwards met A. G. Kirkpatrick one of the attorneys for the Plaintiff in said case & told him what this affiant had heard said Low say, said Kirkpatrick asked this affiant to go with him & show said Low to him, This affiant

then went with said Kirkpatrick to where said Low was sitting in the Court House, said Kirkpatrick then asked said Low what he had been swearing to, Low said nothing to amount to any thing, that he had seen two men talking as he supposed about the said case at the Central House on the Friday preceding, one of them he took to be a juror the other he said was a red whiskered man whom he supposed to be Plaintiff from the description given him of Plaintiff, but that he did not know the Plaintiff, said Low asked said Kirkpatrick when said Plaintiff was Kirkpatrick answered that "he went to Moxmouth yesterday." said Kirkpatrick then asked said Low what said persons had said whom he supposed to be a juror & the Plaintiff in this said conversation at the Central House, said Low replied that he did not hear the conversation between them but saw them talking together and he supposed they were talking about the case, Kirkpatrick then asked said Low if he could state a single word said by either of said persons, said Low replied that he could not, Kirkpatrick then asked said Low where his affidavit was, Low replied that the attorney for the defendant had it, Kirkpatrick then went away towards the bar where the attorneys were & was gone a short time when he again returned and said to said Low, that George H. Harding who had said affidavit refused to let him see it & that he Kirkpatrick was afraid that said Harding had put something into said affidavit which said Low did not want in, said Low said that there was nothing in said affidavit except what he had stated to said Kirkpatrick, Kirkpatrick replied to this that

if such was the case he thought said Hoarding would not have refused to let him see it. Kirkpatrick then asked said Low where he resided, Low said in Kallow County, Kirkpatrick then asked him when he was going home, Low answered that he was going home in a day or two, Kirkpatrick said "I understand it the affidavit is to be kept in the attorney's pocket until you leave & it is then to be coming in upon us" and then Kirkpatrick asked him whether he would make an affidavit of the facts & let them be filed, Low said in reply that he would not make another affidavit that he had made one which contained the facts, Kirkpatrick then said that he would compel him to do so, that he would have a subpoena issued and bring him up. A few minutes afterwards the said Low was served with a subpoena by the Sheriff and he then went up and made an affidavit.

All the above took place on the 28th day of November A. D. 1860. in Peoria Illinois, and is as full a statement of the facts & what took place as this affiant can now remember.

Subscribed & sworn to before me

this 14th day of December

A. D. 1860.

Wm. Safety Clerk of the Circuit of
Warren County Illinois

J. C. Ragland

On the twenty fourth day of November in the year of our Lord one thousand eight hundred and sixty three was filed in the office of the clerk of said court in said cause the following instructions of the defendant in the words and figures following, to wit:

"Unless the Jury believe from the evidence that the Contract under which the work and labor of the Plaintiff was done, and his materials were furnished was substantially the same, as that set forth in the petition they must find for the defendant.

If the Jury believe from the evidence that the work and labor, and the materials mentioned in the petition were done and furnished under a written contract made between Cecil & Warwick, and the defendant, then the Jury must find for the defendant

In this Case the petition alleges in substance that the defendant employed the plaintiff to make and burn eighty four thousand brick for the purpose of building and erecting in part a certain building on said lot (meaning the lot described in said petition) and that the defendant promised and agreed with the plaintiff to pay him when the same brick was made and burnt for the making thereof whatever the making and burning thereof was reasonably worth:

But although the Jury believe from the evidence that the said eighty four thousand brick were made and burnt by the plaintiff for the defendant, yet if they further believe from the

Given

Given

Given

Proceedings at a term of the Circuit Court begun and held at the Court house in the City and County of Peoria, State of Illinois, on the fourth day of March in the year of our Lord one thousand eight hundred and sixty one, it being the first Monday of said month. Present the Honorable Edwin Powell Judge of the 16th Judicial Circuit in said State, James Stewart, Sheriff and Crook P. Sloan, Clerk, to wit:

Wednesday March 27th A.D. 1861

William P. Cecil

vs

Samuel Claycomb

On motion it is ordered that the bill of Exceptions herein may be signed in vacation.

evidence that they were so made and burnt under a contract that the defendant should pay the plaintiff at the rate of one dollar and a quarter per thousand for the making and burning of said brick, then in this case the jury must find for the defendant as to the said eighty four thousand brick and every part of said eighty four thousand brick.

If the jury believe from the evidence that the contract proved in regard to the amount of brick to be laid was either 356,000 or 356,170, and not 357,996 as alleged in the petition, then the jury must find for the defendant upon all the charges for laying brick set forth in said petition

If the jury believe that the contract alleged in the petition, as to the time when said brick were to be laid is that they were to be laid during the fall of 1857; and if they believe from the evidence that the only contract proved in this cause in regard to the time when said brick should be laid, is that they were to be laid before cold weather set in then the jury must find for the defendant as to said charge for laying said brick

Given.

Given

If the Jury believe from the evidence that the only manner in which any contract is proved in regard to the Sand, and Caps and Pills charged in the plaintiffs account is by proving that the plaintiff furnished a certain quantity of Sand and the said Caps and Pills to the plaintiff, this is not sufficient to entitle the plaintiff to recover for said Sand and Caps and Pills in this action

The Answer of the defendant read to the Jury is evidenced in favor of the defendant so far as it is responsive to and denies any of the charges contained in the petition, and where the answer directly denies any charge contained in such petition there the plaintiff must contradict and overcome the weight of such answer by the testimony of two witnesses, or the testimony of one witness and corroborating circumstances."

As it is remembered that on the 3rd day of April A. D. 1861 there was filed in the office of the clerk of said court in said cause a bill of exceptions and afterwards to wit on the 5th day of April A. D. 1861 there was filed in the office of the clerk of said court then sitting and by order of said court a general order therefor the following depositions were opened and filed in said cause, to wit:

L. Green

L. Green

Be it remembered that on the third day of April in the year of our Lord one thousand eight hundred and sixty one there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois a Bill of Exceptions in the words and figures following, to wit:

State of Illinois }
Peoria County } } Peoria County
Circuit Court

November Term 1860

William V. Cecil

vs
Samuel Claycomb

Be it remembered that on the trial of this cause the plaintiff to maintain the issue on his first offer in evidence the depositions of Alexander M. Warwick, John W. Montgomery, James Hill, Joseph A. Boynton, John Baker, Ardel Mc Mahan, Lincoln Hill & Benjamin V. Foote

On the 19th day of November A. D. 1860
at a term of said court then sitting & under a
general ^{or} order of said court to open depositions
the following depositions were opened and filed
in said cause to wit;

William V. Cecil } Now pending in the Tenth
vs. } Circuit Court.

Samuel Claycomb } Mechanics Lien
Do Messrs. Paine & Burroughs attys
for Defendant

Gentlemen - take notice that
we will on the fourteenth day of March 1860 before John
Porter Esqr. a justice of the Peace of Warren County
Illinois at 9 O'clock A.M. of said day at his office
in the city of Moxmouth Warren County Illinois (and to be
continued from day to day until the depositions are taken)
proceed to take the depositions of James Hill, Joseph
Baynton, S. J. W. Bride, Simeon Hill, John Gamble
A. Claycomb, B. G. Hoote, John Baker, William Newbanks
S. Cozad, W. C. Montgomery, Ardel M. Mahon, Dennis
Barry, Alexander Marwick and William H. Young, to
be used as evidence on the trial of the above cause at
which time and place you can attend and cross
Examine said witnesses if you see proper so to do.
February 13th 1860.

Holloway & Luce
attys for Plff.

We acknowledge service of the foregoing notice by the
delivery to us this day of a true copy of the same
C. A. Paine

Feb 18. 1860.

attys for Defdt

State of Illinois
Warren County
William V. Cecil

vs. Mechanics lien depending
Samuel Claycomb in Circuit Court Peoria
County Ills.

