

No. 3363

Supreme Court of Illinois

Lewis Roach & L. F. Staples.

vs.

Leonard Chapin.

127
Held at a Circuit Court begun and
held in the Town of Charleston in and for the
County of Cook and State of Illinois, on Monday
the 7th day of October A.D. 1861, before the Hon.
Charles H. Constable, Sole Judge thereof, the
following proceedings were had - to wit

Leonidas Chapin

vs
Lewis Roach &
Seraf J. Staples

Bill to Enforce Mechanics Lien

To the Hon Charles H. Constable
Judge of the Circuit Court of Cook County
State of Illinois in Chancery sitting. Humbly
complaining your Orator Leonidas Chapin
respectfully sheweth unto your Honor, as follows
Your Orator states that on the 20th day of
March A.D. 1861 and at sundry other times
subsequent as more particularly appears by
reference to a Bill of particulars filed herewith as a part
of this suit and marked Exhibit A, your
orator furnished Lewis Roach and Seraf J.
Staples. Materials to wit various kinds of
Lumber for erecting and constructing a building
on lots (10 11 & 12) Sec. 16 E. 10th and Twelve
in Block (76) County six in Range Addition
to the town of Matteson as shown by reference
to the recorded plat thereof. And your

20
Orator alleges that he furnished & delivered
said Materials as set forth in the said Exhibit
A. to said Roach and said Staples upon the
premises aforesaid at their special instance &
request for the purpose of erecting the building
which the said Roach & said Staples erect
on said lots out of the materials so furnished
with an implied understanding between your
Orator and said Roach & said Staples that
your Orator should have and hold a Lien
on the said premises for his payment for the
materials so furnished in such manner as
the Statute provides in case said Roach and
said Staples should otherwise fail to make pay-
ment for said Materials upon the delivery thereof
& upon request made for the payment thereof.

And your Orator further alleges that the
last of said Materials was delivered on the 1st of
May 1861. and that payment for the whole of said
Materials thereupon became due from the
nature of the Contract & understanding between
your Orator and the said Roach & said Staples
and your Orator avers that he has many times
requested & demanded payment for said Materials
and that said Roach & said Staples have
always refused & neglected and still do refuse
& neglect so to pay your Orator. And your
Orator further alleges that he believes that

the fee simple to said premises is now vested in said Roach and your orator verily believes that he has no certain security for the payment of the amount due him on the said Materials to wit \$96.⁰⁵/₁₀₀ & interest thereon since May 1st A.D. 1861 except by the enforcement of a Specific Lien on said premises in such manner as the Statute provides.

And your orator therefore prays that the Honorable Court decree & order the enforcement of your orator's Lien against said premises and that said Roach and said Staples be summoned to answer this your orator's complaint but not under oath which is hereby waived and to show cause if any they have why your orator's prayer be not granted. And your orator further prays the Honorable Court to decree & order the proprietary sale without redemption of the said premises at an early day in satisfaction of your orator's claim of \$96.⁰⁵/₁₀₀ & the interest thereon together with his your orator's costs in this suit expended and that the Court grant such other & further relief as equity and good conscience requires your orator will ever pray.

Thos. H. C. Lane

Atty for complainant

Indorsed.

Filed Sep. 20th 1861

Geo W Lee Clerk

4

The following is a copy of Exhibit A. referred to above
Inmate

Mattom Ill. Sep 11th 1861

Meers Roach & Staples

Bought of S. Chapin

Dealer in Lumber, Shingles, Laths, Etc.

March	20 th	To	408 feet	can	a f 1 ⁵⁰		6.12
	22	"	561	" " Clear	a f 3 ⁵⁵	14 ³⁰	14.30
	"	"	230	" " Can	cf 1 ⁶⁰	"	3.68
	26	"	80	" " "	cf 1 ⁴⁰	122	1.22
	29	"	120	" " "	cf 1 ⁵⁰	"	1.80
	"	"	95	" " "	cf 1 ⁶⁰	"	1.52
	"	"	42	" " "	cf 1 ⁶⁰		.67
Apr	5 th	"	1092	" " Laths	cf 1 ⁵⁰	16 ⁸⁰	16.88
	"	"	490	" " 2x4	cf 1 ⁵⁰		7.35
	"	"	330	" " 2x8	cf 1 ⁵⁰		4.95
	"	"	5 M	Shingles	3 ⁰⁰		10.00
	6	"	625	feet 2x4	y 1 ⁵⁰		9.38
	"	"	688	" " 2x6	cf 1 ⁵⁰		10.82
	"	"	704	" " 2x8	cf 1 ⁵⁰		10.56
	"	"	166	" " Sheathing	cf 1 ²⁰		2.00
	"	"	162	" " 2x6	cf 1 ⁵⁰		2.43
	"	"	88	" " 2x8	cf 1 ⁵⁰		1.32
	"	"	715	" " Sheathing	cf 1 ²⁰		8.60
	"	"	2000	" " 2x4	cf 1 ⁴⁶		28.00
	9	"	392	" " 2x4	cf 1 ³⁰		4.38
	"	"	42	" " 2x6	cf 1 ⁵⁰	63-	.63
	10	"	485	" " Sheathing	cf 1 ²⁰		5.82

