No. 14498

Supreme Court of Illinois

Mixter

vs.

Harper et al

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 42

J. W. Middleton & Co., Stationers, 196 Lake St.

Mitchell
1864
Harper's
Greene

1863

14498

State of Illinois }
Third Grand Division } ss. In the Supreme Court
April Term A.D. 1863

Harper & Steele, Defts in Error
vs } Error to
George Mifter, Plff in Error } Roe Bland

And now come the said defendants in Error by J. B. Hawley their Attorney and move this Court to dismiss this Suit, and for Cause shows, that no transcript of the Record of proceedings of the Court below was filed in this Cause, in this Court, before the third day of the present term, nor were any errors ~~in~~ assigned in said Cause before the said third day, nor have any errors as yet been assigned, as required by rule seven of the printed rules of this Court —

J. B. Hawley
Atty for Defts

224 42

Harper & Steele
vs
George Smith
Motion by deft to dismiss

Filed May 4. 1863
S Leland Clk

Printed By Beach & Barnard, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

GEORGE MIXTER, Impleaded, &c. *Plaintiff in Error,* vs. John Harper and Alexander Steele, *Defendants in Error.*	Error to Rock Island.

ABSTRACT OF RECORD.

Rec. p. 1 Petition filed November 5th, 1857.

2 Petition for a Mechanic's Lien upon west half of west half of lot one, in block 19, in old town of Rock Island, alleges that on or about the first day of April, 1857, one John Cossum, the owner of said premises, made a contract with defendants in error, whereby they agreed to furnish
2 moneys and materials necessary and proper in and about the digging the cellar, and for the masonry for the foundation of a brick house to be erected on said premises; and for flooring, lumber and other materials, and for nails, &c., and other hardware and materials used in, and proper for, said house, as set forth in an account annexed to said petition.

For which materials the said Cossum agreed to pay defendants in error their reasonable worth and value *on request;* that they, defendants in error, furnished materials, and money in the procurement of materials, in and about the erecting and building of said house according to said account; that the reasonable worth and value thereof was $140,33, which
3 he (Cossum) agreed to pay defendants in error *on request;* that said Cossum had not paid any part thereof; that Cossum, on the 28th day of August, 1857, conveyed said premises to plaintiff in error by deed there-
3 for; that the title conveyed by said deed, is subject to claim for a lien of defendants in error.

4 PRAYER of petition for a mechanic's lien on said premises, to pay said sum of $140,33.

5 COPY of said account.

6 SUMMONS and return of service by sheriff of Rock Island county.

7, 8 DEMURRER of plaintiffs in error to the petition of defendants in error.

8 ORDER of the court overruling the demurrer aforesaid.

9 ANSWER of plaintiff in error to the petition.

Answer denies that Cossum was the owner of the premises as alleged in the petition.

10 Alleges that a large portion of the claim of defendants in error is for money advanced and not for labor and materials; denies that the claim of defendants in error is just; denies that the defendants in error furnished labor and materials as alleged in said petition. Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

11 AFFIDAVIT of truth of answer.

12 EXCEPTIONS to answer of plaintiff in error.

14 Consent that plaintiff in error file an amended answer.

17, 18, 19 AMENDED ANSWER substantially like the original, above referred to.

16 Exceptions one and two to amended answer sustained.

20 FINAL DECREE.

This decree, by agreement, is made in the several cases for mechanic's lien, as follows, to-wit:

Harper & Steele	vs.	John Cossum	and George Mixter.
Atkinson & Reynolds	vs.	"	"
Robert Graham	vs.	"	"
Stephen Ainsworth	vs.	"	"
Charles C. Toomer	vs.	"	"

21 Decree recites, that the several causes above named were heard by the court, upon testimony produced to the court, upon the several petitions taken as confessed against Cossum, and the answers of plaintiffs in error, and the replications thereto, without a jury; that the court found a decree in favor of defendants in error, Harper & Steele, for $188,69; in favor of Atkinson & Reynolds for $603,57; in favor of Robert Graham for $182,09; in favor of Stephen Ainsworth for $71,10.

21 The decree provides that the defendants in error (with others) have a lien on said premises for the amount found due them; and that the said
22 premises be sold by the sheriff of Rock Island county, under a special execution to be issued to him for that purpose.

No time is fixed by the decree for the sale.

23 CERTIFICATE of the clerk to the record.

ASSIGNMENT OF ERRORS.