Depositions of sundry witnesses taken before me John Porter a Justice of the Peace in & for the County of Warren & State of Illinois commencing this 14th day of March A.D. 1860. at 9 O'clock A.M. of said day at my office in the City of Monmouth & County & State aforesaid pursuant to the attached & foregoing notice.

Alexander M Warwick being first duly sworn according to the whole truth & nothing but the truth in the matter in controversy wherein William V. Cecil is Plaintiff & Samuel Claycomb is defendant (the parties being present by their attys) said Warwick doth depose and says as follows -

Int 1st What is your name age occupation & place of residence

Answer My name is Alexander M Warwick my age is (30) thirty years my occupation bricklayer & plasterer my place of residence Monmouth Warren County Ills.

Int 2nd Are you acquainted with the parties to this suit and if so how long have you known them

Answer I have known the defendants nearly eight years and the Plaintiff about five years.

Adjourned till tomorrow the 15th Inst at 1 O'clock P.M. of said day, Thursday 15th 1860 parties appeared

Int 3^d by their attorneys & proceeded - as follows
How long have you worked at the trade of bricklaying

Answer Something over 9 years.

Int 4th How long have you worked at the trade of bricklaying
in the County of Warren & State of Illinois,

Answer About 8 years I have been in the county and have
worked at the trade more or less every year.

(Adjourned till tomorrow the 16th Inst at
9 O'clock A.M.) March 16th 1860. 9 O'clock A.M.
of said day met and again proceeded with deposition of
Alexander M. Warwick parties present - by their attorneys

Int 5th Do you or do you not know of William V. Cecil
Plaintiff in this suit getting up a building for Samuel
Claycomb defendant -

Answer, I do

Int 6th When did Jeff get up said building

Answer. In the Summer & Fall of 1857.

Int 7th What size was said building

Answer I do not know exactly - It was a large building three
stories high of brick above the basement.

Int 8th Where is said building situated

Answer In the City of Monmouth Warren County Illinois on the North side of the Public Square

Int 9th Is said building well built

Answer So far as I am able to judge from appearances it is -

Int 10th What was it worth in the Summer & Fall of 1857. to put up such a building and furnish all the labor, per thousand bricks by measurement,

Answer It was worth three dollars & a half per thousand

Int 11th Was or was not such labor as was put upon that building high in 1857.

Answer It was.

Int 12 Did or did not the Plaintiff furnish his attendance and bricklayers in putting up said building

Answer Well, I cannot answer that question positively I was not about the building enough to know

Int 13th Do you or do you not know of Jeff making & burning a kiln of brick for the debt in the Spring of 1857.

Answer I do.

Int 14 What was it worth in the Spring of 1857. per thousand to mould set & burn bricks all labor furnished & materials

also, except labor of plff -

Answer It was worth one dollar & a half per thousand that spring

All of the above and foregoing Interrogatories & answers objected to by defendants counsel and inserted here to save the trouble of noting each & every objection separately -

Cross examined by defendants counsel as follows

Int 1st
Objected to

State if you know whether the labor of the Plaintiff was done under a special contract, if so state when it was made who were the parties to said contract & within what time the building was to be completed -

Answer

I do not know whether it was done under a special contract or not, nor do I know at what time it was to be completed

Int 2.

In answer to interrogatory ten in chief - you answer that it was worth three dollars and a half per thousand brick to put up such a building in 1857 and furnish all the labor - Do you estimate said price by the job under contract, or by days labor.

Answer

- I would estimate it at that by the job under contract

Int 3
Objected to

To your knowledge was there ever a written contract made between said defendant and said Plaintiff and yourself for the erection of a brick building on the place where said building now stands

Answer

There was

Int 4th
Objected to

Would you recognize said Contract if shown to you -
If so state if the one here shown is the same (Paper
here shown to the witness with the name of John Porter
written on the margin)

Answer

It is the same paper -

Int 5th

Are you acquainted with the hand writing of the several
parties to said Contract if so - State if the names
signed to the contract are in the hand writings of the
of the parties respectively -

Answer

I am acquainted with their hand writings - and the
signatures to said Contract are in the hand writing of the
several parties respectively - Paper here exhibited marked
"Exhibit A"

Int 6th
Objected to

Is the name of A. M. Warwick your own signature
and if so was you a party to said Contract

Answer

The name is my signature & I was a party to the
Contract.

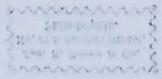
Int 7th
Objected to

Was the horse referred to in said Contract ever delivered
to you or your partner the said Plaintiff - by said
defendants & if so state to which

Answer

It was delivered to me

(Examined by Puffs Counsel)



Int 1 When was you a partner in business with the said plaintiff

Answer In the summer & Fall of 1856.

Int 2nd When did you dissolve partnership with said Plaintiff

Answer In the last of January or in February 1857, we settled and dissolved partnership and did not work as a company any after that time

Int 3^d Was it during the time that you were in partnership with the plaintiff the written contract marked "Exhibit A" was made.

Answer It was

Int 4th Reads this written contract spoken of by you in answer to cross interrogatory 3^d & marked "Exhibit A" any thing to do with the erection of the building spoken of by you as being erected by Plff, in 1857. For defendant.

Answer It had not

Int 5th Was you connected with plaintiff in any manner in the erection of the building spoken of by you as being erected by Plaintiff for defendant, in 1857.

Answer I was not

Int 6th Was you connected with plaintiff in any manner in making the contract if one was made for the erection of said building in 1857.

Answer I was not,

Qnt. Had this written Contract marked "Exhibit A" anything to do with the burning of brick in 1857 spoken of by you as having been burned by y^r self for defendant,

Answer It had not,

Qnt 8th Did you in connection with P^rff, ever agree to build such a building as said Plaintiff built for said defendant heretofore spoken of by you in 1857.

Answer I did not,

Qnt 9th Had you in connection with Plaintiff a final settlement of all matters connected with said written Contract marked "Exhibit A" with said delay comb - if so when - had you this settlement

Answer We had a settlement with him, I think in January 1857, I do not know whether it was of all matters connected with the Contract marked Exhibit A, or not We settled up our accounts till that time but passed no receipts

Qnt 10 Did you or did you not, make any Contract to do work or do any work in connection with Plaintiff in 1857

Answer, I did not

Qnt 11. Did you settle up concerning all work done under Contract marked "Exhibit A", in connection with said Plaintiff with defendant - at the time spoken of by you in January 1857.

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Answer I did
Cross Examination resumed by Defts attorney

Int 1st Was there any thing done under said Contract marked "Exhibit A" by you and said Plaintiff, If so, state particularly what was done.

Answer, There was work done under said Contract by myself and Plaintiff, there was two hundred & four thousand brick made for defendant -

Int 2^d Objected to Were said Brick suitable to put into a large hotel building several stories high -

Answer They were

Int 3^d About what time were said bricks burned & what became of them

Answer They were burned in the first week of December 1856 or it may have run into the second week they were fired during the first week - I never kept the run of the brick and dont know what became of them so as to say positively.

Int 4th Were not those bricks or the most of them put in the building that is now erected on the lot

Answer I presume they were - I dont know positively did not see the brick hauled away from the kiln.

Int 5th Was there any kiln of brick burned on the ground there

You now speak of were burned previous to December 1856. And if so who made & burned them

Answer I think there was if my recollection serves me right - Mr Cecil Pflger & myself made & burned other brick previous to that time -

Int 6th
(Objected to) Were said two kilns of brick made & burned on the ground described in Contract marked "Exhibit A"

Answer They were -

Int 7th
(Objected to) Did you and said plaintiff go upon said land and make and burn said two kilns of brick under & by virtue of said Contract,

Answer I believe we only made one kiln of ~~brick~~ under the Contract - we went upon said land by virtue of said Contract

Int 8th
(Objected to) What time did you go upon said land to commence the first kiln

Answer I cannot say positively as to the time but sometime in April or the first of May 1856.