5	11	"	1 1/2 m Shingle of 2 ⁰⁰ per m	3.00
	"	"	518 fut flooring of 2 ⁰⁰	10.36
	"	"	500 " " of 2 ⁰⁰	10.00
16	"	"	37 " Corn of 1 ⁵⁰	43
17	"	"	285 " flooring of 2 ⁰⁰	5.70
	"	"	84 " Corn of 1 ⁵⁰	1.26
18	"	"	30 " flooring of 2 ⁰⁰	.60
19	"	"	400 " Sheeting of 1 ⁴⁰	5.60
	"	"	1 1/2 m Shingles of 2 ⁰⁰	3.00
24	"	"	350 fut flooring of 2 ⁰⁰	5.50
	"	"	240 " " Corn of 1 ⁴⁰	3.36
	"	"	84 " " " of 1 ⁵⁰	1.26
May 1 st	"	"	6000 Slatte of 3 ²⁵ per m	19.50
	"	"	104 fut - 2x4 of 1 ⁵⁰	1.55
				<u>\$ 222.05</u>

Amount Credited Messrs Roach & Staples

1861

April 16	By Cash rec'd on a/c	30.00
"	" Amount allowed on Ashmore house	35.40
"	" Amt Credited Apr. S. J. Staples	<u>110.00</u> \$125.40
<u>Amt to Balancer (Balance)</u>		<u>\$ 96.65</u> Dr

Ludovick Filed Sept 20th 1861

Geo W Deed Clerk

6th

And afterwards to wit on the 20th day of
September A.D. 1861. Subpoena in Chancery,
issued in words and figures following to wit—

State of Illinois

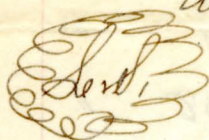
Coles County

The People of the State of Illinois

To the Sheriff of Coles County. Greeting

We command you to Summon Lewis
Roach & Leroy F. Staples if to be found in your
county, to appear before the Circuit Court of said
county, on the first day of the next term
thereof, to be holden at the Court House in
Charleston, on the 1st Monday of October next
to answer to a Bill of Complaint, filed in our said
Circuit Court on the Chancery side thereof against
them by Leonidas Chapin. Bill to enforce
Mechanics Lien. and further, to do and receive
whatever the said Court may then and there con-
sider in this behalf, and hereof make due return
to our said Court, as the law directs—

Witness our Hand Clerk of said Court
and the Judicial Seal thereof, at Charleston
this 20th day of Sept. A.D. 1861



Lewis W. Seal Clerk

By W.A. Whitterson, Deputy

Said Subp. Indorsed

Served by duly delivering true
copies of the within, to the within named

7th

Lewis Roach & Leroy F Staples. this 21st day
of Sept. A.D. 1861. J. H. Johnston S. C. C. 22
By C. A. Muntz Dplg

And afterwards to wit on the 10th day of October 1861
there was filed in said cause an instrument in writing
in words and figures following to wit

" State of Illinois } Col's Leicuit Leaver
Col's Leaver } October Term A.D. 1861
Lewis Roach. impleaded with }
Leroy F Staples }
at } Mechanics Lien
Leonidas Chapin } Lewis Roach

impleaded with Leroy F Staples by protestations not
confessing or acknowledging all or any of the matters
and things in the said complainant's bill to be
true in such manner and form as the same
are therein set forth and alleged. ~~It~~ Demur.
thence and for cause of demurrer show.

That the said complainant have not in and
by their said Bill. made or stated such a case
as does or ought to entitle him to any such relief
or him as is therein sought & prayed for from or
against this defendant. Wherefore and for divers
other errors & imperfections this defendant humbly
demand the judgment of this Honorable Court
whether he shall be compelled to make any

further or other answer to the said Bill or any
of the Matters and things therein contained & pray
to be disallowed with his reasonable costs in this
behalf sustained &c.

