

No. 13103

Supreme Court of Illinois

Phillips et al

vs.

Stone et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT

Third Grand Division.

No. 70.
1860.

Frederick
Phillips Jr

vs

Stone
et al

STATE OF ILLINOIS, }
SUPREME COURT,

To the Clerk of the Circuit

ss. The People of the State of Illinois,
Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Andros B. Stone, Lucius B. Boomer, Nathaniel S. Bouton for the use of Nathaniel S. Bouton plaintiffs and Charles B. Philips, William Bowne Charles G. Snickfield, & Robert E. Moser John B. Moss defendants, it is said manifest error hath intervened, to the injury of the aforesaid Charles B. Philips one of said defendants

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 13th day of October in the Year of Our Lord one thousand eight hundred and fifty-nine
L. Leland

Clerk of the Supreme Court.
J. B. Miller Deputy

Charles B. Phillips
unpleaded &c.
27

Andros Stone & the

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned

L. Leland Clerk
by J. B. Rice Depy

Filed Oct. 13. 1837

L. Leland
Clerk

Know all men by these Presents, That
us Charles B. Phillips and Noah D. Wright of the
City of Chicago, Cook County, Illinois are held and
firmly bound unto Andros B. Stone, Lucius B.
Boomer and Nathaniel S. Boulton, for the use of
the said Nathaniel S. Boulton, also of the City of Chicago
in the County and State aforesaid, in the sum
of Six Thousand Four Hundred and Seventy two Dollars
and Four cents (\$6472.12) lawful money of the United
States of America, for the Payment of which well
and truly to be made we bind ourselves, our Heirs,
Executors and Administrators, jointly, severally and
firmly by these Presents -

Sealed with our Seals and dated this the
12th Day of October A.D. 1859 -

The Condition of the above Obligation
is such, that, Whereas the said Andros B. Stone, Lucius
B. Boomer and Nathaniel S. Boulton, for the use of
the said Nathaniel S. Boulton, did, at the July Term
A.D. 1859, of the Circuit Court within and for the County
of Cook and State of Illinois, to-wit: on the 13th Day of
July A.D. 1859, that being one of the Days of the July
Term of said Court aforesaid, by the consideration of
said Court, recover against the above bounden Charles
B. Phillips, the sum of Three Thousand Four Hundred
and seventy six Dollars and Six cents (\$3476.06) Damages
by reason of Debt: in a certain Proceeding in said
Court then pending upon Petition for a Mechanics
Liens, wherein the said Andros B. Stone, Lucius B.
Boomer and Nathaniel S. Boulton, who since for the
use of said Nathaniel S. Boulton were Petitioners and
the said Charles B. Phillips, and William Brown
and Charles G. Luskfield were defendants - upon
which said Judgment the said Charles B. Phillips

has sent out a Writ of Error, out of the Supreme Court of said State of Illinois, which has been ordered to operate as a Supersedeas, upon the Execution of this Bond, and the filing of the same in office of the Clerk of said Supreme Court.

Now if the said Charles B. Phillips shall duly prosecute his said Writ of Error, and shall pay the Judgments, Costs, Interest and Damages, in case the Judgment against him shall be affirmed in the said Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

Executed in presence of
Jno N Smith

Charles B. Phillips Seal
Noah D. Wright Seal

State of Illinois
County of Cook p.

Noah D. Wright being first duly sworn deposes and says, that he is the same person who as security for Charles B. Phillips, signed & executed the foregoing Bond. That he is worth the sum of Six Thousand Dollars, now and above all his debts. And is the owner of unincumbered Real Estate situated in the State of Illinois, of the value of Six Thousand Dollars and upwards. Affirmed with not -
Subscribed & sworn to before me, N D Wright

this 12th Day of October AD 1859.

John Forsyth
Notary Public

JOHN FORSYTH
NOTARY PUBLIC
SOUTH CHICAGO

Superior Court of Illinois

Charles B. Phillips vs
Plff. in error

Andros B. Stone vs
Def. in error

Bond -

Filed Oct. 13. 1859
L. Leland
Clerk

SUPREME COURT.

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|                      |   |                              |
|----------------------|---|------------------------------|
| A. STONE, ET AL,     | } | ERROR TO COOK CIRCUIT COURT. |
| <i>vs.</i>           |   |                              |
| CHARLES B. PHILLIPS. |   |                              |

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The proceedings below were under our mechanic's lien law, for Patent Iron Shutters, placed in a building of C. B. Phillips. The first error assigned is, that the petition does not show that the work was done and materials furnished under any contract, specifying the time within which the same were to be done and furnished; and cites, in support of the position, *Cook vs. Roфинot*, 21 Ill. R. 437, and the cases there cited. The petition was filed and decree taken, before the decision in those cases. It alleges, "that the building was built under plans and specifications, made by William B. Olmsted, architect, and the different parts were open to bidders; that the petitioner made proposals or bids for the making and setting up of Mellan's Patent Rolling Shutters, according to the plans in the architect's office, together with castings for the same, as shown by the plans, &c. The times of payment "was \$2,000 cash when the front was up, without the shutters attached; balance to be paid when the work was done." "No time was specified for the doing of said work by the petitioners, but the same was to be done in time for other work on said building." This work, in its nature, being *supplemental to other work*, it would have been impossible for the architect to fix a time, and he consequently required the petitioners to do it, when the other work should be in a situation to require it, and the petition and the proof shows it was done within "three years."

With due respect to the Court we say, that under our mechanic's lien law, the defendants are entitled to their lien ; and we would candidly ask the Court, to reconsider the decisions of *Cook vs. Rofinot*.

The mechanic's lien law was enacted by our legislature to secure the mechanic, who had placed his labor and materials in the building of another, and thereby enhanced its value. It is based upon the principle, that the laborer is worthy of his hire ; that he is entitled to the protection of law, and of our Courts as the representatives of law. And the law ought to receive a liberal construction for the attainment of that end; and no technicalities ought to prevent the mechanics receiving the protection of the Court. The sole and *only* party complaining of this decree is Charles B. Phillips, the man who had the work *done*; who has received the benefit of the labor ; and now, by an illiberal construction, he seeks to cheat them out of their pay ; to deprive them of what the legislature intended to give ; and what, by the construction which the legal profession of this state have, with singular unanimity, said they were entitled to, till the decisions made in the 21 Illinois, and which decisions have taken the profession by surprise, and which, in their effect, lose to a meritorious class of our citizens, thousands upon thousands of dollars, and reduce them from competency to bankruptcy. It should be the pride of our laws, and of our Courts as the administrators of our laws, to protect and care for the laborer and the material man. The case of *Cook vs. Rofinot*, only decides that the petition must show the time when the materials were to be furnished and paid for. This petition shows when the labor and materials were to be paid for, and in that it differs from that case ; it does not show the exact day when the work was to be done, but it fixes the time for doing it ; it was to be done in time for the other work on the building." We say it does fix the time, but admitting, for the sake of argument, that it does not, we say that the plaintiffs have a lien.

The mechanic's lien law should receive a liberal construction.

In *Barnes vs. Thompson*, 2 Swan. R. 315, says the Court, in construing a like law : "It is insisted that the statutory lien given to mechanics, is upon the condition that a '*special contract with the owner of the lot of ground,*' is made by the mechanic or the undertaker ; for this is the wording of the statute. But we think it would be sticking on the bark to require anything more than an employment, and undertaking to do the work. To this effect, in substance was the charge of the Circuit Court, and we consider it a correct exposition of the act. *The object of the legislature, was to secure to an industrious, and meritorious class of the community, the*

"benefit of their labor; and the act should be so construed as to carry out this laudable purpose. The manifest intention and policy of the legislature should not be defeated by a too rigid construction of their language."

These are words of sound sense and reason, so in *Olmsted vs. McNall*, 7, Black. R. 388. In this case the parties sought to confine the lien by a strict construction. The action was brought for work and labor done upon a "*wharf boat*." The Court say, "it is contended that the language of the statute just cited, contemplates only such buildings as are erected on, and permanently attached to, the reality. We do not doubt but that the mind of the legislature was primarily directed to such buildings, but see no sufficient reason for saying that it was exclusively so. The case before us is manifestly an exception, otherwise injustice may be done. If the statute, under which these proceedings were commenced, does not give the complainants a lien, there is no law that does. The building although not erected on the lot is attached to it, and the employer has such an interest in it, as may be sold on execution. The statute being remedial, should receive such a construction as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy." We ask the Court in this case, to give such a construction as shall meet the beneficial ends which the legislature had in view, and prevent a failure of the remedy. In this case, it is defined to be a remedial law, as well as in 2 Swan R. 315.

In view of these authorities and others, which we might cite, let us examine the law. The first section provides for a lien to any person, who shall by a contract with the owner, furnish labor or materials. That language is very broad and very comprehensive. This language is rendered more broad and very comprehensive, by reference to the second section—which extends it to all work done and materials furnished. After thus providing, there is the following words:—*Provided*, that the time of completing the contract shall not be extended for a longer period than three years, nor the time of payment beyond the period of one year, for the time stipulated for the completion thereof. Walker, Judge, says:—"The intention of the legislature was to dispense with the precision in the contract as to the kind of work, but to require the contract to fix and limit a time when the work should be completed and the money paid." We do not so understand the intention of the legislature. Why should they dispense with precision as to the kind of labor, and require great precision as to the time of doing the work and paying for the same? Their intention was to provide a remedy for the enforcement of mechanic's lien to

reach all cases, whether the contract was by parol or in writing, and that of a class who were not deemed exact or precise in making these contracts ; who are not supposed to be acquainted with the niceties or refinements of the law, and yet the construction of the Court limits the operation of the law, and as we shall presently show, excludes from its operation a large class who are within its spirit, and who are by a liberal construction entitled to its protection. The Court add further, "if by the terms of the contract the work was to be performed within three years from the entering into the contract, and the money was to be paid by the express or implied agreement under which it was to be performed ; then, and not till then, could the creditor avail himself of the time."

Is not the effect of the construction to cut off a large class of cases ? To restrict the intention of the legislature ? Is it the only construction that can be put upon the act ? We say not. That there is another construction, which will carry out the intention of the legislature, and which will save a large class of cases, which will otherwise be sacrificed ; which will prevent the ruin of many who have acted upon another construction, which has the sanction of the uniform opinion of the profession, and the decision of the local Courts. That construction is, that the proviso is to restrict the parties against contracting *beyond the time*, not requiring them to specify a time within three years in which the work is to be done, and a period within the one year thereafter in which the money is to be paid ; and that there is a mechanic's lien in all cases when there is no time fixed in the contract for the doing of the work, or the payment of money when the work was done within the three years. That they are words of restriction limiting the power of contracting, and not fixing a provision of the contract.

When two constructions can be given a statute which is to be liberally construed, one of which enlarges its operation, the other restricts it, the Court are bound to give the enlarged construction. Says the Court, in 5 Mary. R. 484 ; "of several constructions that is to be preferred, which introduces the most general and uniform remedy."

4 Gilm. R. 221.

1 Gilm. R. 672.

6 Misso. R. 142.

And that such construction can be given to it, no one can question. That it is as natural a construction as that given to it, is equally true. That it does more justice to a meritorious class must be admitted. That it does justice to all, and injustice to no one, we emphatically claim, as also, that it better carries out the intention of the legisla-

ture, to give a lien to him who has put his labor or materials into the building of another.

That this statute is to be liberally construed, we have shown by the authorities above cited ; and we on this point further cite :

6 Misso. R. 122.

1 Mary C. R. 342.

15 Geo. R. 361.

4 Cush. R. 316.

In this case the Court decide, statutes are to be construed according to the intention of the makers, if this can be ascertained with reasonable certainty, although such construction may seem contrary to the ordinary meaning of the letter of the statute. In the same case the Court adds, "a literal construction of the statute would be prejudicial in very many cases, and cannot be admitted." This case grew out of the construction of the exemption law of Massachusetts. In *Winslow vs. Kimball*, 25 Maine R. 493, says the Court, "statutes are to receive such a construction as must 'evidently have been intended by the legislature. To ascertain this, 'we must look to the object in view, to the remedy intended to be 'afforded, and the mischief intended to be avoided. The object in 'view in the provision in question, clearly was to prevent wills from 'being nullities by reason of any interest in a witness to them, created by the wills themselves. *No one can doubt, if it had occurred 'to the legislature, that the case before us was not embraced in the 'enactment, that it would have been expressly included.*" And upon these principles, the Court extended the construction, to embrace the case before them. Does any one doubt that the object of the legislature was a full and complete remedy to the mechanics ? Or, if in the language of *Winslow vs. Kimball*, if it had occurred to the legislature, "that such a construction would be put upon their language as is claimed for it, that they would have passed any such law ?"

Or as stated in *Olmsted vs. McNatt*, "if the statute does not afford a remedy, the petitioners had none"—and in the language of the same case our construction is demanded, "to prevent a failure of a remedy." Our construction is supported by reason, justice, and authority. For more pointed and emphatic or pertinent language cannot be made use of, than that contained in *Stamels vs. Raymond*, *Winslow vs. Kimball*, *Olmsted vs. McNatt*, and *Barnes vs. Thompson*; two of which cases were under mechanic's lien law, and both of which extend the construction of the law, which according to these authorities could well be done if necessary, but which in the case at bar is not necessary, as we only ask that another construction, of which the language is

equally susceptible, should be adopted, instead of the one sought to be given the law in question.