Int 9th
(Objected to) What became of the brick in ~~the~~ first kiln =

Answer They were built into the walls of the Union school house in the East Ward in the City of Monmouth Warren Co Ills.

Q^{nt} 10th Who built said school house

Myself and Plaintiff put up the brick work -

Q^{nt} 11th Were said brick suitable to be put in a large hotel
Several stories high

Answer They were

Q^{nt} 12th At the time you & Plaintiff & defendant settled your
accounts in January 1857 did you have the contract
marked "Exhibit A" with you, and if so, was
said contract annulled released discharged or cancelled

Answer I do not know certain that we had it with us at
the time - I suppose it was not released or cancelled
at that time - it was forfeited before that time

Q^{nt} 13th At the time of said settlement was said last kiln
of bricks made & burned by you and said Plaintiff
still in the kiln and if not where were they

Answer They were still in the kiln

Q^{nt} 14th In whose possession was the said contract left after
the same was made & signed

Answer I believe I had it myself after it was signed -
It was left with E. A. Paine

Q^{nt} 15th Did you ever call on said Paine for said contract
afterwards and if so at what time -

Answer

I did call for it - I cannot remember at what time it was It was before this suit was commenced It was sometime in the summer of 1856 I called for it

Int 16

Objected to

Did you or not call on said Paine for said Contract after said building was completed or about the time the brick work of the same was completed & before this suit was commenced - and ask for said Contract and examine the same & return it to him

Answer

I did not within any reasonable time I am not sure that I did not ask Paine to see the Contract some time in the fall of 1857 it was before the brick work was completed

Int 17th

Objected to

After you had made said examination of said Contract did you not tell said Paine in the Court house in Monmouth Ill. that you wished you had destroyed or burned said Contract while you had it in your hands

Answer

I cannot recollect that I did & I would not swear that I did not I might have said so. -

Direct Examination resumed

Int 1st

Did said Claycomb give you & Plaintiff privilege to burn brick for yourselves and the privilege of the same bank if you only burned his brick in time and was or was not the said brick put into the said school house burned under this arrangement. -

Answer

He gave us privilege of burning brick for ourselves also the use of the sand bank and we built the school

house with bricks made under that arrangement -

Int 3rd Have you any interest in the event of this suit -

Answer Not the least whatever

Cross resumed

Int 1st Was the second kiln put into the said school house

Answer The most of the second kiln was put in the school house -

Int 3rd At what time did you & said plff, complete the brick work of said school house -

Answer The 5th or 6th of August A.D. 1856. we finished said school house

Alexr M. Warwick

John W. Montgomery, being first duly sworn doth depose and say as follows.

Int 1st State your name age occupation & place of residence.

Answer My name is John W. Montgomery my age is 43 years - my occupation is Public house keeper & my residence Young America Warren County Ills -

Int 2 Do you know the parties to this suit and if so how long have you known them

Answer I do, and have known the P^{ty} since the summer of 1857

and the defendant since 1856 I believe it was

Int 3^d Do you know anything of the Plff, having put up a brick building for the defendant if so state when and where -

Answer I do know of the Plff. putting up a brick building for the def in the City of Monmouth Warren Co Ill in the Summer & Fall of 1857. for defendant, It was put up on the North side of the Public Square -

Int 4th Where did said Plff, board his hands while putting up said building

Answer He boarded with Oliphant Cozart he and his hands in the City of Monmouth Warren Co Illinois

Int 5th Who settled with said Cozart for boarding said men

Answer While I stayed ^{with} Cozart Mr Cecil always settled their board and the bill was always charged to the Plff,

Int 6th Do you know of Plff paying said Cozart anything for boarding said hands if so how much & at what time -

Answer I remember of his paying at one time some money. I think it was ten dollars the time I do not remember exactly but it was sometime in the Summer of 1857
J. W. Montgomery

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Continued till tomorrow morning the 17th
1860. at 9 O'clock A.M.

March 17th 1860. 9 O'clock A.M. Parties present
by their attorneys.

James Hoill being first duly sworn according to
law doth depose & answering say as follows.

Int 1st What is your name age occupation & place of residence

Answer My name is James Hoill my age 47 years, my occupation
bricklaying & plastering until the last three years since
that ~~time~~ I have not done much if anything at
the business

Int 2. Do you know the parties to this suit and if so state
how long you have known them -

Answer I do - and have known the defendant 18 or 20 years
and the P^lff I have known four or five years I do not
recollect exactly how long I have known him -

Int 3rd Do you know of Plaintiff building a brick building
for defendant, and if so, when & where was it put up

Answer I saw the Plaintiff working on a building on what
we call lot 14 block 10 in the City of Monmouth
Warren Co Ills - on a lot claimed by defendant - It
was (I think) three years ago, last summer as near as
I recollect - I am not certain whether it was in 1856
or 1857.

Q^{nt} 4th What sort of a building was this spoken of by you as erected on lot 1 in Block 10 in said City?

Aⁿs^wer It was a brick building three stories high above the basement - the lower part divided into two store rooms - the next story divided into offices & the next is the celebrated hall - Claycomb hall - the only public hall in town that I know of -

Q^{nt} 5th Did you ever measure or help measure said building? If so, state how many thousands bricks you made of it by measurement.

Aⁿs^wer I did help measure it with Mr. Boynton one day - well as to the number of thousand it was three hundred & I think fifty six thousand & a few hundred over - It was somewhere in there we made a little difference.

Q^{nt} 6th What was it worth to lay the bricks in such a building and furnish all the labor in the year 1857. per thousand?

Aⁿs^wer I used to have from three dollars to three dollars & ~~three dollars~~ and a half a thousand I did not lay any that season - I think it was worth at least three dollars & fifty cents per thousand -

Q^{nt} 7th Was the bricklaying in said building done in a good and ~~and~~ workmanlike manner?

Aⁿs^wer It is so far as I can see.

Q^{nt} 8th Do you or not consider it a good job of work for this country?

Answer I consider it a good fair job

Int 9th Was or was not the wages of bricklayers high in 1857
Objected to

Answer Well I should judge it was I did not work any myself
I was offered three dollars per day

Int 10th Is it or not worth more to lay the bricks in a large
Objected to three story building than in one of less size & height

Answer Pretty hard question to answer that boys - when we built
a high story or the last story of a three story building - we
would make a little difference in the price.

Int 11th Are or are not the stories in this building higher
Objected to than usual in this country for a common building

Answer They are a little higher than in a common building
in this country.

Int 12th What was it worth in 1857. per window and door to
Objected to raise and set the stone that are in said building, the
sill & Cap to each window.

Answer I think it was worth 50 Cents to each window that
is 25 cents for the sill & twenty five (25) cents for the
Cap. and it is worth 50 Cents for each sill & Cap to a
large door.

Int 13th Is or is it not customary to charge extra for raising
Objected to & setting stone in such a building when it is not
mentioned in the contract.

Answer Of course we always did
 Jas Hoill

Joseph A. Boynton being produced & sworn to testify the truth the whole truth & nothing but the truth in the matter in controversy in this Suit doth depose and say as follows to wit:

Int 1st What is your name age occupation & place of residence

Answer My name is Joseph A. Boynton my age is ~~thirty two~~ 32 years my occupation at present Constable - residence Monmouth Warren Co. Ills.

Int 2nd Do you know the parties to this suit & if so how long have you known them.

Answer I know them - have known them between four & five years.

Int 3rd What has formerly been your occupation previous to your present employment.

Answer A Stone Mason & Brick layer

Int 4th How long have you worked at said business and until how lately

Answer I worked at it about 8 years and until the last two years -

Int 5th
objected to
Answer

Do you or not know of Plaintiff putting up a brick building for defendant and if yes, when & where did he put up the same.