F. A. Allison

Atty for Lewis Roach

Indorsed

Filed Oct. 10th 1861

L. W. Vail Clerk

And afterwards to wit at the Term of Court
of assize to wit on the 8th day of said Term
An Order & decree of said Court was made in
this Cause which is in words and figure
following to wit ..

Leonidas Chapin

vs

Leroy F. Staples &

Lewis Roach

Bill to enforce Mechanics Lien

And now at this day this
Cause came on to be heard upon Bill, Exhibits &
Proofs and it appearing to the satisfaction of the
Court that due notice of the pendency of this
Cause has been given the said defendants by
service of Summons in due form of law and the
said Roach now appearing in Court by F. A.
Allison his Attorney files a Demurrer to the
Complainants Bill and upon the hearing

thereof the said Demurer is overruled by the Court and the said Staples also appearing in Court by O.P. Harris his attorney and this cause now coming on to be heard. the said Staples by his said Attorney ~~and this cause now coming on to be heard.~~ the said Staples by his said Attorney confesses the several allegations of the Complainants Bill to be true and that the said defendants are justly indebted to said Complainant in the sum of \$96.⁵⁵/₁₀₀ the balance due on account as per said Exhibits now shown the Court and that said Lumber was furnished by Complainant to said defendant and used by said defendants in such manner as is specified in Complainants Bill &c.

And the said Roach by his said Attorney appears but confesses naught but defends and thereupon on hearing the testimony of Witnesses sworn & examined in behalf of the Complainant it appearing to be proven to the satisfaction of the Court that said Complainant did furnish Lumber & Materials to said Staples and said Roach for the purpose of erecting a house upon Lots (10 11 & 12 in Block 76) Sen. Eleven & Twelve in Block Seventy Six in Hayes Addition to the Town of Mattson County of Cook & State of Illinois. and that said defendants used said Materials in erecting a Building thereon, and it appearing also that there is a balance due & unpaid the

Complainant on said Sum of \$96.⁶⁵/₁₀₀ and
 that said Roach is the owner in fee of said Town Lot
 whereon said Building was erected Thereupon it is
 ordered, adjudged and decreed by the Court that
 said defendants do pay to the said Complainant
 the said sum of \$96.⁶⁵/₁₀₀ with legal interest thereon
 together with the costs of this suit within ninety days
 from the rendition of this decree and, that in default
 of such payment by the said defendants as of said
 Stephen B. Moore be and he is he is hereby appointed
 a Special Commissioner to execute this decree; and that
 after giving four weeks notice of the time and place
 he do proceed to sell to the highest and best bidder for
 cash in hand the said lots numbers Ten (10) Eleven (11)
 and twelve (12) in Block number Seventy Six (76)
 upon which a lien is hereby decreed to exist in favor
 of said Plaintiff for the payment of said sum of
 \$96.65 or so much of said lots as may be necessary
 to satisfy said debt & costs, that he execute to the
 purchaser or purchasers a good and sufficient deed
 for the ~~purchaser or purchasers a good and sufficient~~
 premises so sold, and that the title thereto be dec-
 -reed to rest fully under said sale and conveyance
 in such purchaser or purchasers who shall thereupon
 have quiet and immediate possession of the premises
 purchased. It is further ordered and decreed that
 the said Commissioner out of the proceeds of said
 sale pay, first - The costs of this suit;

Secondly - the amount of said debt & interest
 throw to the said Chapin; paying the residue of any
 over to the said Lewis Roach: And that said
 Commissioner report his proceedings herein to
 this Court at its next term &c. And it is
 further ordered and decreed by the Court, that
 should the proceeds of said sale by the Commis-
 sioner as aforesaid not be sufficient to satisfy
 said costs, debt & interest, then Execution is
 hereby awarded ~~to satisfy said costs~~ said plain-
 tiff on this decree for the balance so remaining
 unpaid to be levied by the Sheriff &c of the
 goods and chattels lands & tenements &c which
 may be found of the said defendants &c
 It is further ordered that this cause stands
 continued &c

State of Illinois
 Cook County 3^d Dist.