1 Strob. R. 476.

17 Vermont R. 479.

In this last case the Court held, where the literal construction of a statute would lead to an inequitable restriction, the Court will extend its application to cases within the same equity, though at the expense of *forcing the construction of the words*.

6 Misso. R. 141.

1 Kent Com. 461.

Says Kent, "when the expression in a statute is special or particular, but the reason is general, the expression should be deemed general; *scire leges, non hoc est verba, earum tenere sed vim ac postestatum*, and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction or absurdity." The construction contended for leads to injustice of the worst kind. There is another principle of construction which should apply, it is the equitable construction. Says Darwin, in statutes page 63 (sec. 728), "In law, all cases cannot be foreseen or expressed; "the object of interpreting laws by what is called equity, is to supply as far as possible this deficiency by a recurrence to natural principles of justice." "Thus it is said, statutes which give remedy for wrongs should be taken by equity;" page 67. "Remedial statutes are to be construed largely and beneficially, so as to suppress the mischief and advance the remedy. It is by no means unusual in construing remedial statutes, to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief." But it is said by the Court in *Cook vs. Heald*, "the lien is given by statute, and is in derogation of the common law, and is opposed to common right and should be strictly construed." "The remedy is cumulative to the ordinary remedy given by the common law, and as it is a privilege enjoyed by one class of community above all others, to be available, the party seeking to enforce should bring himself within the terms of the statute." We have sought to show, 1st. That our case is within the true construction of the law. 2ndly. That by the authorities above cited, that the statute instead of being construed strictly is to be construed liberally. The two cases of 2nd. Swan 315. 7 Black. R. 388, are so held under mechanic lien laws of sister states. The other cases cited are strictly in point.

19 Conn. R. 299.

8 Ind. R. 6. 40.

12 Geo. R. 104.

1 Md. Ch.R. 342.

2 N. J., R. 623.

9 Geo. R. 253.

1 Penn. R. 211.

In these remarks of the Judge deciding the case, we humbly submit lies the error, in saying that the statute must be strictly construed. Statutes consists of many parts, a description or specifying of the persons who are entitled to the remedy, and the mode of enforcing the remedy—the former is always to be so construed as to embrace within its provisions the largest number of persons or cases, whatever construction may be given to the latter. Says Dwaris on statutes, page 79, (sec. 754), “it has been already stated, that a statute may be penal “in one part and remedial in another. There is no impropriety, “it remains to be seen, in putting a strict construction on a penal “clause, and a liberal construction on a remedial clause, in the same “act of Parliament. This has been done in the statutes which make “it a felony to burn houses and other property, and gives those who “suffer from felony an action against the hundred.” So in *Short vs. Hubbard*, 2 Bing. R. 354, an act authorizing the Sheriff to grant replevins in certain cases, a part was held remedial and was construed so as to embrace the case under consideration, on the doctrine that a portion of the statute was remedial and should be liberally construed, while the 22d section of the same act was held penal and to be construed strictly. In Dwaris on statutes, page 67, (sec. 734 and 735), it is said, “whatever doubts may be entertained of the propriety of extending the words of statutes by equitable construction, to embrace “other cases, conveyances, times, places, persons and things, besides “those contained and expressly mentioned in the act, there can be no “question that the words of a remedial statute are to be construed “largely and beneficially, so as to suppress the mischief and advance the remedy.” In the case of the *Dean of York vs. Middleborough*, 2 Y. and J. 213, Lord Alexander uses these emphatic words: “It is “no means unusual in construing a statute to extend the enacting “words beyond their natural import and effect, in order to include “cases within the same mischief, where statutes are remedial.” “It “is a mode of construction as familiar to the profession as expounding “a statute by equity.” These are very emphatic words. What did the legislature intend to provide for? Mechanics and material men. Shall it be said that if we contract with a mechanic to build us a house in two years and nine months, and to pay him six months after its completion, that he has a lien; and if we contract with a mechanic to build us a house as speedily as it can be done, and that he is to employ all the men that can be economically employed, and we are

to pay him in six months from the date of the contract, that he has no lien ? It cannot be said the legislature intended any such thing ; it is unjust, unfair, partial, invidious. If such be the words of the statute, which we deny, in the words of Lord Alexander, the "Court should extend them ;" should have recourse to the equity of the statute. On this subject, Dwaris, page 728, says : " In law, all cases cannot be foreseen or expressed ; the object of interpreting laws by what is called equity, is to supply, "as far as possible, this deficiency, by a recurrence to natural principles of justice." In 22 Ohio R. 123, the Ohio Courts gave a liberal construction to the mechanic's lien law, such a construction as would best attain the policy of the act. The statute of Ohio providing for liens against boats and vessels, is held to be a beneficial one, and has been liberally construed by the Courts ; 1 Ohio R. 386 ; 11 Ohio R. 461. Says Reed, Judge, in the last case, " this statute is equitable in its object, and will receive a liberal construction, to carry the design of its enactment into effect." In the case of *Webster vs. Brig Andes*, 18 Ohio R. 202, says Spaulding, Judge, in considering the law creating liens against boats and vessels, "our books of reports teem with adjudications necessarily tending to make the rich richer, but instances are rare where the wants of him who earns his bread by the sweat of his brow are humanely cared for by the law-making power, or where the rights of labor have borne unquestioned competition with privileged capital in the judicial forum. The act which we are considering was intended to secure to honest industry the fruits of its hard earning, against fraud or failure in business of all such as might put it in requisition. It is a statute of so highly a beneficial a character, as to justify a Court in giving to its construction the most liberal intendment to carry out its object." Nor are we entirely without authority in our own state, in *Williams vs. Chapman*, 18 Ill. R. 425, Scates acknowledges that a liberal construction is to be given to mechanic's lien law, "for he says while we will give the act a liberal construction to preserve the rights of mechanics and material men, we are not called upon to destroy all other rights," &c. Thus settling as recently as 1856, that a liberal construction is to be given to the law.

The same case settles conclusively our construction, for says the Court, "it is not the contract which creates the lien under the statute, but it is the use of the material furnished upon the premises, the putting them into the building and attaching them to the freehold, which entitles the parties furnishing, to a lien upon the premises to the extent of their value." So we say, if the work be done within the three years, under a contract, which by its terms does not extend the time for doing the same beyond three years, there is a

lien. Its the doing the work within the time which creates the lien. Why in one case shall the Court say, that it is not the contract which creates the lien, but the doing the work ; and yet in the case at bar say, the doing the work does not create the lien, but the provision of the contract ? So it is held in *Gaty vs. Casey*, 15 Ill. R. 192. "It is the doing the work that creates the lien, not the contract." The lien commences from the time it is done, 11 Ill. 526. 3 Eng. Ark. 425. The case in 15 Ill. R. 191, was decided by Caton, Judge ; and is approved in 17 Ill. R. 425, by my learned opponent, Judge Scates. By these authorities, the doing the work within the three years, must give a lien. In *Warren vs. Harris*, 2 Gilm. R. 307. Where the petition disclosed, there was no time fixed for doing the work, or the payment for the same, and when such was the contract. The mechanic's lien was upheld by Chief Justice Caton, The objection urged by Browning and Bushnell, whose ability none can question, was not that there was no time fixed for doing the work, but the petition "did not show the work done ;" which position Caton sustained, but that it was cured by verdict. This decision was made 1845. The drawer of the present petition had the case of *Warren vs. Harris* before him, when he drew the one in this case, and added what was held to be wanting.

In *Forney vs. Saunders*, 4 Scam. R. 527, decided in 1843, by C. J. Caton, the petition was defective in the same particular, and came up upon demurrer in which a liberal construction was given to the law. Says the Court, "to hold that mechanics who have constructed these improvements, have no lien upon them for labor and materials, would be attributing to the legislature a partiality and injustice which never could have been intended, and entirely at war with the policy indicated by the whole course of legislation on this subject." And in *Kimball vs. Cook*, decided by Caton in determining who were creditors under the statutes he adopts a liberal construction. And Young, Judge, 1 Gilm. R. 434, in his dissenting opinion says, "the statute, in my judgment, should receive a liberal construction in favor of mechanics." These authorities show that our mode of construction has received the repeated sanction of our Courts. A very strong case on this subject is *Littlejohn vs. Miliron*, 7 Indiana Reports 126. This was a case to enforce a mechanic's lien ; the defence was, that the work was done under a contract with a married woman ; it was contended that as she could not contract for any purpose, there was no lien. Says the Court, "this statute ought to receive a liberal construction, and not such an one as would put it out of the power of the husband and wife to improve the property of the wife for their joint benefit. If the

wife cannot contract for such a purpose, there is stronger reason than in ordinary cases, why the mechanic should retain a specific lien as a security for the labor bestowed."

This same doctrine of liberal construction of mechanic's lien laws, is adopted in New York, in *Daldson vs. Wood*, 22 Wend. R. 397 ; *Haswell vs. Goodchild*, 12 Wend. R. 373 ; *Taylor vs. Baldwin*, 10 Barb. R. 626 ; in this case, the Court admitted the doctrine of equitable lien.

We close the review of the authorities, by citing the language of the Court in *Buch vs. Brown*, in 2 Howard, Miss. R. 878, in giving a construction to the mechanic's lien law of that state, says the Judge, "It is well urged by the counsel of the appellee, that the claims of the mechanic are favored in law. They are often unlettered men, and Courts will uphold the policy of the Country, in giving these statutes a free interpretation in favor of the laborer. They are made to secure him the reward of his toil, and should not be baffled by any subterfuge."

By a strict construction of the words used in the *proviso*, our construction is the true one. The words are that the time of completing the contract, shall not be *extended*. What is the meaning of the word *extended* ? Webster says, stretched, spread, expanded, enlarged. Then the law will read, expanded or enlarged beyond three years ; that the contract carries it beyond three years ; not that the contract must restrict within three years ; but when the contract expands it beyond. In the absence of either expansion beyond, or restriction within ; or, in case of silence on the part of the contract, if from the nature of the work, doing it within a reasonable time, would be within the three years, it certainly cannot be said to be within the words of the *proviso*. For the contract does not extend or expand the time for doing the work beyond three years.

Our apology for urging this question, is the large amount our clients will lose if the doctrine contended for be sustained, for men who had a competency will lose their all. Because we believe ourselves to be right ; because we know that it will be the pleasure as well as the duty of this Court to modify the decisions they have made, if they are convinced they are in any wise wrong. Because we know, "to err is human, to retract and correct the error, is God-like and divine." And that humanity is never nobler than when reconsidering their positions, they calmly seek to find the right, and finding it, without pride of opinion, or hesitancy, avow it, however much it may conflict with previous decisions or pre-conceived opinions. We ask, only, that the Court would calmly consider the reasons we feebly have pre-

sented for the faith that is within us ; give to the suggestions all the weight they are entitled—and see if such a construction cannot be given to the statute as will save just, meritorious and equitable claims.

This case can be sustained by the verdict according to the ruling of *Warren vs. Harris*. Again, this objection comes to late. The only objecting party to this decree, is the contracting party, Charles B. Phillips. He has answered—in his answer he did not raise the objection, it is raised for the first time in this Court.

SHUMWAY, WAITE & TOWNE,

Attorneys for Plaintiff.

70-33

Charles B Phillips

vs

A. Stone State

Ship for the State

in the

Filed May 11, 1860

L. Leland

Clk

SUPREME COURT.

A. STONE, ET AL,

vs.

CHARLES B. PHILLIPS.

ERROR TO COOK CIRCUIT COURT.

The proceedings below were under our mechanic's lien law, for Patent Iron Shutters, placed in a building of C. B. Phillips. The first error assigned is, that the petition does not show that the work was done and materials furnished under any contract, specifying the time within which the same were to be done and furnished ; and cites, in support of the position, *Cook vs. Rafinot*, 21 Ill. R. 437, and the cases there cited. The petition was filed and decree taken, before the decision in those cases. It alleges, "that the building was built under plans and specifications, made by William B. Olmsted, architect, and the different parts were open to bidders ; that the petitioner made proposals or bids for the making and setting up of Mellan's Patent Rolling Shutters, according to the plans in the architect's office, together with castings for the same, as shown by the plans, &c. The times of payment "was \$2,000 cash when the front was up, without the shutters attached ; balance to be paid when the work was done." "No time was specified for the doing of said work by the petitioners, but the same was to be done in time for other work on said building." This work, in its nature, being *supplemental to other work*, it would have been impossible for the architect to fix a time, and he consequently required the petitioners to do it, when the other work should be in a situation to require it, and the petition and the proof shows it was done within "three years."

With due respect to the Court we say, that under our mechanic's lien law, the defendants are entitled to their lien ; and we would candidly ask the Court, to reconsider the decisions of *Cook vs. Rofinot*.