I do, in the summer of 1857, on the North side of the Public square in the City of Monmouth Warren County Illinois

Int 6th
objected to
Answer

What sort of a building - is it

Three story brick above basement -

Int 7th
objected to
Answer.

What is said building used for -

The first story above basement is used for store rooms - second story used as offices the third as a hall

Int 8th
objected to
Answer

Did you or not ever measure said building. If yes how many bricks does it contain by measurement,

I did, measure it it contains three hundred & fifty six thousand one hundred & seventy brick by measurement

Int 8th
objected to
Answer

What was it worth in 1857. to lay the brick in such a building per thousand and furnish all labor -

I did not work at bricklaying that season & consequent-ly cannot tell as well as some who worked at it - but I suppose it was worth somewhere from three to four dollars per thousand and furnish all the labor in such a building

Int 9th

What was it worth in 1857. to raise & set such stone

as is used in the caps & sills of the windows and doors of said building per stone

Answer About 20^c a piece take it all around

Int 10th What sort of a job of work do you consider said building.

Answer I consider it a very fair job for this country
J. A. Boynton

John Baker being produced and sworn according to law to testify the truth the whole truth and nothing but the truth in the matter in controversy in this suit doth depose and say as follows:

Int 1st What is your name age occupation & place of residence

Answer My name is John Baker my age is 23 years my occupation bricklaying & I reside in Hale Township Warren Co N.Y. 5 miles North West from Monmouth in 2^d Sec.

Int 2. Are you acquainted with the parties to this suit and if age how long have you known them

Answer I am acquainted with the Plff pretty well do not know the defendants very well have known the Plff since August 1857. Have known the Deft about the same length of time.

Q. 3
Objected to

Do or not Sonow of Plaintiff putting up a building for defendant of Ave - State when & where the same was put up.

Answer

I do, it was in the Summer & Fall of 1857. It was on the north side of the Public Square in the City of Monmouth Warren Co Ills.

Q. 4.
Objected to

On what lot & block is said building erected,

Answer

On Lot one block ten

Q. 5th
Objected to

What sort of a building is it -

Answer

A brick building - three stories high above the basement.

Q. 6th
Objected to

Where did you work what at & for whom in the Fall of 1857

Answer

Answer I worked in Monmouth at bricklaying & for Mr. Cecil the Plaintiff on that building.

Q. 7th
Objected to

What sort of job of brick work is said building

Answer

It is a good job

Q. 8th
Objected to

What was it worth in 1857. in ~~1857~~ to do such a job of bricklaying per thousand and the mason furnish all the labor,

Answer

From \$350. to \$375. per thousand

Q. 9th
Objected to

What was it worth in 1857. to raise & set the caps and sills to the windows and doors of said building per stone

Answer It was worth about thirty seven and a half cents per stone

Int 10th objected to Did you or not assist in raising and setting said stones & if aye state for whom.

Answer I did assist in raising & setting said stones & for the Plaintiff

Int 11th objected to Did or did not said plaintiff use a great deal of care in putting up said building to make it strong and firm

Answer Hee did

Int 12th objected to When did said plaintiff finish and complete the bricks work in said building.

Answer It was November 1857, If I recollect right

Int 13th In what year did plaintiff commence doing the bricks work in said building.

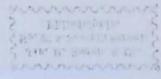
Answer Hee commenced in 1857.

Int 14th objected to Did or did not defendant Claycomb ever pay you any money for plaintiff, If aye state how much & when

Answer Hee did - Hee gave me twenty five dollars and twenty five cents it was sometime in September 1857. -

Int 15th objected to Did or did not plaintiff give you an order on said defendant for said money.

Answer Hee did



Jan 16th
Objected to

Is or is not this all the money you ever received from
from Defendant for Plaintiff?

Answer

It is

Jan 17th
Objected

Was or was not said Plaintiff delayed in his works
putting up said building if any ^{what} state was the cause
of said delay & how long was he delayed?

Answer.

Hee was delayed for want of timbers being laid -
I could not say exactly how long, some 8 or ten days
I think at each story.

Jan 18th
Objected to
Answer

How many hands who worked for Plaintiff ever being
still during these delays?

From five to seven or eight hands

Jan. 19th
Objected to
Answer.

What was the time of these hands so delayed worth
per day at that time?

I do not know exactly - bricklayers I suppose were worth
from two to two & a half dollars per day attenders I
suppose were worth One dollar & a half

Jan 20th
Objected

At the time you first quit work for P^lff. and Plaintiff
gave you an order for the money mentioned above did
said Defendant say anything to you about staying on
and helping Plaintiff finish the building of any state
what it was he said and all about it?

Answer

Hee did want me to stay on - and he told me that

hands were rather scarce and said I should have my pay right in my fist as I went along.

John Baker

Ardel M^c Mahon being next called & sworn to testify the truth the whole truth and nothing but the truth in the matters in controversy in this suit doth depose and say as follows

Int^{1st} What is your name age occupation & place of residence

Answer My name is Ardel M^c Mahon my age about 35 years - my occupation a laborer - my residence Monmouth Warren County Illinois.

Int^{2nd} Are you acquainted with the parties to this suit and if Aye state how long you have known them

Answer I have known defendant nearly five years & plaintiff nearly as long -

Int^{3^d} Do you or not know of plaintiff putting up a building for defendant & if Aye state when and where said building was put up

Answer I do know of his laying up the brick in a building for the defendant - It was in August 1857. I first saw him at it I think, It ^{is} ~~was~~ on the North side of the public square in the City of Monmouth Warren Co. Ills and if I am not mistaken is on lot one in Block ten in said city

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Philadelphia.

Int 4
directed to
Answer

What kind of building was it

It is a brick building three stories from the basement up

Int 5th

In whose employ were you late in the Fall of 1857.

Answer

I was in Mr Claycombs employ (the defendant in this suit) after I returned from Kansas -

Int 6th
directed

Were you often with said defendant and intimate with him at that time

Answer

I was with him a good deal of the time see him mostly once or twice a day sometimes more & sometimes less

Int 7th
directed to

Had you any conversation with defendant about that time in regard to this building as to who was putting it up If Any state what that conversation was, when, and all about it state all he said fully

Answer

I had conversation about it several times - when I came home from Kansas I remarked to him he was getting his building up this was in August 1857. and I asked if Warwick was not helping to put it up - he said not that he was getting Cecil to put it up. he seemed dissatisfied with Warwick and said that he had made an agreement with Cecil to put it up then when I was to work for him in the Fall when the cold weather was coming on and the building was not going on he was displeased about it and he seemed dissatisfied with Cecil and said he was to have it finished so as to get the roof on & the windows in

before the cold weather set in - he said he engaged Cecil to do the work and was to pay him what it was worth - that is the way I understood him -

Int 8th
Objected to

Do you or not know any thing about plaintiff being delayed in the fall of 1857, putting up said building for the want of timbers to go on with the brick work If any state what you know

Answer

There has been a delay sometime for the want of timber & sometime for the want of bricks but what was the length of time I cannot say -

Int 9th
Objected to

When did said plaintiff commence laying the brick ~~work~~ of said building & when was the brick work completed

Answer

I do not know when he commenced I was not here at the time It was completed I think in December of 1857.

Cross Examined by defendants Counsel

Int 10th

When & where & who was present when the conversation referred to by you took place

Answer

Well I have been told so often that I could not say when & where I did he has told in his own room for one time and down at the mill for another time I do not recollect that any person was present when he told me in his own room & down at the mill -

Int 3^d
objected to

Was the conversation that you have referred to had at the defendant's own room or at his mill -

Answer

They were in his own sitting room and his grist mill at different times.

Int. 3^d
objected

How many different times were these two conversations had.

Answer

He had it two or three times, and different times, but I could not tell all he said in regard to the building.