I, Geo W Steel, Clerk of the Circuit Court
 in and for said County do hereby certify that the
 foregoing is a full, true, and complete Record
 in the case of Leonidas Chapin vs Lewis Roach
 and Leroy J. Staple. Billo to enforce Mechanic's Lien,
 on trial at the October Term 1861 of our said Court
 as appears from the Books and files of my office

Witness my hand and the Seal of said Court this
 Nov. 12th 1861.

Geo W Steel
 by W. A. Whittman Depy

12
Fees paid by Deft's atty & L.
Geo. W. Lull clerk.

State of Illinois.
Sevent Grant Division.

Let the writ of error
be made a supersedeas on plaintiffs in
error entering into bond in the penal
sum of Three hundred dollars with John
S. Allison his security, conditioned ac-
cording to law. Dec. 14th 1861.

J. S. Waller
"

The plaintiffs in error, assigns as errors the following, to wit

1st The court erred in overruling Plaintiff's Motion to the petition of Defendant in error

2nd The court erred in rendering a decree against plaintiffs in error, ~~it not being plaintiff's call and a judgment decree pre-emptive taken~~

3rd The court erred in rendering a decree without the answer of Defendant S. H. Staples, being filed

4th The court erred in decreeing the sale of all the premises, set forth in the petition without first finding that ^{a part of} the premises could be separated from the residue and sold without damage to the whole and the value thereof was not sufficient to satisfy the amount due, ~~that he decreed without~~

5th The Court erred in rendering a decree against plaintiffs in error upon the evidence facts found to be true in said decree,

Together with errors as will fully appear upon an inspection of the record of this cause &c.

H. A. Allison

att^y for plaintiff in error

Supreme Court - Second Grand Division

January Term AD 1862

And now comes the defendant in vs by M. C.
McLain his attorney and says that there is no record
to be found in said record therefore asks that this
case be remanded and defendant be allowed to prosecute
the writ the collection of his said judgments -

~~Leave~~

Remanded Chapin Jt.
By M. C. McLain Atty

State of Illinois ss
Boles County }

Austin C. Smith after
being first duly sworn says that John
L. Allison who is offered as Security in
the case of Lewis Rouch implicated with
Leroy H. Staples & Leonidas Chapter are
a bond to obtain a supersedeas is propo-
sed of Real and personal property, over
and above all Leins, incumbrances,
Exemptions, Liens, Judgments, or debts to
the amount of One Thousand Dollars
and further affirms with that
Subscribed & sworn to before } Austin C. Smith
me this 10th day of December 1861 }
Peter Voris J.P.

120

Rouch
Chapin

Erron to call
affidavit

Filed Jan 8-62
Wm. J. Conway
At

State of Illinois,

SS.

SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Coles* County:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Coles* County, before the Judge thereof, between *Leonidas Chapin* Plaintiff

and *Lewis Roach* and *Leroy J. Staples*

Defendant, it is said that manifest error hath intervened to the injury of the said *Roach*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county you give notice to the said *Leonidas Chapin*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court to be holden at Springfield, in said State on the first Tuesday after the first Monday in January next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then and there the names of those by whom you shall give the said *Leonidas Chapin* notice, together with this writ.

Witness, the HON. JOHN D. CATON, Chief Justice of our said Court, and the seal thereof at Springfield, this *8th* day of *January* in the year of our Lord, one thousand eight hundred and *sixty-two*.
Wm. R. Turner Clerk of the Supreme Court.

Supreme Court,
SECOND GRAND DIVISION

Leuis Roach sr

Plaintiff in Error.

vs.

Leonidas Chapin

Defendant in Error.

SCIRE FACIAS.

Filed

Feb. 28/62
Wm. C. Cury Clerk S. C.

Served by reading to
Leonidas Chapin
the 10th day of February
AD 1862

Servies	50
Mulage	60
Return	10
	\$120

W H Johnston Sec
By *W H Keadley* Deputy

Supreme Court--Second Division.

JANUARY TERM, 1862.

Lewis Roach and Leroy F. Staples, plaintiffs in error,

vs.

Leonidas Chapin, defendant in error.

Error to Coles.