The mechanic's lien law was enacted by our legislature to secure the mechanic, who had placed his labor and materials in the building of another, and thereby enhanced its value. It is based upon the principle, that the laborer is worthy of his hire ; that he is entitled to the protection of law, and of our Courts as the representatives of law. And the law ought to receive a liberal construction for the attainment of that end, and no technicalities ought to prevent the mechanics receiving the protection of the Court. The sole and *only* party complaining of this decree is Charles B. Phillips, the man who had the work *done* ; who has received the benefit of the labor ; and now, by an illiberal construction, he seeks to cheat them out of their pay ; to deprive them of what the legislature intended to give ; and what, by the construction which the legal profession of this state have, with singular unanimity, said they were entitled to, till the decisions made in the 21 Illinois, and which decisions have taken the profession by surprise, and which, in their effect, lose to a meritorious class of our citizens, thousands upon thousands of dollars, and reduce them from competency to bankruptcy. It should be the pride of our laws, and of our Courts as the administrators of our laws, to protect and care for the laborer and the material man. The case of *Cook vs. Rofinot*, only decides that the petition must show the time when the materials were to be furnished and paid for. This petition shows when the labor and materials were to be paid for, and in that it differs from that case ; it does not show the exact day when the work was to be done, but it fixes the time for doing it ; it was to be done in time for the other work on the building." We say it does fix the time, but admitting, for the sake of argument, that it does not, we say that the plaintiffs have a lien.

The mechanic's lien law should receive a liberal construction.

In *Barnes vs. Thompson*, 2 Swan. R. 315, says the Court, in construing a like law : "It is insisted that the statutory lien given to 'mechanics, is upon the condition that a '*special contract with the owner of the lot of ground,*' is made by the mechanic or the undertaker ; for this is the wording of the statute. But we think it 'would be sticking on the bark to require anything more than an 'employment, and undertaking to do the work. To this effect, in 'substance was the charge of the Circuit Court, and we consider it a 'correct exposition of the act. *The object of the legislature, was to 'secure to an industrious, and meritorious class of the community, the*

“benefit of their labor; and the act should be so construed as to carry out this laudable purpose. The manifest intention and policy of the legislature should not be defeated by a too rigid construction of their language.”

These are words of sound sense and reason, so in *Olmsted vs. McNall*, 7, Black. R. 388. In this case the parties sought to confine the lien by a strict construction. The action was brought for work and labor done upon a “*wharf boat*.” The Court say, “it is contended that the language of the statute just cited, contemplates only such buildings as are erected on, and permanently attached to, the reality. We do not doubt but that the mind of the legislature was primarily directed to such buildings, but see no sufficient reason for saying that it was exclusively so. The case before us is manifestly an exception, otherwise injustice may be done. If the statute, under which these proceedings were commenced, does not give the complainants a lien, there is no law that does. The building although not erected on the lot is attached to it, and the employer has such an interest in it, as may be sold on execution. The statute being remedial, should receive such a construction as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy.” We ask the Court in this case, to give such a construction as shall meet the beneficial ends which the legislature had in view, and prevent a failure of the remedy. In this case, it is defined to be a remedial law, as well as in 2 Swan R. 315.

In view of these authorities and others, which we might cite, let us examine the law. The first section provides for a lien to any person, who shall by a contract with the owner, furnish labor or materials. That language is very broad and very comprehensive. This language is rendered more broad and very comprehensive, by reference to the second section—which extends it to all work done and materials furnished. After thus providing, there is the following words:—*Provided*, that the time of completing the contract shall not be extended for a longer period than three years, nor the time of payment beyond the period of one year, for the time stipulated for the completion thereof. Walker, Judge, says:—“The intention of the legislature was to dispense with the precision in the contract as to the kind of work, but to require the contract to fix and limit a time when the work should be completed and the money paid.” We do not so understand the intention of the legislature. Why should they dispense with precision as to the kind of labor, and require great precision as to the time of doing the work and paying for the same? Their intention was to provide a remedy for the enforcement of mechanic’s lien to

reach all cases, whether the contract was by parol or in writing, and that of a class who were not deemed exact or precise in making these contracts ; who are not supposed to be acquainted with the niceties or refinements of the law, and yet the construction of the Court limits the operation of the law, and as we shall presently show, excludes from its operation a large class who are within its spirit, and who are by a liberal construction entitled to its protection. The Court add further, "if by the terms of the contract the work was to be performed within three years from the entering into the contract, and the money was to be paid by the express or implied agreement under which it was to be performed ; then, and not till then, could the creditor avail himself of the time."

Is not the effect of the construction to cut off a large class of cases ? To restrict the intention of the legislature ? Is it the only construction that can be put upon the act ? We say not. That there is another construction, which will carry out the intention of the legislature, and which will save a large class of cases, which will otherwise be sacrificed ; which will prevent the ruin of many who have acted upon another construction, which has the sanction of the uniform opinion of the profession, and the decision of the local Courts. That construction is, that the proviso is to restrict the parties against contracting *beyond the time*, not requiring them to specify a time within three years in which the work is to be done, and a period within the one year thereafter in which the money is to be paid ; and that there is a mechanic's lien in all cases when there is no time fixed in the contract for the doing of the work, or the payment of money when the work was done within the three years. That they are words of restriction limiting the power of contracting, and not fixing a provision of the contract.

When two constructions can be given a statute which is to be liberally construed, one of which enlarges its operation, the other restricts it, the Court are bound to give the enlarged construction. Says the Court, in 5 Mary. R. 484 ; "of several constructions that is to be preferred, which introduces the most general and uniform remedy."

4 Gilm. R. 221.

1 Gilm. R. 672.

6 Misso. R. 142.

And that such construction can be given to it, no one can question. That it is as natural a construction as that given to it, is equally true. That it does more justice to a meritorious class must be admitted. That it does justice to all, and injustice to no one, we emphatically claim, as also, that it better carries out the intention of the legisla-

ture, to give a lien to him who has put his labor or materials into the building of another.

That this statute is to be liberally construed, we have shown by the authorities above cited ; and we on this point further cite :

6 Misso. R. 122.

1 Mary C. R. 342.

15 Geo. R. 361.

4 Cush. R. 316.

In this case the Court decide, statutes are to be construed according to the intention of the makers, if this can be ascertained with reasonable certainty, although such construction may seem contrary to the ordinary meaning of the letter of the statute. In the same case the Court adds, "a literal construction of the statute would be prejudicial in very many cases, and cannot be admitted." This case grew out of the construction of the exemption law of Massachusetts. In *Winslow vs. Kimball*, 25 Maine R. 493, says the Court, "statutes are to receive such a construction as must evidently have been intended by the legislature. To ascertain this, we must look to the object in view, to the remedy intended to be afforded, and the mischief intended to be avoided. The object in view in the provision in question, clearly was to prevent wills from being nullities by reason of any interest in a witness to them, created by the wills themselves. No one can doubt, if it had occurred to the legislature, that the case before us was not embraced in the enactment, that it would have been expressly included." And upon these principles, the Court extended the construction, to embrace the case before them. Does any one doubt that the object of the legislature was a full and complete remedy to the mechanics ? Or, if in the language of *Winslow vs. Kimball*, if it had occurred to the legislature, "that such a construction would be put upon their language as is claimed for it, that they would have passed any such law ?"

Or as stated in *Olmsted vs. McNatt*, "if the statute does not afford a remedy, the petitioners had none"—and in the language of the same case our construction is demanded, "to prevent a failure of a remedy." Our construction is supported by reason, justice, and authority. For more pointed and emphatic or pertinent language cannot be made use of, than that contained in *Stamels vs. Raymond*, *Winslow vs. Kimball*, *Olmsted vs. McNatt*, and *Barnes vs. Thompson*; two of which cases were under mechanic's lien law, and both of which extend the construction of the law, which according to these authorities could well be done if necessary, but which in the case at bar is not necessary, as we only ask that another construction, of which the language is

equally susceptible, should be adopted, instead of the one sought to be given the law in question.

1 Strob. R. 476.

17 Vermont R. 479.

In this last case the Court held, where the literal construction of a statute would lead to an inequitable restriction, the Court will extend its application to cases within the same equity, though at the expense of *forcing the construction of the words*.

6 Misso. R. 141.

1 Kent Com. 461.

Says Kent, "when the expression in a statute is special or particular, but the reason is general, the expression should be deemed general; *scire leges, non hoc est verba, earum tenere sed vim ac postestatum*, and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction or absurdity." The construction contended for leads to injustice of the worst kind. There is another principle of construction which should apply, it is the equitable construction. Says Darwin, in statutes page 63 (sec. 728), "In law, all cases cannot be foreseen or expressed; "the object of interpreting laws by what is called equity, is to supply as far as possible this deficiency by a recurrence to natural principles of justice." "Thus it is said, statutes which give remedy for wrongs should be taken by equity;" page 67. "Remedial statutes are to be construed largely and beneficially, so as to suppress the mischief and advance the remedy. It is by no means unusual in construing remedial statutes, to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief." But it is said by the Court in *Cook vs. Heald*, "the lien is given by statute, and is in derogation of the common law, and is opposed to common right and should be strictly construed." "The remedy is cumulative to the ordinary remedy given by the common law, and as it is a privilege enjoyed by one class of community above all others, to be available, the party seeking to enforce should bring himself within the terms of the statute." We have sought to show, 1st. That our case is within the true construction of the law. 2ndly. That by the authorities above cited, that the statute instead of being construed strictly is to be construed liberally. The two cases of 2nd. Swan 315. 7 Black. R. 388, are so held under mechanic lien laws of sister states. The other cases cited are strictly in point.

19 Conn. R. 299.

8 Ind. R. 6. 40.

12 Geo. R. 104.

1 Md. Ch.R. 342.

2 N. J., R. 623.

9 Geo. R. 253.

1 Penn. R. 211.

In these remarks of the Judge deciding the case, we humbly submit lies the error, in saying that the statute must be strictly construed. Statutes consists of many parts, a description or specifying of the persons who are entitled to the remedy, and the mode of enforcing the remedy—the former is always to be so construed as to embrace within its provisions the largest number of persons or cases, whatever construction may be given to the latter. Says Dwaris on statutes, page 79, (sec. 754), “it has been already stated, that a statute may be penal “in one part and remedial in another. There is no impropriety, “it remains to be seen, in putting a strict construction on a penal “clause, and a liberal construction on a remedial clause, in the same “act of Parliament. This has been done in the statutes which make “it a felony to burn houses and other property, and gives those who “suffer from felony an action against the hundred.” So in *Short vs. Hubbard*, 2 Bing. R. 354, an act authorizing the Sheriff to grant replevins in certain cases, a part was held remedial and was construed so as to embrace the case under consideration, on the doctrine that a portion of the statute was remedial and should be liberally construed, while the 22d section of the same act was held penal and to be construed strictly. In Dwaris on statutes, page 67, (sec. 734 and 735), it is said, “whatever doubts may be entertained of the propriety of extending the words of statutes by equitable construction, to embrace “other cases, conveyances, times, places, persons and things, besides “those contained and expressly mentioned in the act, there can be no “question that the words of a remedial statute are to be construed “largely and beneficially, so as to suppress the mischief and advance the remedy.” In the case of the *Dean of York vs. Middleborough*, 2 Y. and J. 213, Lord Alexander uses these emphatic words: “It is “no means unusual in construing a statute to extend the enacting “words beyond their natural import and effect, in order to include “cases within the same mischief, where statutes are remedial.” “It “is a mode of construction as familiar to the profession as expounding “a statute by equity.” These are very emphatic words. What did the legislature intend to provide for? Mechanics and material men. Shall it be said that if we contract with a mechanic to build us a house in two years and nine months, and to pay him six months after its completion, that he has a lien; and if we contract with a mechanic to build us a house as speedily as it can be done, and that he is to employ all the men that can be economically employed, and we are

to pay him in six months from the date of the contract, that he has no lien ? It cannot be said the legislature intended any such thing ; it is unjust, unfair, partial, invidious. If such be the words of the statute, which we deny, in the words of Lord Alexander, the "Court should extend them ;" should have recourse to the equity of the statute. On this subject, Dwaris, page 728, says : " In law, all cases cannot be foreseen or expressed ; the object of interpreting laws by what is called equity, is to supply, " as far as possible, this deficiency, by a recurrence to natural principles of justice." In 22 Ohio R. 123, the Ohio Courts gave a liberal construction to the mechanic's lien law, such a construction as would best attain the policy of the act. The statute of Ohio providing for liens against boats and vessels, is held to be a beneficial one, and has been liberally construed by the Courts ; 1 Ohio R. 386 ; 11 Ohio R. 461. Says Reed, Judge, in the last case, " this statute is equitable in its object, and will receive a liberal construction, to carry the design of its enactment into effect." In the case of *Webster vs. Brig Andes*, 18 Ohio R. 202, says Spaulding, Judge, in considering the law creating liens against boats and vessels, " our books of reports teem with adjudications necessarily tending to make the rich richer, but instances are rare where the wants of him who earns his bread by the sweat of his brow are humanely cared for by the law-making power, or where the rights of labor have borne unquestioned competition with privileged capital in the judicial forum. The act which we are considering was intended to secure to honest industry the fruits of its hard earning, against fraud or failure in business of all such as might put it in requisition. It is a statute of so highly a beneficial a character, as to justify a Court in giving to its construction the most liberal intendment to carry out its object." Nor are we entirely without authority in our own state, in *Williams vs. Chapman*, 18 Ill. R. 425, Scates acknowledges that a liberal construction is to be given to mechanic's lien law, " for he says while we will give the act a liberal construction to preserve the rights of mechanics and material men, we are not called upon to destroy all other rights," &c. Thus settling as recently as 1856, that a liberal construction is to be given to the law.