Int 4th

What month and what year were these conversations had in -

Answer

In 1857, in the month of August for one time - and I think its December the other time in the latter part of November or first of December.

Int 5th

What month and what year did the delays occur in for want of timber

Answer

I will not say positively but it was in August or September 1857 I helped put up some sticks of timber & I know they were delayed waiting for them -

Int 6th
objected to

Have you ever had any difficulty with the defendant in this suit -

Answer

I never had much difficulty with him he owed me some and I was not very well satisfied that I had to sell his note for less than it was worth.

Int 7th

Did you not have a personal quarrel with the defendant

within a year. -

Answer

He had a few words and he was the cause of all - he commenced on me to abuse me in the Court House when I was talking to his brother -

Int 8th 11th

objected to

Answer

Are you not prejudiced against the defendant now -
No sir - I am not any more than against any other man in town - I would be glad to see him ride in his carriage every day provided he pays his honest debts I was always willing to uphold him until he got so bad I could not -

Int 9th

Was the plaintiff or his attorney or any person for him ever consulted with or advised with you as to what your testimony would be in this case -

Answer

No sir they never did -

Int 10th

objected to

Answer

Was you subpoenaed here as a witness to have your deposition taken in this case -

Answer

I was -

Int 11th

objected to

Answer

Did you know that your deposition was to be taken in this case before you was subpoenaed

There was a remark made to me that I would have to attend court - I asked in what case they said in Colay comb & Coeily

Int. 12
objected to
Answer

When and where was said remark made

Some time ago I cannot recollect the time, about a month ago I was on the side walk on the North side of Public Square in the City of Monmouth Warren County Ills -

Int. 13th

Who made said remark

Answer

Mr. Cecil the plaintiff

Int. 14th
objected to
Answer.

What did he ask you -

He asked me if I knew anything about his building that house I told him yes and he said he would have me subpoenaed & have my deposition taken and I told him what little I knew, I was willing to tell on either side

Int. 15th
objected to
Answer

Did he not ask you if you recollected the delay about the timbers -

I do not recollect whether he did or not -

Int. 16th

Did he ask you if you recollected the conversation with Claycomb, the deft about the agreement

Answer

No sir - He asked me if I ever heard Claycomb say anything about it, and I told him I had had some conversations with Mr. Claycomb about it

Int. 17th

Did you tell him what those conversations were

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Simcon Hill being first duly examined and sworn to testify the truth the whole truth and nothing but the truth in the matter in controversy in this suit did depose and say as follows

Int 1. What is your name age occupation & place of residence

Answer. My name is Simcon Hill & my age is 53 years my occupation a farmer and I reside 4 miles South of Monmouth Warren Co. Ills,

Int 2nd Are you acquainted with the parties to this suit

Answer I am.

Int 3. Do you or not know of Piff making & burning a kiln of brick for debt - If any state when & where & how many brick was in said kiln

Answer I do - It was in the Spring of 1857. it was about mile North East. of the public square in the city of Monmouth Ills & there was between seventy five & ninety thousand brick in said kiln -

Int 4th What kind of brick were they & what became of them -

Answer They were good bricks & I believe they were put into the brick building spoken of by Andrew Claycomb in his deposition - I hauled most of them

Int 5th Do you know whether or not Plaintiff furnished some sand for debt, which was put into said building If any

State how much & when was it furnished

Answer

I do know that he furnished some sand six hundred bushels & in the year 1857.

Int 6th

What was said sand worth delivered at said building

Answer

It was worth 5 or 6 cents per bushel

S. J. Hill

Adjourned till tomorrow morning the 21st at 9 o'clock A.M. - Wednesday March 21st 1860 9 o'clock A.M. parties met by their attorneys and proceeded to take the deposition of Benjamin F. Foote

Benjamin F. Foote being produced & duly sworn to testify the truth the whole truth and nothing but the truth in the matter in controversy in this suit did depose and say as follows

Int 1st What is your name age occupation & place of residence

Answer - My name is Benjamin F. Foote & my age is 51 years my occupation Farming my residence Monmouth Warren County Ill -

Int 2 Do you know the parties to this suit if you state how long you have known them

Answer I do and have known the Pff three years and defendant about thirteen^{year}

Int. 3^d Do you⁸¹ or not know of Jeff, making and burning a kiln of brick for defendant of any, State when and where, & how many brick was in said kiln and where the same was used.

Answer. I know plaintiff made a kiln of brick for defendant - It was in the summer of 1857 I think - It was on the defendant's land North East of the public square in Monmouth Ill - I could not tell how many brick was in said kiln - there might have been 75 thousand I could not tell positively they were put into the building on the North side of the public square in the City of Monmouth Warren County Ill in the building put up by plaintiff for defendant in the year 1857 as near as I recollect it was that year

Int. 4th Did you or not ever have any conversation with defendant in regard to who was to put up said building by you referred to - If any state when & where said conversation occurred and all said defendant said about it.

Answer I did have a conversation with defendant about the matter - I was going with defendant to his mill I asked him who was going to put it up, this was the Spring before it was built and when they were preparing to make the last kiln of brick - he said Mr Cecil the plaintiff was going to put it up for

Qnt 6th } Was you hauling the brick from the said
kilns - and delivering them at said building during
the erection of the same

Answer I was

each & all of every one of the above cross interrogatories
and answers objected to by Pelfs counsel

Direct examination resumed

Qnt 1st } Do you or not know that defendant
furnished the wood & labor to make & burn the
kiln of brick made in 1857

Answer I think defendant furnished the
hands to make the last kiln (I mean the
last kiln that was burned to put in the build-
ing referred to above.

D J Foot "

Linn, I do not recollect of his saying anything about the price he was to give. I remember that I did not think the plaintiff could put it up alone - & the defendant said that plaintiff was to get hands to help put it up - and that he peff was to get it up in time to have the roof put on that fall - that was about all the defendant expected to get done to it that season - he stated that he had changed his mind about the building and was going to have the building put up for store rooms and offices &c instead of for a hotel as he had intended for the reason that he had purchased the brick hotel in said city and did not think it would pay to have two hotels -

~~Ans~~ 2nd

Int 5th Did or did not the defendant ever pay you any money for Peff
Answer. He did not

Cross Examined.

Int 1st Do you know of the plaintiff in company with Alexander Warwick burning a kiln of brick about the 1st or second week of December 1856 If so state what became of them & what quality were said brick

Answer I could not say about their being in company - they burned a kiln of brick I do not recollect the time the most I know there was a sorrel horse sold to work on the yard it was a horse of defendant taken from my care I think Mr Warwick took Linn away - I was working for debt

objected to

it was before the building was put up and when they were making the first kiln of brick - the kiln stood then during the winter after they were burned - part of them was hauled up to put in the building above referred to I helped haul them I am not much of a judge of brick, I don't think they were very good brick

Qnt 2nd Was this kiln burned at the same place of the one referred to by you in your direct examination
Answer - It was on the same yard

Qnt 3rd Was any other kiln burned there before the kiln at the 1st of December 1856

Answer I don't recollect but think the first kiln burned on that yard was the one that stood over winter but don't recollect positively

Qnt 4th Did you haul brick from both the kiln that stood over winter and the one that was made & burned in the summer of 1857 - and if so, when were they hauled to, and what became of them

X Answer I hauled from both kilns, the old one & the new one I hauled them to the building before referred to, I saw the men carry loads of them up on to the building

~~Qnt 5th~~

Qnt 5th Were parts of both kilns standing on the yard at the same time, and did you haul from both kilns to said building in the same day and week

Answer Yes Sir.