And now comes the said George Mixter, by Knox & Reed, his attorneys, and says there is manifest error in the record and proceedings aforesaid, and in the rendition of the decree aforesaid in manner and form aforesaid, in this, to-wit:

1. The court erred in overruling the demurrer of the plaintiff in error to the petition of defendants in error.

2. The court should have sustained said demurrer and dismissed the said petition.

3. The court should have dismissed said petition, for the reason that the same is insufficient to give the court jurisdiction.

4. The court erred in rendering the decree for defendants in error in manner and form aforesaid.

KNOX & REED,
Attorneys for Plaintiff in Error.

Brief and Points for Plaintiff in Error.

The petition for a mechanic's lien, filed in this cause, is manifestly insufficient to give the court jurisdiction, for the reason that *no time was fixed* in which the money and materials mentioned in said petition were to be delivered. The petition *entirely fails* to show that any time was fixed for the furnishing or delivery of the money or materials.

This is a fatal defect in the petition.

In the case of *Phillips* vs. *Stone, et. al.*, 25 Ill. 81, this Court says:

"They (meaning parties who endeavor to enforce liens) must show in "their pleading, a time within which the contract was to be performed by "the agreement, and the time when the money was to be paid, as limited "by the act; and on the hearing, these allegations must be proved."

See cases then cited.

On page 169, of the 25 Ill., two cases are described, where the Court says:

"The petitions in both these cases present the same defect which we "have so often described to be fatal. They state no time within which "the contracts were to be performed, as is required by the statute."

In the case of *Scott et. al.* vs. *Keeling*, 25 Ill. 358, the Court says:

"The petition in this case is insufficient. Both the petition and proof "show that no time was specified by the contract within which it should "be performed."

In *Moser* vs. *Matt et. al.*, 24 Ill. 198, the Court says:

"It is essential a definite time shall be alleged for the completion of the "work. We cannot imply a time."

In the case of *Cook et. al.* vs. *Heald et. al.*, 21 Ill. 430, the Court says:

"Again, the petition should have averred a time when the contract was "to be performed by the agreement, and the time when the money was "to be paid, within the times severally limited by the act, as these facts "are material to a proper understanding by the Court, of the rights of "the parties."

The above quotations are fully sustained by the following authorities: 21 Ill. 431; do. 437; 22d do. 252; 23 do. 79; ibid. 473.

The petition is also fatally defective, for the reason that it fails to show that any *time* was *fixed* for the *payment* for the materials furnished.

The authorities above cited all agree that a lien cannot be enforced where no time was fixed for the payment for materials furnished or labor performed. See cases before cited.

The petition alleges that the material furnished were to be paid for by Cossum, *on request.*

This is not sufficiently definite to comply with the decisions cited, which unequivocally declare that the time for payment must *be fixed definitely* by the contract; and which time must be within one year from the completion of the work.

The request could be lawfully made in one month, or in one year, or in five years; and Cossum was under no obligation to pay until a request was made.

The decree in this case is unlawful, for the reason that a sale of the premises by the decree might be made at any time, as soon as the proper advertisement could be made.

The only clause in the decree which refers to the time of sale, is as follows, to wit.: "and that special execution, with a copy of the decree, "issue to the sheriff of Rock Island county for the sale thereof."

So the sale might have been made in twenty days after the decree was rendered.

This was error, most clearly.

Link vs. *Architectural Iron Works*, 24 Ill, 551.
Claycomb vs. *Cecil*, 27 Ill. 497.

For the foregoing reasons upon the points made, we think the decree in this cause should be reversed.

KNOX & REED,
Attorneys for Plaintiff in Error.

724 42

Minter
vs
Harper

Abstracts and
Brief of Plff in
Error

Filed April 24 1863
L Leland
Clk

Printed By Beach & Barnard, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

GEORGE MIXTER, Impleaded, &c. *Plaintiff in Error,* **vs.** John Harper and Alexander Steele, *Defendants in Error.*	Error to Rock Island.

ABSTRACT OF RECORD.

Rec. p. 1 Petition filed November 5th, 1857.

2 Petition for a Mechanic's Lien upon west half of west half of lot one, in block 19, in old town of Rock Island, alleges that on or about the first day of April, 1857, one John Cossum, the owner of said premises, made a contract with defendants in error, whereby they agreed to furnish
2 moneys and materials necessary and proper in and about the digging the cellar, and for the masonry for the foundation of a brick house to be erected on said premises; and for flooring, lumber and other materials, and for nails, &c., and other hardware and materials used in, and proper for, said house, as set forth in an account annexed to said petition.