The same case settles conclusively our construction, for says the Court, " it is not the contract which creates the lien under the statute, but it is the use of the material furnished upon the premises, the putting them into the building and attaching them to the freehold, which entitles the parties furnishing, to a lien upon the premises to the extent of their value." So we say, if the work be done within the three years, under a contract, which by its terms does not extend the time for doing the same beyond three years, there is a

lien. Its the doing the work within the time which creates the lien. Why in one case shall the Court say, that it is not the contract which creates the lien, but the doing the work ; and yet in the case at bar say, the doing the work does not create the lien, but the provision of the contract ? So it is held in *Gaty vs. Casey*, 15 Ill. R. 192. "It is the doing the work that creates the lien, not the contract." The lien commences from the time it is done, 11 Ill. 526. 3 Eng. Ark. 425. The case in 15 Ill. R. 191, was decided by Caton, Judge ; and is approved in 17 Ill. R. 425, by my learned opponent, Judge Scates. By these authorities, the doing the work within the three years, must give a lien. In *Warren vs. Harris*, 2 Gilm. R. 307. Where the petition disclosed, there was no time fixed for doing the work, or the payment for the same, and when such was the contract. The mechanic's lien was upheld by Chief Justice Caton, The objection urged by Browning and Bushnell, whose ability none can question, was not that there was no time fixed for doing the work, but the petition "did not show the work done ;" which position Caton sustained, but that it was cured by verdict. This decision was made 1845. The drawer of the present petition had the case of *Warren vs. Harris* before him, when he drew the one in this case, and added what was held to be wanting.

In *Forney vs. Saunders*, 4 Scam. R. 527, decided in 1843, by C. J. Caton, the petition was defective in the same particular, and came up upon demurrer in which a liberal construction was given to the law. Says the Court, "to hold that mechanics who have constructed these improvements, have no lein upon them for labor and materials, would be attributing to the legislature a partiality and injustice which never could have been intended, and entirely at war with the policy indicated by the whole course of legislation on this subject." And in *Kimball vs. Cook*, decided by Caton in determining who were creditors under the statutes *he* adopts a liberal construction. And Young, Judge, 1 Gilm. R. 434, in his dissenting opinion says, "the statute, in my judgment, should receive a liberal construction in favor of mechanics." These authorities show that our mode of construction has received the repeated sanction of our Courts. A very strong case on this subject is *Littlejohn vs. Miliron*, 7 Indiana Reports 126. This was a case to enforce a mechanic's lien ; the defence was, that the work was done under a contract with a married woman ; it was contended that as she could not contract for any purpose, there was no lien. Says the Court, "this statute ought to receive a liberal construction, and not such an one as would put it out of the power of the husband and wife to improve the property of the wife for their joint benefit. If the

wife cannot contract for such a purpose, there is stronger reason than in ordinary cases, why the mechanic should retain a specific lien as a security for the labor bestowed."

This same doctrine of liberal construction of mechanic's lien laws, is adopted in New York, in *Daldson vs. Wood*, 22 Wend. R. 397 ; *Haswell vs. Goodchild*, 12 Wend. R. 373 ; *Taylor vs. Baldwin*, 10 Barb. R. 626 ; in this case, the Court admitted the doctrine of equitable lien.

We close the review of the authorities, by citing the language of the Court in *Buch vs. Brown*, in 2 Howard, Miss. R. 878, in giving a construction to the mechanic's lien law of that state, says the Judge, "It is well urged by the counsel of the appellee, that the claims of the mechanic are favored in law. They are often unlettered men, and Courts will uphold the policy of the Country, in giving these statutes a free interpretation in favor of the laborer. They are made to secure him the reward of his toil, and should not be baffled by any subterfuge."

By a strict construction of the words used in the *proviso*, our construction is the true one. The words are that the time of completing the contract, shall not be *extended*. What is the meaning of the word *extended* ? Webster says, stretched, spread, expanded, enlarged. Then the law will read, expanded or enlarged beyond three years ; that the contract carries it beyond three years ; not that the contract must restrict within three years ; but when the contract expands it beyond. In the absence of either expansion beyond, or restriction within ; or, in case of silence on the part of the contract, if from the nature of the work, doing it within a reasonable time, would be within the three years, it certainly cannot be said to be within the words of the *proviso*. For the contract does not extend or expand the time for doing the work beyond three years.

Our apology for urging this question, is the large amount our clients will lose if the doctrine contended for be sustained, for men who had a competency will lose their all. Because we believe ourselves to be right ; because we know that it will be the pleasure as well as the duty of this Court to modify the decisions they have made, if they are convinced they are in any wise wrong. Because we know, "to err is human, to retract and correct the error, is God-like and divine." And that humanity is never nobler than when reconsidering their positions, they calmly seek to find the right, and finding it, without pride of opinion, or hesitancy, avow it, however much it may conflict with previous decisions or pre-conceived opinions. We ask, only, that the Court would calmly consider the reasons we feebly have pre-

sented for the faith that is within us ; give to the suggestions all the weight they are entitled—and see if such a construction cannot be given to the statute as will save just, meritorious and equitable claims.

This case can be sustained by the verdict according to the ruling of *Warren vs. Harris*. Again, this objection comes to late. The only objecting party to this decree, is the contracting party, Charles B. Phillips. He has answered—in his answer he did not raise the objection, it is raised for the first time in this Court.

SHUMWAY, WAITE & TOWNE,
Attorneys for Plaintiff.

120 70 (33)

Charles B. Phillips

is

A. Street -

Prize for Defense

no error!

Filed May 11, 1860

L. Leland

Clerk

IN THE SUPREME COURT,

Third Grand Division, }
APRIL TERM, A. D. 1860. }

CHARLES B. PHILLIPS,

Et Al.

VS.

A. STONE, ET AL.

ERROR TO

Cook Circuit

COURT.

ABSTRACT OF RECORD.

Rec. 2 Bill states that Phillips being about to erect a building on lots 30 and 31, in block four (4) in Fort Dearborn addition to the city of Chicago, on South Water Street, near the Richmond House—had plans and specifications drawn by an architect or superintendent.

That according to the plans, the building was to have patent rolling shutters.

3 That at that time Wm. B. Olmstead was the architect. That the different parts of
the building were open for bidders, and defendants made proposals, or bid for the
making and setting up of Mellan's Patent Rolling Shutters, according to the plans
in the architect's office, together with castings necessary for the same as shown in the
3 plans at the office of said W. B. Olmstead, for the sum of \$2,950. Payments as fol-
lows : \$2,000 cash when the front is up, without the shutters attached—balance to
3 be paid upon completion of the work according to contract. Contract is made, ex-
hibit A.

That Phillips accepted the bid, and defendants agreed to do the work according to the proposals, and Phillips agreed to pay according to the propositions.

That the plans are in the possession of the architect, and are referred to, and a copy made, exhibit B. All which was to be done to the satisfaction of the architect.

4 That no time was specified for the doing said work by defendants, but was to be done in time for other work on the building.

5 That during the month of October, 1856, defendants set up part of the work, according to the order of the architect, and the work was then ordered to be stopped for the present.

That W. B. Olmstead ceased to be the architect some time previous thereto, and Wm. W. Boyington was appointed the superintendent, and he has superintended the work ever since.

5 That during the month of January last, or about that time, defendants received orders from the superintendent to go on with the work and complete the same.

That the defendants immediately proceeded to complete said work, and on or about the 10th June, 1858, did fully complete the same, in accordance with the plans and specifications, and to the satisfaction of the superintendent. A copy of certificate of that fact is attached and made exhibit C.

6 That by certificate defendants to fully complete the work on their part, were required to furnish a crank, which was immediately done.

That defendants have been ready and willing to perform said work, and have by themselves, or N. S. Bouton, fully performed and completed the same, as proposed, and to the satisfaction of those in charge of the work.

That soon after the contract was made, the firm of Stone, Boomer & Bouton dissolved, and said Bouton undertook the performance of the contract by agreement with Stone, Boomer & Bouton, and hence the certificate runs to said Bouton.

That the sum, with a large arrear of interest thereon, is now fully due and owing defendants, and they have often requested Phillips to pay the same, but he has failed to do so.

7 That defendants did said work and furnished materials at the request of said Phillips, who was the owner of the above lots, and still is.

That on 29th June, 1858, said Phillips made a mortgage on lot 30, block 4, in Fort Dearborn addition to Chicago, to secure Wm. Bowne of city of New York, the sum of \$20,000, payable in five years with 7 per cent.

That he executed another mortgage on the same day to Wm. Bowne, to secure a like sum on lot 31 in same block—five years at 7 per cent.

8 That nothing is due on said mortgages, and the debts are one and the same, but whether anything is due to Wm. Bowne or not, the mortgage is subsequent to defendant's lien for work.

That Charles Linkfield recovered a judgment on 25th March, 1858, against said Phillips for \$370 and costs, but defendants aver that said judgment is satisfied, but that it is also subsequent to their lien.

Pray that Phillips, Bowne & Linkfield may be made defendants, and that amount due defendants may be ascertained and decree entered for same with interest, and that the same may be adjudged to be a prior and first lien on said lots, and that the same may be sold to pay the same.

PROPOSALS.

10 Defendant's proposal is as follows :

" We hereby propose for the making and setting up of Mellan's Patent Rolling Shutters for the Phillips' buildings, as per plans shown in your office, together with castings necessary for same, as shown in the plans at your office, for the sum of \$2,950. Payment \$2,000 cash when the front is up, without the shutters attached, balance on completion of the work according to contract."

CERTIFICATE.

" MR. N. S. BOUTON,

DEAR SIR :

11 I hereby certify that I have examined the designs, details and drawings as made by Olmstead and Nicholson, architects for Mr. C. B. Phillips' Iron Store, front on South Water Street, near the Richmond House. I have also examined the work as put up by you, and consider it as completed according to the designs and draw-

(4)

ings, and is now in working order. You will please furnish the cranks for the turning up the iron shutters and leave them at my office, subject to Mr. Phillips' order.

WM. W. BOYINGTON, *Superintendent.*

ANSWER OF BOWNE.

17 That he knows nothing of the matters stated, except so far as relates to the mortgages, and leaves defendants to prove the same.

Admits the mortgage of lot 30 at the time, in the manner and for the amount stated, running five years and at 7 per cent.

18 Also another mortgage of lot 31 same block, same date, amount and interest, and both due five years after date, and dated 29th June, 1858.

Denies that the indebtedness in both, is one and the same thing, but that they were given to secure \$40,000 owing by Phillips to this respondent, no part of which has been paid.

19 Admits that nothing is now due, the first instalment of interest being due six months from the date of the mortgages, and the mortgages are subsisting valid liens, and without notice of other claims or liens, after a careful search of the records of the county, and that he took them under the full belief that he acquired a valid first lien.

Denies that his mortgages are subsequent liens to defendants.

And he insists that by lapse of time and by waiver, defendants' lien, if they ever had any, has been lost, and if said lots are sold, that it be sold subject to his mortgages.

20 Rule to answer by 21st December, 1858.

ANSWER OF LINKFIELD.

22 Says that he has no interest whatever in the premises, and that the said judgment in his favor against Phillips is satisfied.

REPLICATION

23 To Bowne's answer was made in the usual manner, and also to Linkfield's
answer.

24 Defendants made motion to strike Phillips' answer from the files, because it was
filed after its default entered, without first setting aside his default.

25 Which motion was sustained for the reason assigned.

ANSWER OF PHILLIPS.

26 And afterwards on the 24th day of June, 1859, C. B. Phillips by consent of
petitioner's counsel, filed his answer denying that work was completed, and alleging
that it was improperly and defectively performed, and that Phillips had thereby
sustained damage.

REPLICATIONS TO PHILLIPS' ANSWER.

Replication to the answer of C. B. Phillips as follows :

"And now comes the said petitioners and for replication to the answer of
Charles B. Phillips, say that all their petition is true, and all the several matters
and things in the answer contrary thereto are untrue, and this they are ready to
verify ; wherefore they pray, &c."

REFERENCE TO MASTER.

26, 27 Referred to the Master to take proofs.

27 & 29 Petition amended by making R. E. & J. V. Moss, parties defendants below,
30 who waive process, enter their appearance, and consent to refer to master to take
proof.

28 Amended petition states that if the Mosses have any lien for work, it is subse-
quent to defendants, and pray that it be postponed, &c.

MASTER'S REPORT.