Residing in the same day and next
Xxxxxx 30x xi,

Int (1st)

Was you hauling the brick from the said kilns -
and delivering them at said building the erection
of the same -

Answer I was

Each and all of very one of the above cross interroga-
tions and answers objected to by Pliffs Counsel
direct examination resumed

Int 1st

Do you or not know that defendant furnished the
wood & labor to make and burn the kiln of brick
made in 1857

Answer I think Defendant furnished the hands
to make the last kiln (I mean the last kiln that
was burned to put in the building refered to above
D J Foot "

State of Illinois)
Warren County } P John Porter a justice
of the peace in and for said County do certify
that the foregoing depositions were taken by me
at my office in the Court House in the city of
Mountz in said county commencing at the
time mentioned in the notice hereto attached and in
pursuance of said notice to wit on the 14th day
of March A.D. 1860 at 9 o'clock A.M. of said
day that the witnesses were first duly sworn accord-
ing to law to testify the truth the whole truth
and nothing but the truth in the matter in contro-
versy in the suit named in the caption thereof, that
said depositions were reduced to writing by me
and carefully read over to each witness respectively

and by him subscribed and sworn to before me,
 that the taking of the same was continued from day
 to day as mentioned therein and was taken in the
 presence of the parties by their attorneys and that
 the objections noted in said depositions were made at the
 time of propounding said interrogations

Given under my hand
 and Seal this 29th day of March A.D. 1860

John Porter J.P. *J.P.*

costs J.P. Sept. 14, 59
 125
 \$ 14,84

State of Missouri }
Florida County } } Georgia County Circuit
Court November Term 1860

William V. Cecil }

vs }

Samuel Claycomb } Be it remembered that on the trial
of this cause the plaintiff to maintain the issue on his
part offered in evidence the depositions of Alexander
Mr. Warwick John Montgomery James Hill
Joseph A. John Baker W. Mahan
Simon Hills & Benjamin W. Fretz to the admission of
which evidence and each of the questions and answers
therein contained the defendant then and there objected but
the court overruled the objections and each of them and
admitted the said depositions in evidence to which said
several rulings of the court the defendant then and there
excepted

The plaintiff then called Joel E. Raglan who
testified that he had lived several years in Monmouth and
knew the building erected by said Cecil it was on lot
Number one in Block Number Ten in the city of Mon-
mouth and was a large brick building That the build-
ing contained forty-eight windows and doors and that
each window and door had cut Stone Caps and Sills

The plaintiff here rested.

The defendant then read his answer in evidence
to the jury.

The defendant then called Andrew Claycomb
who testified as follows to wit There was a kiln of
brick burned by plaintiff for the defendant in the fall
of 1856 I did not see the contract on which it was
burned In the spring of 1857 I heard the plaintiff

8

tell the defendant that if he defendant would furnish the wood and hands that he plaintiff would go ^{on} and make and burn a kiln of brick on the same conditions he had made and burned the other kiln and burn them so that they would lay up the other kiln and defendant agreed to do so and plaintiff went on and made a kiln of brick and burned them on said agreement as I understood from both the parties that the price agreed on was \$1,25 per thousand for making and burning the brick. There were three kilns burned the first kiln before I came to Monmouth and the second in December 1856. The brick were put into the building.

Said Claycomb further testified that the building was put up in the summer and fall of 1857 that in November or December 1857 Cecil the plaintiff was at work on the building and had it ^{nearly} completed within some three or four feet from the top. That witness at this time was superintending the business of the defendant, and had been urging plaintiff to go on with the work, that plaintiff told witness at this time that the defendant did not pay him and that he had no money to pay his hands. Witness then told plaintiff he had better make out his account and settle. He replied and said it was no use that Claycomb would not settle. I told plaintiff that I supposed defendant had paid him all his contract called for. Plaintiff replied that it could not be possible. Cecil made some threats about blowing up the building. Witness advised him to get his contract and read it before he made such threats. Plaintiff then started towards the Court House. Witness soon followed him and found plaintiff in the office of E. A. Paine Esq. I had the account which I showed him. This is the same

Warwick J. Cecil Jr
To A. Claycomb

1856

Amount brot Over

1169 58[¢] 1169 58[¢]

| | | | | | |
|--------------|------------------|----------|-----------------|-------------------|------|
| April | 16 | To | 100 lb flour | at 4 ^c | 4.00 |
| " | 21 | " | 3 bushels brand | | 25 |
| " | 28 | " | 2 1/2 do do | | 20 |
| May | 21 st | " | 117 " Flour | | 3.92 |
| " | " | " | 1 Bushell brand | | 8 |
| " | 6 | " | 71 lb flour | | 2.66 |
| " | " | " | 2 bushel brand | | 16 |
| " | 8 | " | 92 lb flour | | 3.45 |
| Warwick | 9 | " | 1 bushel meal | | 40 |
| " | " | " | 3 " brand | | 16 |
| " | 14 | " | 3 " " | | 24 |
| May | 23 | " | bushels | | 24 |
| " | " | " | 1 1/2 Meal | | 60 |
| " | " | " | 80 flour | | 3 00 |
| Warwick June | 5 | " | 100 flour | | 3 75 |
| " | 6 | " | 114 flour | | 4 28 |
| Warwick | 14 | " | 1 bushel Meal | | 35 |
| June | 7 | by order | Colby | | 3 00 |
| " | 33 | " | 157 lb flour | | 5 89 |
| " | " | " | 3 bushels brand | | 24 |
| July | 5 | " | 100 flour | | 3 75 |
| " | " | " | 3 bushels Meal | | 70 |
| Warwick | 9 | " | 2 1/2 " Meal | | 1 00 |
| " | 10 | " | 3 bushels brand | | 28 |
| " | 26 | " | 103 flour | | 3 59 |
| " | " | " | 3 bushels brand | | 28 |

1169 58

| | | | | | |
|---------|---------------------|----|------|----|------|
| 10 04 | 5 1/4 Corn Meal 175 | 26 | Meal | 26 | Meal |
| 1 35 | Meal 26 1/2 | 26 | Meal | 26 | Meal |
| 3 32 | Meal 26 1/2 | 26 | Meal | 26 | Meal |
| 1 02 | Meal 26 1/2 | 26 | Meal | 26 | Meal |
| 3 35 | Meal 26 1/2 | 26 | Meal | 26 | Meal |
| 3 31 24 | Meal 26 1/2 | 26 | Meal | 26 | Meal |
| 1169 58 | Meal 26 1/2 | 26 | Meal | 26 | Meal |

Warwick & Cecil

Dr

To A. Claycomb

| | | | | |
|-----|----------------|----------------------------|----------|--------|
| Dec | 4 | To 60 flour 1 bushell meal | 2.20 | |
| " | 20 | " 4' brand 1 1/2 meal | 92 | |
| " | " | " 140 lb flour | 4.20 | |
| Jan | 3 ^d | " 300 " flour | 9.00 | 16.32 |
| | | A. Warwick's Livery bill | | |
| | | To " " " | \$ 24.80 | |
| | | 470 Rals to Harding | 19.00 | |
| | | Rent of Sand Bank | 15.00 | 58.80 |
| Feb | 19 | Cash to Dennis | 50.00 | |
| | | David Haley | 40.00 | |
| | | Self Cecil | 2.50 | |
| " | 27 | J. Baker | 45.00 | |
| | | Cecil | 35.00 | |
| Oct | 4 | Dickson paid Cecil | 20.00 | |
| " | 17 | Same to Same | 35.00 | |
| | | A. Claycomb to Same | 15.00 | |
| | | Dickson to Cecil | 3.00 | |
| | | Livery Bill | 20.00 | |
| Dec | 10 | " " " | 3.75 | 261.25 |

Amount brot Over

1349 44
1585.81

Warwick

Cecil

X

Dec

Dec

"

"