For which materials the said Cossum agreed to pay defendants in error their reasonable worth and value *on request;* that they, defendants in error, furnished materials, and money in the procurement of materials, in and about the erecting and building of said house according to said account; that the reasonable worth and value thereof was $140,33, which
3 he (Cossum) agreed to pay defendants in error *on request;* that said Cossum had not paid any part thereof; that Cossum, on the 28th day of August, 1857, conveyed said premises to plaintiff in error by deed there-
3 for; that the title conveyed by said deed, is subject to claim for a lien of defendants in error.

4 PRAYER of petition for a mechanic's lien on said premises, to pay said sum of $140,33.

5 COPY of said account.

6 SUMMONS and return of service by sheriff of Rock Island county.

7, 8 DEMURRER of plaintiffs in error to the petition of defendants in error.

8 ORDER of the court overruling the demurrer aforesaid.

9 ANSWER of plaintiff in error to the petition.

Answer denies that Cossum was the owner of the premises as alleged in the petition.

10 Alleges that a large portion of the claim of defendants in error is for money advanced and not for labor and materials; denies that the claim of defendants in error is just; denies that the defendants in error furnished labor and materials as alleged in said petition. Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

11 AFFIDAVIT of truth of answer.

12 EXCEPTIONS to answer of plaintiff in error.

14 Consent that plaintiff in error file an amended answer.

17, 18, 19 AMENDED ANSWER substantially like the original, above referred to.

16 Exceptions one and two to amended answer sustained.

20 FINAL DECREE.

This decree, by agreement, is made in the several cases for mechanic's lien, as follows, to-wit:

Harper & Steele	vs.	John Cossum	and George Mixter.
Atkinson & Reynolds	vs.	"	"
Robert Graham	vs.	"	"
Stephen Ainsworth	vs.	"	"
Charles C. Toomer	vs.	"	"

21 Decree recites, that the several causes above named were heard by the court, upon testimony produced to the court, upon the several petitions taken as confessed against Cossum, and the answers of plaintiffs in error, and the replications thereto, without a jury; that the court found a decree in favor of defendants in error, Harper & Steele, for $188,69; in favor of Atkinson & Reynolds for $603,57; in favor of Robert Graham for $182,09; in favor of Stephen Ainsworth for $71,10.

21 The decree provides that the defendants in error (with others) have a lien on said premises for the amount found due them; and that the said
22 premises be sold by the sheriff of Rock Island county, under a special execution to be issued to him for that purpose.

No time is fixed by the decree for the sale.

23 CERTIFICATE of the clerk to the record.

ASSIGNMENT OF ERRORS.

And now comes the said George Mixter, by Knox & Reed, his attorneys, and says there is manifest error in the record and proceedings aforesaid, and in the rendition of the decree aforesaid in manner and form aforesaid, in this, to-wit:

1. The court erred in overruling the demurrer of the plaintiff in error to the petition of defendants in error.

2. The court should have sustained said demurrer and dismissed the said petition.

3. The court should have dismissed said petition, for the reason that the same is insufficient to give the court jurisdiction.

4. The court erred in rendering the decree for defendants in error in manner and form aforesaid.

KNOX & REED,
Attorneys for Plaintiff in Error.

Brief and Points for Plaintiff in Error.

The petition for a mechanic's lien, filed in this cause, is manifestly insufficient to give the court jurisdiction, for the reason that *no time was fixed* in which the money and materials mentioned in said petition were to be delivered. The petition *entirely fails* to show that any time was fixed for the furnishing or delivery of the money or materials.

This is a fatal defect in the petition.

In the case of *Phillips* vs. *Stone, et. al.*, 25 Ill. 81, this Court says:

"They (meaning parties who endeavor to enforce liens) must show in "their pleading, a time within which the contract was to be performed by "the agreement, and the time when the money was to be paid, as limited "by the act; and on the hearing, these allegations must be proved."

See cases then cited.

On page 169, of the 25 Ill., two cases are described, where the Court says:

"The petitions in both these cases present the same defect which we "have so often described to be fatal. They state no time within which "the contracts were to be performed, as is required by the statute."

In the case of *Scott et. al.* vs. *Keeling*, 25 Ill. 358, the Court says:

"The petition in this case is insufficient. Both the petition and proof "show that no time was specified by the contract within which it should "be performed."

In *Moser* vs. *Matt et. al.*, 24 Ill. 198, the Court says:

"It is essential a definite time shall be alleged for the completion of the "work. We cannot imply a time."