31 Afterwards on 13th July, 1859, the master made his report in substance, that
he did on the 12th July, 1859, proceed to take the proof as follows :

E. W. JONES

32 Stated that he is a book-keeper, has resided five and a half years in this city—
knows defendants and Phillips—knows premises. In summer of 1856, Phillips
commenced getting iron work of defendants who were iron founders in the city.
On the 11th June, 1856, defendants submitted written propositions to Phillips
through his architect, W. B. Olmstead, to make, furnish and set up for the build-
ing on the premises, Mellan's Patent Rolling Shutters as per plan. I find a copy
of the proposition in the letter book of defendants, and here produce the same as
part of my deposition ; it is set out on page 10 of record and heretofore copied as an
exhibit to petition, and again on page 32-33 of the record. I am acquainted with
the hand writing of Wm. W. Boyington. The certificate of acceptance of the work,
dated June 10, 1858, is his, it is set out on pages 10 and 11—35 and 36 of record
and transcribed into the abstract.

D. SHEPHERD

34 Testified that he is a clerk of defendants' attorneys. Some two or three weeks
since had copies of notices served by Mr. Stevenson, another clerk, upon Phillips'
attorney and Bowne's attorney.

L. BRIDGES

34 Testified that he was an architect in office of Boyington & Wheelock in 1857.
Knows Boyington's hand writing. Certificate dated March 31 st, 1857, is his and
Wheelock's, written by Boyington. Knows of defendants doing the iron work on
Phillips' building, including the iron shutters, and furnished the cranks for the
shutters, delivered at Boyington's office.

35 The written proposals and certificate hereinbefore set forth, were offered in evi-
dence, also the last certificate of Boyington & Wheelock.

The latter is as follows :

\$2,000

Chicago, March 31st, 1857.

MR. C. B. PHILLIPS :

This is to certify that there is due to N. S. Bouton, the sum of two thou-

(7)

sand dollars for labour and materials furnished your buildings on South Water Street, as per contract, payable at sight at Chicago.

Yours respectfully,

BOYINGTON & WHEELLOCK.

COPIES OF NOTICES.

36 Plaintiffs will produce on trial a letter written by Stone, Boomer & Bouton to
Olmstead, dated June 11th 1856 ; also another from same to same, dated June 16th,
1856 ; also another from same to same and Phillips, dated June 28th, 1856 ; also
37 the original bids made by defendants for the work sued for, about the date of the
three letters above, addressed to either Phillips or Olmstead, or evidence of their
respective contents will be offered. Also, all written contracts, between defendants
and Phillips, relating to the work sued for, and the materials to be furnished by
them ; and, also, the specifications, drawings and plans of the building referred to,
38 or they will give like evidence of their contents. They also produced the deposition
of Wm. B. Olmstead, filed in this cause, July 2, 1859.

REPORT

Concludes that the following facts appear from the evidence :

38 That defendants made and set up the iron shutters for Phillips in the buildings
on the premises, at the time and in the manner set forth in the petition, and accord-
ing to the propositions and contract therein set forth.

That on the 31st of March, 1857, there became due to defendants the sum of
\$2000, according to the terms and conditions of the said proposition and contract,
and the balance of \$950, on the 10th of June, 1858.

MASTER'S OPINION,

40 Therefore, is, that there is due to defendants for said work at the date of this
report, principal and interest, the sum following :

Amount due, March 31, 1857,	- . .	\$2000 00
Interest, two years, three months and twelve days,		274 00
Amount balance, June 10, 1858,	- - -	950 00
Interest, one year, one month and two days,	- -	62 06
1859. July 2. Amount due, date of Report,	- -	——\$3,286 06

From the evidence I am therefore of opinion that the prayer of petitioners should be granted—that a judgement or decree should be entered in their favor for the above sum of \$3,286.06.

REPORT AND OPINION.

40 That the lien of petitioners as prayed should be decreed and established, and
39 that an order for the sale of the premises and all the right, title and interest of
 Phillips therein be made, &c.

DECREE.

40 & 39 On 13th July, 1859, cause came on to be heard on a motion by plaintiffs'
39 counsel for confirmation of the report of the master, and upon the petition and
 answers of Phillips and Bowne, and the replications, and the master's report, and
 after argument of counsel it was ordered that the report be confirmed. The Court
 also found that Phillips is indebted to defendants on a mechanic's lien, as in said
 petition alleged, in the sum of \$3,236.06, and that the same is a lien on the premises
 to-wit: lots 30 and 31, in Fort Dearborn addition to the city of Chicago, situated
 on Water street near the so-called Richmond House.

41 The Court further find that the lien is prior to that of Bowne above named—
 that the judgment in favor of Linkfield is paid and that the said premises ought to
 be sold to satisfy the petitioners' lien. Therefore, ordered, that Phillips pay into
 Court for petitioners, within five days of the rising of the Court, the sum of
 \$3,236.06 with the costs, and on default, L. C. P. Freer, master in chancery of this
 Court, proceed to sell said premises according to law, and out of the proceeds pay
 1st, the costs of sale; 2nd, the costs of Court; 3d, the amount due petitioners with
 interest thereon from the date of this decree, and render the surplus into Court to
 be distributed as the Court may hereafter direct.

PETITION FOR RE-HEARING.

42 Afterwards, on 26th August, 1859, Phillips filed his petition as follows :

42 That he is much agrieved by the decretal order of 13th July, 1859, ordering
him to pay to defendants \$3,286.06, which includes the sum of \$336.06 interest.
42 He submits that so much of said decree is erroneous, by the laws of this State, as
allows interest on said sums in the master's report, because the contract was made
in 1856 and was governed by the interest laws of 1845 and not those of 1857. He
further submits that said decree should not have been made because there was no
allegation in defendant's petition and no evidence that the work in question was
43 done to the satisfaction of the superintendent. That he has an off-set of payments
to the amount of \$1,257.62 to the claim, and that had said order not been made
without notice to him or his solicitors, he would have established such payment.
That said order has not yet been enrolled; prays a re-hearing, all further proceed-
ings stayed by order of Judge Norton until further order of Court.

44 Afterwards, on 21st September, 1859, Phillips' motion for a re-hearing was
overruled.

ASSIGNMENT OF ERRORS.

45 1. The petition of defendants does not contain facts and allegations sufficient
to establish and maintain a lien on the premises; it does not appear by the petition
that the work was done and materials furnished under any contract specifying the
time within which the same were to be done and furnished.

2. The Court erred in allowing interest upon the amount claimed, when there
was no allegation in the petition, and no proof that payment was withheld by an
unreasonable and vexatious delay of payment.

3. Judgment should have been rendered for plaintiffs in error

POINTS FOR PLAINTIFF IN ERROR.

I.

The petition in this case is wholly insufficient. It fails to aver that any time was agreed upon within which the materials were to be furnished or the work done, or when the money was to be paid.

Cook vs. Refinot, 21st Ill. 437, and cases cited.

II.

Neither does the proof show a case which entitled the petition to a lien under the statute.

III.

The Court erred in allowing interest on the amount claimed. The case, as to interest, falls under the laws of 1845.

SCATES, McALLISTER & JEWETT,

Attorneys for Plaintiff in Error.

Be it remembered that heretofore
to-wit; on the 17th day of August, ^{at 1858} there
was filed in the Office of the Clerk of the
Court aforesaid a certain Precipue
Affidavit of non residence and Petition,
which are in words & figures following
to-wit;

State of Illinois } Circuit Court of
County of Cook } ss Cook County
October Term at 1858

Andros B Stone
Lucius B Boomer
Nathaniel S Bouton
who sue for the use of
Nathaniel S Bouton

Petition for
Mechanics Lien

(1)
vs
Charles B Phillips, William
Bowne & Charles S Smithfield

The Clerk of said Court will issue a
Summons in the above cause, directed to
the Sheriff of Cook County in a Petition
for Mechanics Lien, returnable at the
October Term of said Court, A.D. 1858

Shumway, Hyde & Torne
Plaintiffs Attorneys
D. Sprague Church Esq. Clerk

Chicago Aug. 17th 1858

The State of Illinois } Circuit Court within
Cook County ID } for said County,

Andrew B Stone, Lucius
B Boomer, Nathaniel S.
Bouton, who sue for the
use of Nathaniel S Bouton

vs
Charles B Phillips, William
Borne & Charles S Linkfield

Nathaniel S

(2) Bouton being duly sworn says that he is one
of the above named petitioners, that said
Charles Borne is a non resident of the
State of Illinois; that he resides out of
said State of Illinois, process cannot
be served upon him

N S Bouton

Sworn to & Subscribed before

me this 17th day of August A D 1858

Jas S Church

CLK

To the Honorable George Manierre Judge
of the Cook County Circuit Court, within
for the County of Cook and State of Illinois
Your Petitioners Andrew B Stone, Lucius
B Boomer & Nathaniel S Bouton late

Partners in trade under the name & style
of Stone, Boomer & Bontow who sue for
the use of Nathaniel S Bontow refer me
unto your Honor, that one Charles B
Phillips being about to rent a building
on the following described property, then &
now owned by said Charles B Phillips
situate in the City of Chicago County
of Cook and State of Illinois; to wit;
Lots Thirty (30) Thirty one (31) in Block
Four in Port Dearborn Addition to the
City of Chicago Cook County Illinois and
which property is situated on South
Water Street in the City of Chicago near
the so called Richards House
had plans and specifications of the same
drawn by an Architect or Superintendent

That said buildings were to have
according to the plan of the Architect
Patent Rolling Shutters; that at that time
William B Elmsted was the Architect;
that the different part of said buildings
were open for bidders and that your
petitioners made proposals or bids for the
making & setting up of Miltams Patent
Rolling Shutters for said buildings
according to the plans in the Architect
Office, together with the Cuttings
necessary for the same as shown in

(4)

the plans, at the office of said Dr B
Clintons for the sum of twenty nine
hundred & fifty dollars payments on the
same to be made as follows - two
thousand dollars Cash when the front
is up, without the Shutters attached,
balance to be paid upon completion of
the work according to contract; That
a copy of said bid is hereto attached and
marked Exhibit "A" & for greater certaint
ty made part of this Petition; That
said bid was accepted by said Phillips
and your petitioners agreed to do the
work according to said proposal &
said Charles B Phillips, agreed & under
took & promised to pay your Petitioners
according to said proposition; That said
plans are in the possession of the Archi
tect of said building - and to which
they refer for greater certainty when pro
duced, that they hereto attach a sub
stantial copy of said plans so far as
said work was to be done by your pe
titioners as aforesaid And which is
marked Exhibit "B" said work was
to be done to the satisfaction of the Ar
chitect, or Superintendent of said work
That no time was specified for the
doing of said work by your petitioners

but the same was to be done in time for
 the other works of the building; That during
 the month of October AD 1856, your
 petitioner set up part of the work
 according to the order of the then Archi-
 tect, the work was then ordered to be
 stopped for the present, That some time
 previous thereto William B Olmsted ceased
 to be the Architect in charge of the work
 and William St Payington was appointed in
 his stead & he has Superintended the
 work from that time till the present
 That during the month of January
 last or about that time your petitioners
 received orders from the Superintendent
 of said work to go on with said work
 and complete the same - that they
 immediately proceeded to complete said
 work, and on or about the tenth day
 of June AD 1858 did fully complete
 said work in accordance with the
 plans & specifications, and to the satisfaction
 of the Superintendent in charge of
 said work; A copy of his certificate
 of that fact is hereto attached and
 made part of this Petition and referred
 to for greater certainty & marked "C"
 That by said Certificate your petitioners
 to fully complete said work on their part

(5)

was required to finish a crank
which they did at once, That
said petitioners have been made
willing to perform said work
and have by themselves or Nathaniel
& Bouton fully performed and
completed said work as proposed
and to the satisfaction of those in
charge of said work. That soon
after the said Contract was made
the firm of Stone, Bormer & Bouton
dissolved and said Nathaniel &
Bouton undertook the performance
of said Contract by agreement with
Stone, Bormer & Bouton and hence
the Certificate runs to said Bouton

(6) And your petitioners allege that
said sum with a large arrear of
interest thereon is now fully due
owing to your petitioners; and that
they have often requested the said
Phillips to pay the same to your Pe-
titioners but although often requested
do to do, That by the Statute in such
cases made and provided they are
entitled to interest on their claim

That your petitioners did said
work and furnished said materials at

the request of said Charles B Phillips
who was the owner of said above
described property and is now the
owner thereof. And your petitioners
further shews unto your Honor that
on the 29th day of June A.D. 1838
said Charles B Phillips made & executed
a Mortgage of Lot Thirty in Block
Four N in Port Dearborn Addition
to Chicago to secure to One William
Browne of the City of New York the
sum of \$20,000 payable to said
Browne or order in five years
after the date thereof with interest
at 7% And on the same day execu-
ted a Mortgage to said William
Browne to secure a like sum of
\$20,000 on Lot 31 Block 4 in
Port Dearborn Addition to Chicago
payable to the order of said Browne
five years after the date thereof,
with seven per centum interest per
annum. That they are informed & believe
& so charge the fact to be that nothing
is due on said Mortgages; that the
pretended indebtedness secured by
both Mortgages is one & the same;
but they are informed & so charge the
fact to be that, whether anything is

due on said mortgages to William Bown the same is lien subsequent to that of your petitioners & is to be deferred to theirs

(8) Your Petitioners further allege & state, that one Charles G Luskfield recovered a Judgment on the twenty fifth day of March A.D. 1858 against said Charles B Phillips for \$370 dollars besides costs in the Cook County Circuit Court besides costs of suit; but your petitioners are informed & believe & so charge the fact to be that said judgment is satisfied; but whether satisfied or not the same is to be deferred to lien of your petitioner your petitioners having priority in point of lien over the said Charles G Luskfield

Your petitioners therefore pray that the said Charles B Phillips Charles G Luskfield and William Bown may be made parties defendant to this their petition, and that they may be summoned in due form of law, by summons issuing out of and under the seal of this Honorable Court, returnable to the next term of this Honorable

(9)

Court, at the time and place of holding the same Summoning them to be and Appear and answer this your petitioners petition And Each and Every of the allegations in the same Contained and that the Amount due to your petitioners may be ascertained with the interest thereon, and that a decree or judgment may be Entered in favor of your petitioners for the Amount due to them as aforesaid with the interest against said Lots above described; And that the same may be adjudged and decreed to be a prior or first lien on said Lots; And that the same may be decreed to be sold, or so much thereof as may be necessary the Amount so found due to your petitioners And the proceeds, Applied to that purpose according to the Statute in such Cases made & provided, with Costs; And that they may have such other and further relief as may be equitable in the premises or which may be according to the provisions of the Statute in such Cases, made and provided.