12

| | | | | |
|--|--|---|----------------|-------|
| | | Hand at Gilbat & Frymire | 10.00 | |
| | | Senman Shop | 5.75 | |
| | | Cut wood 10 cords | 17.50 | |
| | | Bozards bordi bill | 191.00 | |
| | | to P. Strickland any brick | 1810.06 | |
| | | to P. Strickland any brick | 2.25 | |
| | | Burns | 2.00 | |
| | | Burns | 4.00 | |
| | | Car case | 11.00 | |
| | | Denis Helford | 16.00 | |
| | | Wm Wigan | 4.75 | 40.00 |
| | | | <u>1850.06</u> | |
| | | To 3 days work by A. Claycomb hand | 3.75 | |
| | | To Cash by A. Claycomb | 2.00 | |
| | | Mortar by Rice | .50 | |
| | | Soft Pick | 2.00 | |
| | | Shipping Ore & Helas | 15.00 | |
| | | To Amt of Allow per Order | 26.41 | |
| | | (Paid under the written contract) | 1586.12 | |
| | | (between Claycomb & Warwick & Cecil) | 157.10 | |
| | | Jan Wm Cecil | 40.00 | |
| | | To amt paid Senman | | |
| | | amt to hour Bill | 27.50 | |

1857

William Cecil

Dr

| | | | | |
|------|----|-------------------------------------|-----------|--------|
| June | 11 | Paid B. H. Foot | 12.00 | |
| " | " | use of H & B | 2.50 | |
| July | 23 | amt to J. B. Foot by order | 6.00 | |
| | | Order Gardner Stone | 3.75 | |
| | | Spirit level | 1.75 | |
| | | 11 1/2 cords wood | 330.40.25 | |
| Aug | 12 | amt to B. H. Foot | 7.50 | |
| | | Cash to Cecil | 10.00 | |
| | | amt to B. H. Foot | 1.60 | |
| | | amt to Norman | 9.00 | |
| | | amt to Allen & Co | 10.75 | |
| | | 1 Wheel Barrow | 4.00 | 111.10 |
| Sept | | Tox Order to Senman | 40.00 | |
| | | (to affect Bricks under writ cont.) | | 157.10 |

Number 1311
of Claycomb

1886

2

W. Warwick & Cecil
De

Jan. B. Surr
No. 178, Sever
Pittsboro

which account was allowed in evidence. That the plaintiff took the account and looked at it. He said that the account was all correct against him but that the portion of the account got by Warwick where he and Warwick were in partnership should not be charged to him. Witness further said that Cecil in the same conversation said that the \$1300 which Warwick and Cecil got the fall before Warwick got more than his share and that Warwick and him (Cecil) were not in partnership and Claycomb the defendant would have to look to Warwick for the balance. Cecil denied that he was doing the work on the contract. After awhile witness went to the Court House and found Cecil who had the contract. I asked him whether he would go on under the contract. He stood awhile and then said he would go on. He looked over it right smart. This looks like the same contract. A portion of that account was got by Warwick and him. He said he was willing to turn the balance. He said that between \$600 and \$700 was right. The House was talked about. I do not recollect what was said. Witness found Cecil at the brick building he was inside. I asked him whether he was going to finish that building. He studied and said it would not kill him. He had the contract when I went over. The amount paid by Claycomb to Warwick & Cecil on their contract with him (Claycomb) was \$1886.12 and paid under the written contract between Warwick Cecil & Claycomb and that Warwick of the \$1886.12 had got more than he was entitled to. There were some other items following that there was no trouble about Cecil made no objection to the balance. The \$131 was

E. A. Taine testified that Cecil the plaintiff some time in the month of November 1857 came into his office in the Court House and asked witness for the contract between Warwick vs. Cecil and the defendant Claycomb which was in witnesses hands as the attorney for both parties. Witness got the contract from his desk and handed to Cecil after I gave him the contract my impression is he went out of the office and soon after returned to my office. Andrew Claycomb came into the office of witness soon after Cecil's return. Said Andrew Claycomb and Cecil then had some conversation to which witness did not pay attention being otherwise engaged. Both then called his attention to the matter. Andrew Claycomb had an account which he handed to Cecil who looked it over. Claycomb ^{said} according to the account, Cecil was overpaid. Cecil said he thought it was hard to charge him with what Warwick got, that Warwick got more than his share. Mentioning particularly a horse which Warwick got of the defendant Claycomb. Cecil said that the account was all right with this exception that he was willing to set off \$1300. Witness then took the account and as Cecil admitted made the entire in brackets as set out in the account. Cecil said that Warwick had not helped put up the building and had drawn more than his share.

E. A. Taine further testified that the contract alluded to by him he afterwards saw in the possession of Judge Porter.

The defendant then called D. K. Ripley who testified that he was acquainted with Judge Porter that James P. Morris has charge of his office that witness

and said Morris looked very carefully at all the papers in judge Porters desk for the contract described in defendants answer. but could not find it judge Porter was absent from Monmouth at the time.

The defendant here offered to read a copy of said contract in evidence to the jury but the Court held that the proper proof had not been made of the loss of the original and excluded the evidence to which opinion of the Court in excluding said evidence the defendant then and there excepted

Here the defendant rested his case

The plaintiff then read in evidence the deposition of Andrew Claycomb as follows

" Andrew Claycomb being first duly sworn to testify the truth the whole truth & nothing but the truth in this case answered as follows

Int 1st what is your name age occupation & place of residence

Answer My name is Andrew Claycomb my age near 48 years occupation Farmer during life - and now reside in Monmouth Warren County Ill -

Int 2 Are you acquainted with the parties to this suit and if aye how long have you known them

Answer I am & have known the Plff since Spring of 1857 have known defendant all his life

Int 3^d Do you or not know of a contract between Plaintiff & defendant - for making a kiln of brick & if aye - state when said contract was made and what were the terms thereof

Answer There was a kiln of brick burned by Plff for defendant in the fall of 1856 I did not see the contract on which it was burned In the

Spring of 1857 I heard plaintiff tell defendant that if he defendant would furnish wood & hands that he Peff would go on and make & burn a kiln of brick on the same conditions he had made & burned the other kiln and burn them so that they would lay up the other kiln, and defendant agreed to do so and Peff went on & made a kiln of brick & burned them on said agreement as I understood from both parties
Int 4th Do you or not know of defendant objected to $\frac{3}{3}$ agreeing to give Peff one dollar & twenty five cents per thousand for making said last mentioned kiln - and defendant furnishing hands and wood

Answer - I could not say positively I rather think that was the price agreed on - It was agreed on the same conditions the other kiln was made on

Int 5th (objected to) What became of this last mentioned kiln of brick spoken of by you as having been burned in 1857 - by Peff -

Answer - I do not know positively but I believe they were used in putting up a building by Peff for deft in 1857 - in the City of Monmouth Warren Co. Ill - on lot one in Blockten in said City

Int 6th Are you or not a brother of the defendant in this suit

Answer I am -

Cross Interrogatory

No 1 Was the contract (her shown to you & marked "Exhibit A") the contract referred to by the parties

Answer They spoke of a written contract before

Made by three of them - but at the time of the conversation referred to by me I had never seen a written Contract - In the fall of 1857 when the building was nearly laid up - the Plaintiff did not go on to finish the brick work - I asked him why he did not go on - and he said that the defendant did not furnish him money and I said to him - that he deft had I supposed paid him

Peff - all the Contract called for - Peff said it could not be possible I said to the Peff - that he had better make his account out & go and settle with deft & see how they stood - Peff said it was no use - I asked him why - & he replied that defendant would not settle and Peff made some threats, and I told him Peff, he had better get his contract & read it before he made such threats - he Peff went right to the Court house and after he was there awhile I came to him and he Peff had a contract, I took the contract & looked at it and read some of it It was exactly like this one and I think it is the same - (Here contract marked "Exhibit A" shown to the witness)

Int 2nd What did he Peff further say about said contract at that time or soon after
Answer - He Peff said he could finish the house He guessed it would not kill him I agreed to furnish the money to pay the hands from that time out