- 1, 2, 3. Leonidas Chapin, complainant below, filed his bill to enforce a mechanic's lien against Lewis Roach and Leroy F. Staples, setting forth that on the 20th day of March, A. D. 1861, and that at sundry other times, as shown by a bill of particulars filed therewith as an exhibit, he furnished said Roach and Staples, at their special instance and request, lumber for erecting a building on lots 10, 11 and 12, in block 76, in Noyes' addition to the town of Mattoon, with an implied understanding between the parties that Chapin should have a lien on said premises for his payment for the materials furnished in such manner as the statute provides, in case Roach and Staples should otherwise fail to make payment for said materials upon the delivery thereof, and upon request made for the payment thereof; that the last of said materials were delivered on the 1st of May, 1861, and that payment for the whole of said materials thereupon became due from the nature of the contract and understanding between the parties; that said Chapin had many times requested and demanded payment for said materials, and that said Roach and Staples had neglected and refused to pay, &c.; that complainant believes that the fee simple to said premises was vested in Roach, and that he had no certain security for the payment of the amount due him for said materials \$96 65, and interest thereon since May 1st, 1861, except by the enforcement of a specific lien on said premises in such manner as the statute provides; concluding with a prayer that the court decree and order the enforcement of said Chapin's lien against said premises; and that said Roach and Staples be summoned to answer without oath, and that the court decree a peremptory sale, without redemption of said premises, at an early day to satisfy the claim of Chapin for \$96 65 and the interest thereon together with costs, &c.
- 4, 5. Then follows in the record the bill of particulars referred to as an exhibit in the bill of complaint, being an account of lumber delivered from March 20th to May 1st inclusive, and credits, and showing a balance due of \$96 65.
7. At the October term, 1861, Roach filed his demurrer to complainant's bill.
- 8, 9, 10, 11. At the same term, the court entered a decree overruling the demurrer of Roach and reciting that Staples appeared and confessed the allegations of the bill to be true, &c.; that the said Roach appeared, but confessed nothing; and that on hearing the testimony of witnesses, it appeared to the satisfaction of the court that Chapin did furnish lumber and materials to said Staples and Roach, for the purpose of erecting a house upon lots described in the bill, and that they were used for that purpose, and that there was a balance due on said lumber of \$96 65, and that Roach was the owner in fee of said lots, whereon said building was erected, and it decreed that Roach and Staples should pay said sum with interest and costs of suit within ninety days from the rendition of the decree, in default of which a special commission, appointed to execute said decree, should, after giving four weeks' notice of time and place, sell to the highest and best bidder the said lots, and execute a deed to the purchaser, &c.; that if the proceeds of the sale of said lots should not be sufficient to satisfy debt, interest and costs, complainant should have execution for the balance.
13. The following errors are assigned:
- 1st. The overruling of the demurrer of Roach.
 - 2d. The rendering of a decree against plaintiffs in error.
 - 3d. The rendering of a decree without the answer of defendant, Staples, being filed.
 - 4th. The decree for a sale of all the premises set forth in the petition without first finding that a part of the premises could be separated from the residue and sold without damage to the whole, and the value thereof was not sufficient to satisfy the amount due.
 - 5th. The rendering the decree upon the facts found to be true in said decree.

F. A. ALLISON,
SHERIDAN P. READ,
Atty. for Plaintiff in Error.

Coach

Chapin

Abstrach

Feb Jan 21/62
Pro. Curney

Thos. L. Carnes

Supreme Court,---Second Grand Division.

JANUARY TERM, A. D. 1862.

LEWIS ROACH, Leroy Staples, Plaintiff in Error, }
vs } Error to Coles.
LEONIDAS CHAPLIN, Defendant in Error.

DEFENDANTS BRIEF.

The bill in this cause contains sufficient to entitle the plaintiff below to a hearing on the merits. The demurrer thereto was properly overruled by the court.

Act of legislature, Feby. 18th 1861. page 179.

The decree in this cause is warranted by the bill exhibits and proofs.

Act of legislature, Feb. 18th 1861.

Staples, one of the plaintiffs in error, appeared in open court below, and confessed the truth of the allegations in the bill. Roach, the other plaintiff in error, demurred to the bill and stood by his demurrer, thereby confessing the truth of all the allegations in the bill to be true and correct—cannot afterwards question the correctness of the decree by denying the allegations of the bill.

Miller, et al., vs Davidson 3d Gillman 518.

The decree authorizes the sale of all the town lots mentioned in the bill, but it does not necessarily follow that more shall be sold by the master, than shall be found sufficient to pay debt, interest and costs

In sales of real estate decreed to be made under proceedings to enforce Mechanic's Liens—there is no redemption. Hence the same reasons do not exist for the decree to require the master to sell the real estate in separate lots or parcels, as would in case of redemption after sale. The whole matter is with the Chancellor, and he may order a sale of all or any portion thereof.