Shumway, Staite & Downe
Petitioners Attys

Draft of Building

Chicago June 11, 1856

W B Alvord Esq

Chicago

Dr Sir - We hereby
propose for the making & setting up of
Metlams Patent Rolling Shutter for
the Phillips Buildings as per plans
shown in your office together with cast-
ings necessary for same as shown in
the Plans at your office for the sum of
Twenty Nine hundred & fifty dollars.

Payments Two thousand dollars cash
when the front is up without the Shutter
attached, balance on Completion of the
work according to Contract

Respy Yours

(Signed) Stone Boomer & Bouton

Two Copy

Attest E. M. Jones

Chicago June 10th 1858

Mr W S Bouton

Dear Sir

I hereby certify
that I have examined the designs and

(10)

Details drawings as made by Chute & Nicholson Architects for Mr C B Phillips Iron Store front on South Water Street near the Richmond House. I have also Examined the Work as put up by you and consider it as Completed according to the designs and drawings and is now in Working order.

You will please furnish two Cranks for the turning up the Iron Shutters and leave them at my Office subject to Mr Phillips orders

(Signed) J. W. Bayington
Superintendent

(11)

And after words, to wit: on the day and year last aforesaid there was issued out of the Office and under the Seal of said Court the Peoples writ of Summons directed to the Sheriff of Cook County to Execute & clothe in words & figures following to wit:

State of Illinois }
County of Cook }

The People of the State of Illinois
to the Sheriff of said County - Greeting;
We Command you that you Summon
Charles B Phillips & William Brown

And Charles G. Springfield if they shall
be found in your County, personally
to be and appear before the Circuit
Court of Cook County on the first day
of the next term thereof, to be holden
at the Court House in Chicago in
said County, on the second Monday
of October next to answer unto
Andrew B. Stone, Lucius B. Brown
Nathaniel S. Bouton, who sue for the
use of Nathaniel S. Bouton in their
Petition for a Mechanics Lien, this day
filed in said Court. And have given
then and there this writ with an
Endorsement thereon, in what manner
you shall have executed the same

(12)
Witness William S. Church, Clerk
of said Court and the Seal thereof
at Chicago aforesaid this
Seventeenth day of August
A.D. 1856

Wm S Church
Clerk

And afterwards to wit on the 28th
day of August in the year aforesaid
said writ was returned into the Office
of the Clerk of the Court aforesaid
by said Sheriff Endorsed as follows
to wit:

4

The Sheriff will return this Sum-
mons without service
Aug 28/58 Humway State & Torone
for Peff

I return the within Summons without
Service by order of Plaintiffs Atty &
the 26th day of August 1858
Dues 1 Return \$0.10

John S. Wilson Sheriff
By Seth Daylone Deputy

(131)
And afterwards to wit on the
day and year last aforesaid there
was issued out of the Office and
under the Seal of said Court, the Pro-
cess Alias Writ of Summons, directed
to the Sheriff of Cook County to
Execute & clothed in the words & fig-
ures following, to wit:

State of Illinois
County of Cook

The People of the State of Illinois
to the Sheriff of said County Greeting:
We Command you as we have before
that you Summon Charles P. Phillips
William Borne and Charles L. Smith

if they shall be found in your County
personally to be and appear before
the Circuit Court of Cook County on the
first day of the next term thereof, to be
holden at the Court House, in Chicago
in said County, on the second Monday
of October next to answer unto Ambrose
B Stone, James B Boomer Nathaniel
S Borton, in their petition for a Mechan-
ics Lien on file in said Court

And have you then and there this
with with an Endorsement thereon in
what manner you shall have Executed
the same

(14)
Witness William S Church
Clerk of said Court and the Seal
thereof at Chicago aforesaid this
Twenty Eighth day of August
1858
Wm S Church Clerk

And afterwards on the day and year
last aforesaid said Plaintiffs by
their said Attorneys filed in the
Office of the Clerk of said Court
an Affidavit of the non residence of
William Borne one of the Defendants
in said cause which is in the

words & figures following to-wit:

The State of Illinois } ss Circuit Court
Cook County, ss, } within & for said County

Adros B Stone
Lucius B Boomer
Nathaniel S Bouton
who sue for the use of
Nathaniel S Bouton

vs
Charles B Phillips
William Boone ^{and}
Charles S Smithfield

(15)

Nathaniel S Bouton being duly
sworn says that he is one of the above
named petitioners that said William
Boone is a non resident of the State
of Illinois, that he resides out of the
State of Illinois & process cannot be
served upon him

Nathaniel S Bouton

Subscribed and sworn to before me August
28th 1858

Am L Church
Clerk

And afterwards to wit; At the October
Term of said Court to wit; on the
twelfth day of October A.D. 1858. the
following among other proceedings in said
Court were had and Entered of record
in said Cause to wit;

Andreas B Stone, Lucius
B Brown & Nathaniel S Bouton
who sue for the use of Nathaniel
S Bouton

Pet for
Mechanics Lien

vs
Charles B Phillips &
William Borona and
Charles G Luskfield

(16)

14524

On Motion of said Defendants it is
ordered that the rule to plead in this case
be extended fifteen days

And afterwards, to wit: on the twenty Second day
of October in the year last aforesaid William Borne
by E B McCagg his Solicitor filed his answer
to the Petition of said plaintiffs which is in the words
and figures following, to wit:

Cook County Circuit Court

The several answers of William Borne to
the Petition for Mechanics Lien filed in this court
by Andrus B Stone, Lucius B. Bromer and Nathaniel
S Borton ^{who sues for the use of Nathaniel S Borton} against Charles B Phillips this
Respondent William Borne and Charles G
Linnfield.

(177)
This respondent answering says that as
to the several matters and things stated in said
Petition except so far as the same related to this
respondent and to the said Mortgages made by said
Phillips to him on said Lots thirty (30) and thirty
one (31) in Block four (4) in Fort Dearborn addi-
tion to Chicago this respondent is ignorant and
can neither admit nor deny the same but leaves the
said plaintiffs to prove the same as they shall be
advised.

And this defendant further answering admits
that on or about the twenty ninth day of June A.D.
1858 said Charles B Phillips made and executed
a mortgage of Lot thirty (30) in Block Four (4)
in Fort Dearborn addition to Chicago to this defen-
dant to secure the sum of twenty thousand dollars
payable to this defendant in five years after the

date thereof with interest at seven per cent per annum
and that on the same day said Phillips executed to
this defendant another mortgage to secure the like
sum of twenty thousand dollars on lot thirty one
(31) in Block Four (4) East Dearborn addition
to Chicago which said sum last mentioned was
and is made payable five years after the date of
said mortgage with interest at seven per cent per
annum. But this defendant denies as is alleg-
-ed in said Petition that the indebtedness secured
by said two mortgages is one and the same thing,
and states and claims that said two mortgages
were given by said Phillips to this defendant to
secure the payment of forty thousand dollars ow-
-ing by said Phillips to this defendant, which said
sum is still owing from him said Phillips to
this defendant no part of the same having been
paid. And this defendant admits that nothing is
now due on said mortgages or either of them for the
reason that by the terms thereof said principal sums
secured thereby do not become due until five years
after the date of said mortgages respectively and that
the first installment of interest does not become due
until six months after the date thereof but claims
that said mortgages and each of them are valid
and bona fide liens on and against said premises
and property described in said mortgages respectively
taken by said defendant to secure a legal and

(18)

valid indebtedness of said Phillips to him, without notice or intimation of the said alledged lien or claim of said plaintiffs, after a careful search of the records of the County of Cook for liens against said premises property, or any part thereof, and with the full impression and belief on the part of this defendant that in taking the same he acquired a valid and first lien on and to said property.

And this defendant further answering denies that his said mortgages are a lien on said property subsequent to the lien of the said mortgages of this defendant and claims and insists that by lapse of time, and by default in prosecuting the same, as well as by reason of a waiver of the same the said lien of said plaintiff if any such ever existed is lost and gone or if not gone is deferred and made subsequent to that of this defendant under his said mortgages, and this defendant claims that said property or any part thereof if sold in this proceeding must be sold subject to the said lien of the said mortgage or mortgages of this defendant covering the same

E. B. McLeagg Atty for
Deft Wm Bowne

And afterwards to wit: at the October Term of said Court to wit: on the 25th day of October A.D. 1838, the following among other proceedings in said Court were had and entered of record in said cause. to wit:

Andrew B Stone, Lucius B.
Boomernd Nathaniel S Bouton
who sues for the use of N. S Bouton

14524

vs

Charles B Phillips, W^m Bourne
And Chas G Linkfield

} Pet for Mechanics Lien

On motion of said
defendants it is ordered that the rule to plead be
further extended to 15th day of November next.

And afterwards, to wit: at the November term of
said Court, to wit: on the Sixteenth day of December
A D 1858 the following among other proceedings in
said Court, were had and entered of record in said
cause, to wit:

Andreas B Stone Lucius B.
Boomernd Nathaniel S Bouton
who sues for the use of Nathaniel S Bouton

(20)

14524

vs

Charles B Phillips, William
Bournend Charles G. Linkfield

} Petition for
Mechanics Lien

On motion of
Shumway, Waitend Towne of counsel for said plain-
tiffs it is ordered that the Sheriff have leave to amend
his return on the summons issued herein against the
said defendants. And it is further ordered that said
defendants be and they are hereby ruled to answer
said Petition by the 21st Instant.

And afterward, to wit: on the same day and year
last aforesaid, said writ was returned into the court
aforesaid by said Sheriff with the following endorse-
ments, to wit:

I hereby deputize and appoint C. S.
Squires my Special Deputy to serve the within summons
Oct 1st 1858, John L. Wilson Sheriff

Served by reading to Mrs C. B Phillips and
delivering @ copy of this writ to her the 2nd day
of October 1858 Fees 1 service 30, 1 copy 50, 7 miles 35.
1 Return 10 = \$1.45 Pd by Clk. Atty. John L. Wilson
Sheriff By C. S. Squires Special Deputy,

The State of Illinois
Cook County Es.

(21) The within writ served on
the 1st day of October A.D. 1858 by leaving a copy
of the same at the usual place of abode of the de-
fendant Charles B Phillips with Mrs C. B. Phil-
lips wife of the defendant Phillips she being a white
person of the family of the said Charles B Phillips
and of the age of ten years and upwards and
informing her of the contents thereof, William
Boone & Charles G. Linkfield not found
John L. Wilson Sheriff by C. S. Squires Special Deputy,
The State of Illinois

Cook County Es.

C. S. Squires being duly sworn
says that he is the Special Deputy who served the
within writ that the above return is true,

Sworn to & Subscribed the W & S Squires
16th day of December A D 1838.
W^m L Church ckr

And afterwards to wit on the twenty Eighth day
of May in the year last aforesaid Charles G
Linkfield one of the defendants in said cause filed
his answer to said the Plaintiffs said Petition
which is in the words and figures following, to wit:

The State of Illinois
Cook County ss.
A B Stone Etal

vs
(In Chancery, Circuit
Court Cook County Illinois)
Charles B Phillips Etal
Answer of Charles G
Linkfield to the Petition for a mechanics lien
filed against him and others in the above entitle
-ed Court by A B Stone Etal.

(22)
(99)
And now comes the said Charles G Linkfield
and saving and reserving to himself all & all man-
-ner of exception to said Bill and the many
and manifold errors and imperfections therein
contained answering says that he has no interest
whatever in the premises described in said Petit-
-ion and that the judgment in his favor against
said Phillips therein referred to, is fully satisfied
and paid, and he prays to be hence dismissed
with his costs, &c

W G Linkfield

And afterwards, to wit: on the thirty first day
of May in the year last aforesaid said Plaintiff
by Shumway, Waite and Dorne their Attorneys, ^{filed} their
Replication to the answer of William Borne who
is in the words and figures following, to wit:
State of Illinois Circuit Court within 2d
Cook County Es for said County,
Andreas B Stone Etal

^{vs}
Charles B Phillips Etal

(23) And now comes the
Petitioners and for replication to the answer of
said William Borne says that all the several
matters and things in said Petition contained
are true, and every matter and thing in said
answer of William Borne contained which are
contrary thereto are false and untrue and that
these affiants will establish &c &c

By Shumway, Waite & Dorne
Plaintiffs Attys.