Int 3rd To whom did said Plaintiff deliver said Contract after he had examined the same
Answer I think he delivered it to E. A. Paine - it

was in his office and he (Paine) had it in his possession

Int 4th What were the threats ^{made} plaintiff, which you have referred to -

Answer - The plaintiff said that if defendant did not pay him he would put a keg of powder under it and blow it to hell -

Int. 5th Where was said defendant at the time these conversations referred to by you in reference to finishing the building took place -

Answer He was at his house Dick

Int 6 Did you act as the agent of defendant at that time to assist him in his business

Answer I did -

Int 7 Was it a part of your business as the agent of defendant to attend to the completion of said building under said contract

Answer It was

(all of above Cross interrogatories were objected to by Peff's Counsel when asked - as also the Answers -

Direct Examination (delivered by Peff's Counsel)

Int 1st Have you or not either alone or with another party purchased this lot and building thereon situated, spoken of by you above -

Answer - I have not - either by myself or with another party -

Int 2nd Is not said building transferred to you alone or with another party or parties by deed or otherwise

Answer It is not, I have no interest in it -

objected to
objected to

Int 3^o Have you any interest in the event of this ^{suit}
 Answer I have not any

Int 4th Is not the balance of defendants
 property or most of it transferred to you alone
 or with another ~~parties~~ party or parties

Answer We have bought all his property
 except that house & lot - that is myself & my
 brother William Harrison Claycomb -

Int 5th Have you or not charge of this building
 for the purpose of leasing it or the rooms in it to
 others

Answer, I am William Harrison Claycomb
 agent for it

Int 6th Why did you not purchase this build-
 ing with your brother as you did the balance
 of defendants property

Answer - Well I was a witness in this suit
 between plaintiff & defendant
 Andrew Claycomb."

3. The poles and scaffolding claimed in the Petition cannot be allowed and the jury will not allow for them

4. The Contract set up in the defendants answer between him and the firm of Warwick & Cecil has not been offered in evidence and the Jury should not permit said contract as alleged in said answer to influence their verdict in this case unless it has been proved to the Jury that the work and labor and materials were done and furnished under the said contract, and not under the contract alleged in the plaintiffs petition.

To the giving of which instructions the defendant then & there objected which objections were overruled and the instructions given to the Jury to which opinion of the court in the giving of said instructions the defendant then and there excepted.

The Jury then returned the following verdict.

We the jury find the issues for the complainant and assess his damages at the sum of one thousand ~~and~~ one hundred and fifty six dollars and sixty cents

The defendant then moved for a new trial and in arrest of judgment for the following reasons

" State of Illinois
 Peoria County of Peoria Circuit Court
 Nov. Term 1860

Green

Green

Cecil

vs

Claycomb

The defendant moves for new trial herein
1st Because the verdict is against the evidence
2nd Because it is against the instructions of the
Court
3rd Because the plaintiff improperly tampered with
the jury - See affidavit on file
& For other reasons.

Manning & Merriman
Carr & Harday
for Deft. "

But the Court overruled the motion and
each of them and rendered a decree upon the
verdict of the jury. To which several rulings
of the Court the said defendant then and there
excepted and prayed that this his bill of
exceptions might be allowed which is accordingly
done.
E. N. Powell (Seal)

On the twenty ninth day of December in the year
of our Lord one thousand eight hundred and sixty there
was filed in the office of the Clerk of the Circuit
Court in and for said county of Peoria in said State
and in said Cause a Bond in the words and
figures following to wit:

"Know all Men by these presents that we
Samuel Claycomb as principal and William H. C.
Claycomb are bound and firmly held unto William
D. Cecil in the sum of twenty two hundred dollars

to the payment of which to said Cecil his heirs, administrators executors or assigns the said Samuel Claycomb and William H. H. Claycomb their heirs executors & administrators bind themselves and each of them firmly by these presents Given under our hands and seals this 29th day of December A. D. 1860

The Condition of this obligation is such that whereas in a proceeding to enforce a Mechanic's Lien pending in the circuit court of Peoria County Illinois wherein William V. Cecil was plaintiff and said Samuel Claycomb was the defendant at the November Term 1860 of said court the following decree or order was made —

William V. Cecil In the Peoria

vs

C. C.

Samuel Claycomb Nov. T. 1860

In this case it appearing to the court from the verdict of the Jury that the said defendant is indebted to the said plaintiff in the sum of eleven hundred & fifty six dollars & fifty cents which is a lien upon the premises described in the plaintiff's declaration, viz, Lot numbered one in Block numbered Ten in the City of Monmouth in the county of Warren in the State of Illinois with all the privileges & appurtenances thereunto belonging it is therefore ordered adjudged and decreed that said premises be sold by the Sheriff of Warren County at auction to the highest bidder for cash that said Sheriff give the same notice of the time place & terms of sale as is required by law to be given on sale of real estate on executions at law, that said sale be made at the door of the court house within ninety days after the receipt of a copy of this

Jas. B. Smith & Co.
No. 27 S. Seventh Street,
Philadelphia.

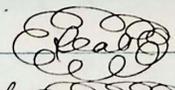
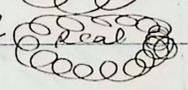
111

order by said Sheriff which copy shall be furnished to said Sheriff, and that said Sheriff execute to the purchaser a good & sufficient deed of said premises - that he pay over to the plaintiff in this case the amount of his debt with interest thereon at six per cent, and that he bring the balance of the money after deducting his fees, into court to abide the further decree of court
E. N. Powell

From which ~~said~~ decree or order the said defendant has prayed an appeal to the Supreme Court of Illinois

Now if the said Samuel Claycomb shall pay the said debt & costs described on said decree with all costs, interest and damages in case the said decree or order shall be affirmed and shall also duly prosecute said appeal then this bond shall be void, else to remain in full force & virtue

In witness whereof we have hereto set our hands and seals this the 29th day of December A. D. 1860.

Samuel Claycomb 
William H. Claycomb 

State of Illinois I do,
 County of Peoria Enoch P. Sloan
 Clerk of the circuit court in and for the
 County of Peoria in the State of Illinois
 do hereby certify that the foregoing is a
 true and correct copy from the files and
 Records of my office in a certain case
 wherein William T. Cecil is plaintiff and
 and James Blaycomb is defendant as
 the same remains of Record and on file
 in my office.

Witness my hand and seal
 of said court at office this
 20th day of April in the year
 of our Lord one thousand eight
 hundred and sixty.
 Enoch P. Sloan, Clerk

Supreme Court of Illinois
3rd Grand Division
April Term A D 1861

Samuel Claycomb

^D
William V. Cecil Appeal from Bond

And said appellant comes & says that in
said records manifest error in
this - 1st That said Court erred in admitting
the testimony of all of said ~~Complainant's~~ pe-
titioner's witnesses in relation to the alleged
Contract or Contracts, & also in relation
to alleged damages by delay of said
appellant

2nd That said Court erred in in
giving the petitioner's instructions &
each of them

3rd That said Court erred
in overruling said Defendant's
motion ^{in arrest of judgment} for new trial.

4th That said Court erred
in making said order
decree of sale.

5th That said Court erred in
refusing to admit said ^{Copy, of said} Contract
between Defendant & complainant ^{and coarisk}
in evidence

6th & for other reasons
wherein he prays reversal of
the Court's finding
for appellant

68 Samuel Claycomb

William T. Reed

68
Record

And now comes the said William T. Reed (Appellor) as
appellor and says that in the record & proceedings of the
said Circuit Court there are no such errors as by the
said appellor are there alleged, nor any or either
of them wherefore he prays that the said judgment
of the said Circuit Court may be in all things affirmed

Wm. Reed

Joinder in Errors

Atty. for Appellor

Filed April 24th 1861

George Deland

Filed April 22, 1861
G. Deland
Clerk