M. C. McLAIN, Att'y for Deff't. in Error.

120-79

Roach
v
Chapin
septs brief

JANUARY TERM, A. D. 1863.
Court... Second Grand Division

LEONIDAS CHAPLIN, Defendant in Error,
vs
LEWIS ROYCE, Lewis Stebbins, Plaintiffs in Error, } Error to Court

DEFENDANT'S BRIEF.

The bill in this case contains sufficient to entitle the plaintiff before to a hearing on the merits. The defendant therefore was properly overruled by the court.

Act of Legislature, Feb. 12th 1861. page 179.

The decree in this case is sustained by the bill exhibits and proofs.

Act of Legislature, Feb. 12th 1861.

The decree in this case is sustained by the bill exhibits and proofs. The defendant therefore was properly overruled by the court. The bill in this case contains sufficient to entitle the plaintiff before to a hearing on the merits. The defendant therefore was properly overruled by the court.

Miller et al. vs Davidson 3d Edition 218.

The decree authorizes the sale of all the town lots mentioned in the bill, but it does not necessarily follow that more shall be sold by the master, than shall be found sufficient to pay debt &c.

In sales of real estate devised to be made under proceedings to enforce Mechanics' liens—there is no redemption. Hence the same reasons do not exist for the decree to require the master to sell the real estate in separate lots or parcels, as would in case of redemption after there is no redemption.

M. C. McMAHON, Atty for Def. in Error.

Filed Jan 21/63
Wm H. Turner
Ch

Supreme Court,---Second Grand Division.

JANUARY TERM, A. D. 1862.

LEWIS ROACH, LEROY STAPLES, Plt'ff in Error, }
vs } Error to Coles.
LEONIDAS CHAPLIN, Defendant in Error.

BRIEF OF PLAINTIFFS COUNSEL.

The bill of complainant shows that the lumber was furnished to Roach and Staples, and credit given to them, and that the property against which it is sought to enforce a mechanic's lien, belongs to Roach alone, and it is not shown that Staples had any interest therein. Can Roach's property be made liable for the joint debt of himself and Staples in a proceeding of this kind? Our Statute, chapter on Liens, sec. 1, and the amendment of 1861, Laws of 1861, p. 179, allows the lien in case the contract is made, or the labor and materials furnished to the owner of the land or town lot. Here the credit was given, not to the owner, but to him and another, If this view is correct, the demurrer should have been overruled.

Staples was not a party in interest under the definition of the statute. Chapter on Liens, section 21.

The decree should not have been entered upon the overruling of Roach's demurrer. He should have been required to answer, in default of which the bill should have been taken *pro confesso* against him. Miller, et al., vs Davidson, 3 Gil. 528.

The answer of Staples should have been filed in writing.

The petition and bill of particulars filed and made a part thereof, charges that lumber only was furnished. The decree finds that lumber and materials was furnished, from which it is to be inferred that the decree is for something besides what was charged in the petition.

The decree does not find when the materials were furnished, so that it does not appear that they were furnished within the time limited in the amendment of the chapter on mechanic's lien, passed in 1861 (Laws 1861, p. 179,) or, indeed, that they were furnished since the passage of that act. Unless the latter was the fact, this case would be governed, I presume, by the statute as it formerly stood, and, in that event, the decree, according to frequent decisions of this court, would evidently be erroneous. There must be evidence appearing in the record sufficient to sustain the decree. *This Court will not presume that any other proof was made than what is stated in the record, White v. Morrison et al. 41 Ills 365; Ward v. Owens 12 Ills. 283.*

The 14th section of the chapter on liens, provides that if any part of the premises can be separated from the residue and sold without damage to the whole; and if the value thereof should be sufficient to satisfy all the claims, &c., the court may order a sale of that part.

This is a provision in favor of the defendant, and in this case the defendant Roach should have had the benefit of it. There were three lots. The court should have enquired if one was not sufficient to satisfy the claim. There is no redemption from a sale under a decree enforcing a mechanic's lien, and for that reason, a larger amount of land than necessary should not be sold, lest there should be an unnecessary sacrifice of property beyond the power of the debtor to avoid.

F. A. ALLISON,

SHERIDAN P. READ,

Attorney's for Plaintiff Roach.

SUPREME COURT
OF
ILLINOIS,
SECOND GRAND DIVISION.

3163

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CEK
Nov 11/84
Wm. H. H. H.
if a book
R

Wm. H. H. H.
No 2