And afterwards, to wit: on the some day and
year last aforesaid said Plaintiffs by their afore-
said Attorneys filed their replication to the answer
of Charles B Sinkfield, which is in the words
and figures following, to wit:

The State of Illinois
Cook County Es Petition for Mechanics Lien
Andreas B Stone Etal vs Replication
^{vs}
Charles B Phillips Etal

And now comes the Petitioners
and for replication to the answer of C. G. Linkfield
says that that all the several matters and things in
said Petition contained are true, and all the sever-
al matters and things in the answer of the said
C. G. Linkfield contrary thereto are untrue and
this they are ready to prove as the Court may direct
&c

Shumway, Waite & Stone

Atty for the Plaintiffs

And afterwards, to wit: on the Second day of
June A D 1839 said plaintiffs by their said
Attorneys filed their motion to strike the answer of
Charles B Phillips from the files, which motion
is in the words and figures following, to wit:

(24)
Andreas B Stone Etal Circuit Court of Cook
County, Illinois
Charles B Phillips Etal

59
The Petitioners come and
move to strike the answer of the defendant from
the files, for the following reasons. It was filed
after the default of said Phillips had been entered
without setting aside the default.

By Shumway, Waite & Stone
Petitioners Atty,

And afterwards, to wit: at the June term of said
Court, to wit: on the twenty third day of June A
D 1839 the following among other proceedings in
said Court were had and entered of record in said
Cause, to wit:

Andreas B Stone, Lucius
B. Boomer, Nathaniel S
Bouton who sue for the use
of Nathaniel S Bouton.

14524

vs

Mechanics Lien

Charles B Phillips William
Bowen, Charles S Linfield

(25)

This day comes the said
plaintiffs by Shumway, Haite and Stone their Attor-
neys and on their motion, it is ordered that the answer
of the said defendant filed herein be and the same
heretby is stricken from the files of this cause upon
the ground that the same was filed after the default
of the said defendants was taken and entered of
record, and that the same was filed without
leave of the court.

And afterwards, to wit: on the twenty fourth day
of June A.D. 1859 said plaintiffs by their said
attorneys filed in said court their replication to the
answer of Charles B Phillips one of the defendants
in said cause; which is in the words and figures
following, to wit:

The State of Illinois

Cook County ss.

Andreas B Stone Etal vs &c

Charles B Phillips Etal

Circuit Court
of Cook County

And now comes the

said Petitioners and for replication to the answer of
Charles B Phillips say that all their
Petition is true and all the several matters and
things in the answer Contrary thereto are untrue
and this they are ready to verify. wherefore they
pray &c By Shumway, Waite & Stone
Atty for Petitioners

And afterwards to wit: at the term last aforesaid
to wit: on the twenty fourth day of June in the
year last aforesaid the following, among other
proceedings in said court, were had and entered
of record in said Cause, to wit:

Andreas B Stone Lucius B.
Boomer and Nathaniel S Bouton who
sue for the use of Nathaniel S Bouton

vs

Charles B Phillips William
Borome and Charles G Smithfield

Mechanics Lien

This day again
come the said plaintiffs by Shumway, Waite & Stone
their attorneys and the said defendant by

their attorneys also come and by oral concern
of parties now given in open court it is ordered
that the said defendant Charles B Phillips
have leave to refile his answer herein. Which
is accordingly done, and thereupon by the further
agreement of said parties it is ordered that this Cause

(26)

14524

be referred to L H Paine Dees Master in Chancery of Cook County to take proofs thereon and make report of the same to this Court, with all convenient speed.

And afterwards to wit: at the term last aforesaid to wit: on the twenty fifth day of June in the year last aforesaid, the following, among other proceedings in said Court were had and entered of record in said cause to wit:

(27) Andreas B Stone Lucius B
Bromer & Nathaniel S Bouton
who sues for the use of Nathaniel S Bouton

14524

Charles B Phillips William
Bromer & Charles G Linfield

Mechanics Lien

This day again come the said plaintiffs by Shumway, Thayer & Jones their attorneys, and on their motion it is ordered that the said plaintiffs have leave to amend their Petition filed herein by making Robert E Moss and John V Moss parties defendants thereto which is accordingly done. Whereupon comes the said defendants Robert E Moss and John V Moss and enter their appearance to this action and waive the issuing and service of process of summons upon them, And thereupon by agreement of said parties, it is ordered that said Petition be and the same is referred to L H

Paine Street Esq Master in Chancery of Cook
County to take proofs thereon, and report the
same to this Court with all convenient speed.

And afterwards to wit: on the same day and year
last aforesaid said plaintiffs by their aforesaid
Attorneys filed their amended Petition in said
cause which is in the words and figures fol-
lowing, to wit:

Advers B Stone Et al vs

Charles B Phillips Et al

The State of Illinois

Cook County Esq.

Circuit Court within

and for said County

(28)
19
011
And now comes the Petition
and amend their Petition by inserting in the
original Petition after the words "owner
thereof" marked in the margin with the
letter "A" That Robert E Moe and John D
Moe partners under the style of Moe & Bro
on the first day of November A D 1838 filed
in this Honorable Court their Petition for a
Mechanics Lien for work alleged to be done
on the premises against Charles B Phillips
and others but the amount of the work if
any done by them, whether they have a lien
or not they do not know but they allege

4
that if the Petitioners in said case have
done any work or have any lien it is
to be deferred to that of your Petitioners. Your
Petitioners would also insert that after the
prayer for process in the original Petition
the names of Robert E Moss and John
D Moss and the prayer that they may
be made party defendants to the amended
Petition and after the prayer for a Decree
that their said Messrs Brothers rights of
lien if any may be forced and their lien
deferred to your Petitioners

(29)
By Shumway Waiter Dorr
Petitioners Attys.

And afterwards to wit: on the same day and
year last aforesaid there was filed in the court
aforesaid the appearance of Messrs Bros by
Cornell Waite of Jameson their attorney, which
is in the words and figures following, to wit:
A B Stone Etal were

vs
Charles B Phillips Etal E Mechanics Lien Court
County Circuit Court.

We hereby enter our
appearance in the above entitled case suit and
agree to the reference to the master in chancery
in the above entitled suit and agree that the
Petitioners may go on and take testimony
without giving us any notice of the same
Chicago June 24. 1834. It being expressly

understood and agreed that this shall not operate
to give said Complainants or Petitioners any
priority or advantage over said Moss & Bro
in regard to the said property or to the collection
of the demands of said Stone Etal and
Moss & Bro against said Phillips or
his property

Cornell, Waite & Jameson

Attys for Moss & Bro

Not meaning to effect the right to sell
said property under the Decree as soon as
obtained, but such sale not to prejudice
Moss & Bro, Cornell, Waite & Jameson

(30)

And afterwards, to-wit: on the 16th day
of July A.D. 1859. there was filed in the Court
aforesaid, the Master's report in said Cause to-
gether with the Exhibits therein referred to which
said report and Exhibits are in the words and
figures following, to-wit:

State of Illinois	}	ss	Master Report
Book County			
			Circuit Court for the Co
			in Chancery

Andrew B Stone Trial
Defts

Charles B Phillips Trial
Defts

Pet for Mchd Lien

Do the Hon George

Meaneine. Presiding Judge &c, in pursuance
of a decretal order entered in the above entitled
Cause by which it was referred to me to take
proof of the material facts and allegations set
forth in the Bill of Complaint on file in this Cause
Report &c, J. S. Le Paine Treasr. Master in Chancery
of Cook County State of Illinois, do hereby report
that on the 12th day of July A.D. 1859, at my
office in the City of Chicago, aforesaid. Said
Plaintiffs by their Attorneys, at which time & place
I proceeded to a hearing and Examination of
the matters embraced in said reference—

Elihu W Jones. a witness produced
and sworn on the part of said petitioner, says
I Am a Book Keeper and resident Chicago

(32)

I have resided in said City for the past five
and a half years. I know all the plaintiffs
and the defendant Charles B. Phillips -
I know the premises described in the plaintiffs
petition on South Water Street next West of the
Richmond House - In the summer of AD 1856
the defendant Phillips commenced getting iron
work of the plaintiffs, who were then iron
founders in Chicago - On the 11th June 1856
the plaintiffs submitted written propositions
to defendant Phillips through his architect
Mr B. Olmstead, to make and furnish and set
up for the building on the premises in question -
"Mellans Patent Rolling Shutter" for the Phillips
building as per plan - I find a copy of
the proposition in the Letter Book of the plaintiffs
and I now herewith produce the same as
evidence and part of my deposition -

The said Copy made Exhibit 1. and
returned herewith -
(Exhibit 1)

Chicago June 11, 1856

Mr B. Olmstead Esq

Chicago Sir

We hereby propose
for the making & setting up of Mellans Patent
Rolling Shutter for the Phillips Building

2
as per plan shown in your Office. together
with Castings necessary for same as shown in
the plans at your Office. for the sum of Twenty-
three Hundred and fifty dollars, Payments,
Two Hundred dollars Cash when the front is up
without the shutters attached, Balance on Com-
pletion of the work according to Contract.

Respectfully Yours
John B. Bomer of Boston

(33)
I Am acquainted with the handwriting and
signature of William W. Boyington, Architect
of this city. I have seen him write and sign
his name very frequently. I have looked at
a certificate of acceptance bearing date June
10, 1858. purporting to be a certificate that the
work to be done by ~~the~~ plaintiffs on the monument
in question by plaintiffs had been done according
to plans - the body and signature of said
certificate is the genuine handwriting and
signature of said Boyington.
I wrote & subscribed before { Elipha W. Jones
me this 13th day of July 1859 }

I am Dr. J. W. Mearns of Cheshire

Daniel Shepard, a witness produced & sworn
on the part of the plaintiffs, says. I am a Clerk
of Shumway Mail and some of this City - Some
two or three weeks since. Mr. Maile of

Shumway Waite and Sonme, handed said Notices
Copies of which I now here produce to a man
of the name of A F Stevenson a clerk in said Office
directing him serving one set of said Notices
on Deates McAllister the attorneys for defendants
in this cause. and one set on E B McLaughy —
Attorney for the Creditors of defendant Phillips
made defendants in this suit. he returned
soon after saying he had served them as di-
rected

Daniel Shepard

Sworn to & Subscribed before me {
his 12th day of July 1859

L B Fairbairn, Notary in Chancery

(34)
S Bridge, a witness produced and sworn, on the
part of the plaintiffs, says. I am an Architect
was in the Office of Boyington & Wheelock
Architects of this City, in 1857 I am acquainted
with the handwriting of said Boyington and
his signature — I have seen him write frequently
the Certificate now here produced and shown
to me dated March 21, 1857 signed by said
Boyington & Wheelock is, the written portion thereof
in the handwriting of said Boyington. I know
of the plaintiffs doing the Iron work of the
building in question for defendant Phillips, the
Iron Rolling Shutter included — the plaintiffs
furnished the Granks for the Shutter, they were
delivered at our Office S Bridge

3
I have subscribed
before me this 13th day
of July 1857. S. P. Free Master in Chancery

The plaintiffs as further evidence offered
the Copy of propositions to make and set up
the Iron Shutter referred to in Petition, and in
the deposition of said Jones, the same marked
Exhibit (1) also the Certificate of the Architect
Brynmorton & Wheelock referred to by the
witness Bridges, the same made Exhibit (2)
also the Certificate of the superintendent —
Brynmorton referred to by the witness Jones &
same made Exhibit 3, the Copies of Notices
referred to by the witness Shepard the same
made Exhibits 4 & 5.

Exhibit (2)

\$2000
Chicago Mar 31st 1855
Messrs B. B. Phillips, This is to certify that
there is due to Mr S. Boulton, the sum of
Two Thousand Dollars for labor and
materials furnished your Building on South
Water St. as per Contract, payable at sight
at Chicago. Yours respectfully
(S. 2) Brynmorton & Wheelock

Architects & Superintendent
(Exhibit 3)

Chicago June 10th 1858
Messrs S. & Boulton

Dear Sir

I hereby certify that I have Examined the designs and detail drawings as made by Olmsted and Nicholson, Architects for Messrs W B. Philips Iron Store front on South Water Street near the Richmond House. I have also Examined the work as put up by you, and consider it completed according to the designs and drawings, and is now in working order, you will please furnish two Cranks for the turning up the Iron Shutters and leave them at my Office, subject to Messrs Philips's order

Wm H Boyington
Superintendent

Exhibit 4

The State of Illinois
books bound ss 8

(36)

Andrew B Stone Esq

Charles B. Philips Esq

Circuit Court

The defendants in the trial of this Cause will produce a letter written by Stone Bommer & Boutin dated June 11th 1856 to W B. Olmsted, and also a letter written by Stone Bommer & Boutin to W B Olmsted and dated June 16 1856, and also a certain other letter written by Stone Bommer and Boutin to W B Olmsted & Charles B. Philips and dated June 28th 1856, and the defendants

will also produce on the trial of this Action the original bids made by the plaintiffs for the work in the petition mentioned, and bearing date about the date of the three letters above mentioned and being addressed to either the defendant Charles B Phillips or to William B. Omsick the Architect, and the plaintiffs will give said evidence of the contents hereof at the trial of this Action

Shumway Waite & Son
Plaintiffs Attys

- Exhibit 5 -

(37)
(100)
The State of Illinois {
Circuit Court }

Andrew B Stone & Co {
were
Charles B Phillips & Co {
Circuit Court }

The defendants are required to produce at the trial of this Action all written contracts made between Stone Boomer & Boulton & Charles B Phillips relating to the work in said petition mentioned and any and all contracts relating to work to be done & materials to be furnished on the building in said petition mentioned by the said Stone Boomer and Boulton for said Charles B Phillips, and also the specifications drawings and plans of the building referred to in the

Petition of the petitioners, and the petitioners
will give said evidence of the contents
thereof at the trial of this action.

Shumway Mailer & Son

Petitioners Attys

Service Accepted & a copy. May 31, 1859
Cates McAllister & Ferratt.

Sole for Phillips

The plaintiffs further produced the
Depositing of M.B. Omsled, filed in
said Cause on the 2^d day of July 1859, and
returned with this Report.

Facts appearing by the Evidence,

(381) That the Complainants made and set
up the Iron Shutters, for the defendant Phillips
for and in the premises on the premises in question
at the time and in the manner set forth in the
petition, and according to the propositions and
Contract therein set forth,

That on the 31st day of March 1859
there became due to the plaintiffs under the
terms and conditions of said proposition &
Contract the sum of \$ 2000
And the balance 950

On the tenth day of June A.D. 1858

I, Am therefore of opinion that there
is due to the Complainants for said work at
the date of this report, for principal & interest
the sum following

Andrew B. Stone Lucius B
Borner, and Nathaniel S Burlin
who sue for the use of
Nathaniel S Burlin

Petition for
Mechanics Lien

14524

Charles B Phillips William
Borner & Charles A Sinfeld

(39)
This day appeared
the said petitioners, and filed the Masters report
upon the submission heretofore made in this case
and moves for the Confirmation thereof, and there-
upon said cause came on for hearing upon the
petition. The answer of Charles B. Phillips, William
Borner and the application thereto, and the
Masters, and was argued by Counsel, and the
Court being fully advised in the premises, doth
order that the said Masters Report be Con-
firmed, and the Court doth find that the
said Charles B Phillips is indebted to the
said petitioners on a Mechanics Lien as in
said petition Alleged in the sum of Thirty
two hundred and thirty six dollars and six
Cents, and that the same is a lien on the prop-
erty in said petition described viz -:

Lots thirty (30) and thirty one (31) in North Dearborn
addition to ^{the city} Chicago. Cook County Illinois and
which property is situated on Maple Street in
the City of Chicago, and near the one called
Richmond House, and the Court further

5

Amount due March 31, 1857.

Int. 2 years. 3 Mos. 12 days

Am't bal June 10, 1858.

Int 1 yr 1 Mo r 2 days

1859 July 12 Amount due date of Report \$ 3386.16

2000, 00

274, 00

950, 00

62, 00

From the Evidence I am therefore of the opinion that the prayer of Complainants should be granted, that a judgment or Decree should be entered in their favor for the above sum

of \$ 3386.16
that the lien of the Complainants as prayed by them should be declared & established and that an order for the sale of the tenements in question, and all the rights title & interest of said defendant in and to the lands in question should be entered as prayed in the Petition, to make the money due the said Complainants as aforesaid.

(40)

All which is respectfully submitted
S. L. P. Greer,

Master in Chancery book 6.

Master fees 6.00

Paid by Compt

And afterwards to-wit. at the July term of said Court to-wit. on the 13th day of July A.D. 1859, the following, Among other proceedings were had and entered of record in said cause

6
finds. That said lien is junior to that of
William Borane, one of the above named
defendants and that the judgment in favor
of Charles B. Linfield is fully satisfied and
paid and that the said premises ought to be
sold to satisfy the said petitioners lien, and
thereupon it is ordered and decreed that the
said Charles B. Phillips pay into Court for
the said petitioners within five days of the
rising of this Court the sum of thirty two
hundred and thirty six dollars and six cents
together with the costs of this suit and that
in default thereof L. L. Paine Forester Master
in Chancery of this Court proceed to sell
said above described premises. According
to the statute in such case made and
provided. And out of the proceeds first
to pay the costs of sale secondly the costs
of Court and thirdly the amount due to
said petitioners with interest thereon for
the date of this decree and the surplus
be brought into Court to be distributed
as the Court may hereafter direct.

(41)
And afterwards to-wit on the 26th
day of August in the year last aforesaid
there was filed in the Court aforesaid, the petition
of the defendant Phillips - which is in the
words and figures, following - To-wit

Andrew B Stone & others

Charles B Phillips & others } look for leave
In Chancery
To the Hon George

(42)
(173)
Meanwell Judge of said Court, the petition
of Charles B Phillips the above named defen-
dant respectfully sheweth. That your
petitioner finds himself much aggrieved by
a decretal order made by your Honor in the
Cause on the 13 day of July last past, whereby
it was, among other things, ordered that your
petitioner pay to the plaintiffs the sum of
three thousand two hundred and eighty six
dollars & six Cents, which said decree in-
cluded the sum of three hundred thirty six
dollars and six Cents interest, And your
petitioner submits, that so much of the said
decree is erroneous, by the laws of this State
as allows the said plaintiffs interest on the
said sum mentioned in the Masters Report
in said Case. Because the said Contract was
made in the year 1836 and was therefore
governed by the interest laws of 1845, and
not those of 1857

And your petitioner further sub-
mits that the said decree should not have
been made because as your petitioner
submits that there is no allegation in the
petitioners bill or no evidence that the work

in question was done to the satisfaction of the Superintendent.

And your petitioner further submits that he has an offset or payment of some ^{fifty seven 67/100} hundred dollars to the said claim. And that if the said decretal order had not been made without notice to your petitioner or his solicitors, your petitioner would have established such payment.

And your petitioner further shows unto your Honor that the said order has been settled and entered but has not yet been enrolled.

(43)

Wherefore your petitioner prays that your Honor will be pleased to grant a hearing of this cause before your Honor, your petitioner submitting to pay such costs as this Court shall award in case his complaint shall be found groundless, and your petitioner will ever pray, &c.

State of Missouri
County of Carroll

Charles B Phillips

Wm J. Sale

On the back of said petition appear the following order to-wit:

Let all the proceedings in the within Cause be stayed until the hearing of the within petition or the further order of the Cook County Circuit Court. Dated Aug 25, 1859

J. A. Horton. Judge 11th Judicial Circuit Ills

And afterwards, to-wit, at the September
term of said Court, to-wit, on the 21st day
of September in the year last aforesaid, the
following, among other proceedings, were had
and entered of record therein to-wit-

Andrew B. Stone, Successor of
Phillips and Nathaniel S.
Benton for the use of
Nathaniel S. Benton

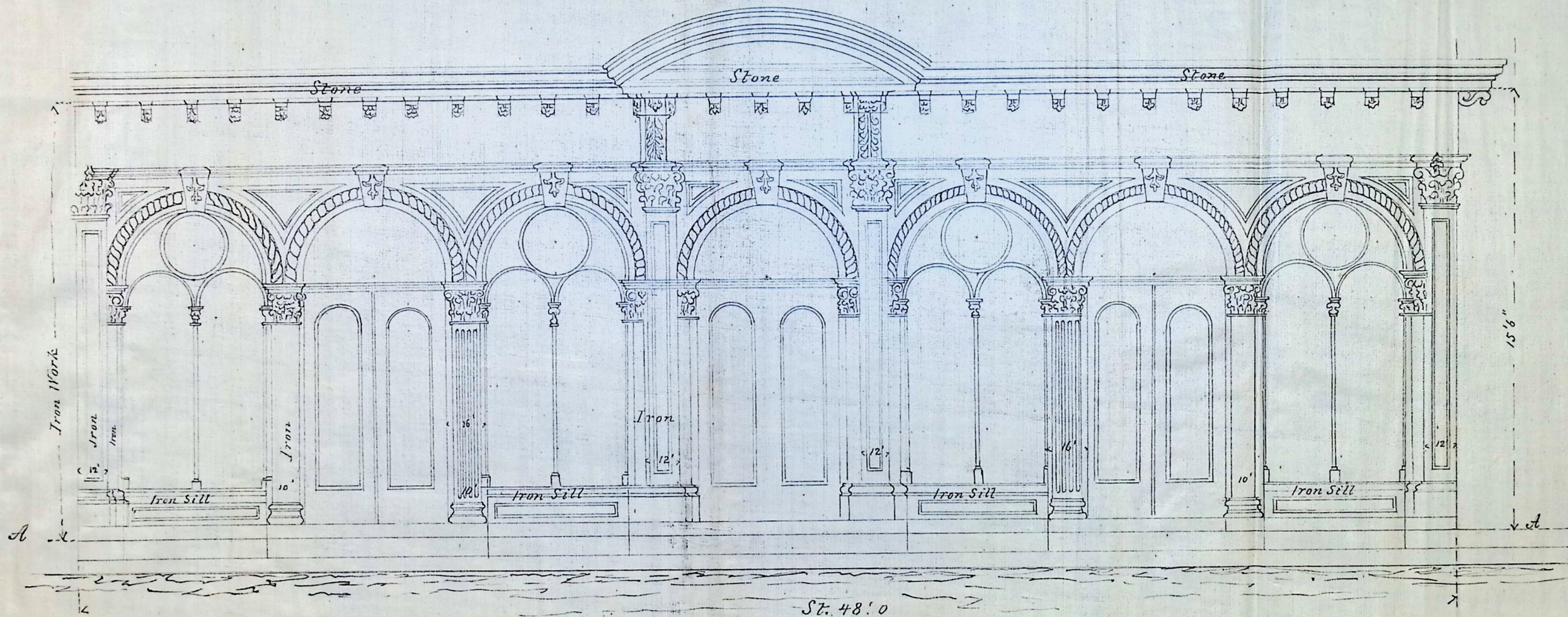
Petition for
Mechanics Lien

Charles B. Phillips, William
Bonne & Charles G. Smithfield,

And now comes the
said Defendants by E. C. McAllister of counsel
their Solicitors, as well as said petitioners by their
Solicitors, and counsel being heard on the motion
submitted by said defendants to set aside
the Decree heretofore entered in this cause
and due deliberation being thereupon had
and the premises fully understood, it is
considered by Court, that the defendants
said Motion be overruled

(44)

" B "



Plan of C.B. Phillips Front

State of Illinois, }
COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of the writs, pleadings & proceedings had
~~admitted of record~~
in a certain cause lately pending in said Court on the
~~Common Law~~ side thereof, wherein Audros B
Stone et al were Petitioners and

Charles B. Phillips et al were defendant as the same now appears
~~from the files & records of said Court~~
IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this twelfth day of October A. D. 1859

Wm L. Church
Clerk.

United States of America }
STATE OF ILLINOIS, COUNTY OF COOK, S. S. } Pleas, before the Honorable George Manierre

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo' Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
Second Monday, (being the Eleventh day) of
July in the year of our Lord one thousand eight hundred and
nifty nine and of the Independence of the said United States the
Eighty fourth

Present, Honorable George Manierre Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

Charles B Phillips & others } Supreme Court of the
Plffs in Error State of Illinois

^{vs}
Nathaniel S Boutin
& others Defts in Error

And the said plffs in error by Seates McAllister
& Jewett their attorneys come and say that in the record
and proceedings aforesaid and in giving the judgment
aforesaid there is manifest error in this to wit;

1st The petition filed for the commencement of this suit
by the defts in error does upon which the judgment
aforesaid is founded does not contain facts or allega-
tions sufficient to show that petitioners had any
lien on the premises in said petition mentioned.

Because it does not appear by any thing therein stated
or alleged that the work & materials alleged to have
been done & furnished, were in fact done or furnished
under any contract specifying the time within which
the same were to be done & furnished.

(45)
2 The Court improperly allowed interest upon the amount
claimed when there was no allegation in said petition
or proof given that the same was withheld by an
unreasonable and vexatious delay of payment.

3^d The said judgment was rendered against the said
Charles B Phillips whereas by the law of the land the same
should have been rendered against the said Defts in
error wherefore for the errors aforesaid and other errors in the
record & proceedings aforesaid the plffs pray that said judgment
may be in all things reversed &c

Seates McAllister & Jewett
Attys for Plffs in Error

Let the Supersadies issue bond
for thousands of dollars and
seventy two dollars & ten cents with
back & night surty. J D Eaton

And now

7th
Superior Court of Illinois
Charles B. Hecker
Off. in vac.

is
Auditor B. Stone and
Off. in vac.

Transcript of record
& assgmt of errors

Filed October 18. 1838
L. Leland
Clerk