In the case of *Cook et. al.* vs. *Heald et. al.*, 21 Ill. 430, the Court says:

"Again, the petition should have averred a time when the contract was "to be performed by the agreement, and the time when the money was "to be paid, within the times severally limited by the act, as these facts "are material to a proper understanding by the Court, of the rights of "the parties."

The above quotations are fully sustained by the following authorities: 21 Ill. 431; do. 437; 22d do. 252; 23 do. 79; ibid. 473.

The petition is also fatally defective, for the reason that it fails to show that any *time* was *fixed* for the *payment* for the materials furnished.

The authorities above cited all agree that a lien cannot be enforced where no time was fixed for the payment for materials furnished or labor performed. See cases before cited.

The petition alleges that the material furnished were to be paid for by Cossum, *on request.*

This is not sufficiently definite to comply with the decisions cited, which unequivocally declare that the time for payment must *be fixed definitely* by the contract; and which time must be within one year from the completion of the work.

The request could be lawfully made in one month, or in one year, or in five years; and Cossum was under no obligation to pay until a request was made.

The decree in this case is unlawful, for the reason that a sale of the premises by the decree might be made at any time, as soon as the proper advertisement could be made.

The only clause in the decree which refers to the time of sale, is as follows, to wit.: "and that special execution, with a copy of the decree, "issue to the sheriff of Rock Island county for the sale thereof."

So the sale might have been made in twenty days after the decree was rendered.

This was error, most clearly.

Link vs. *Architectural Iron Works*, 24 Ill, 551.
Claycomb vs. *Cecil*, 27 Ill. 497.

For the foregoing reasons upon the points made, we think the decree in this cause should be reversed.

KNOX & REED,
Attorneys for Plaintiff in Error.

42 ~~124~~

Miller
vs
Harper

Abstract and
Brief of Plff in error

Filed Apr. 24. 1863
J. Lidard
Clk

State of Illinois } ss. April term A.D. 1863
Supreme Court } of the Third Grand Division.

George Minter } Pltff. in error.
vs
John Hearper } Deftts in error.
& Alexander Steele

Error to Rock Island.

My Dear Sir
You will please issue a scire facias to hear errors to said Defendants to Sheriff of Rock Island County.
Yours &c
Norris & Reed
Attys for Pltff. in error.

L. Leland Esq
Clerk Supreme Ct.
Ottawa Ills.

124
112

Geo. Minster
vs
John Harper
Alexander Steele
- - - - - -
Precipe
- - - - - -

Filed March 28
1863
D. Selmier, clerk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT.

To the Sheriff of Rock Island County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between

George Mister, Impleaded

~~plaintiff~~, and John Harper & Alexander Steele

~~defendant~~, it is said that manifest error hath intervened, to the injury of the said

George Mister

as we are informed by his complaint ~~to us~~ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, 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

John Harper & Alexander Steele

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Harper & Steele

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 28th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-three.

L. Leland
Clerk of the Supreme Court.

State of Illinois } ss.
Rock Island County }

I have executed this writ by reading the same to each of the within named John Harper & Alexander Steele this 31st day of March A.D. 1863.

C. A. McLaughlin Sheriff of
Rock Island County Ill

42

George Allepter

No. vs. John Harper et al.

SCIRE FACIAS.

Filed ..... A. D. 186

..... Clerk.

Sheriff fees $ 0.20
Rec'd my fees in full
C. A. McLaughlin Sh'ff.
R. I. Co. Ill.

Printed By Beach & Barnard, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

GEORGE MIXTER, Impleaded, &c. *Plaintiff in Error,* vs. John Harper and Alexander Steele, *Defendants in Error.*	Error to Rock Island.

ABSTRACT OF RECORD.

Rec. p. 1 Petition filed November 5th, 1857.

2 Petition for a Mechanic's Lien upon west half of west half of lot one, in block 19, in old town of Rock Island, alleges that on or about the first day of April, 1857, one John Cossum, the owner of said premises, made a contract with defendants in error, whereby they agreed to furnish
2 moneys and materials necessary and proper in and about the digging the cellar, and for the masonry for the foundation of a brick house to be erected on said premises; and for flooring, lumber and other materials, and for nails, &c., and other hardware and materials used in, and proper for, said house, as set forth in an account annexed to said petition.

For which materials the said Cossum agreed to pay defendants in error their reasonable worth and value *on request;* that they, defendants in error, furnished materials, and money in the procurement of materials, in and about the erecting and building of said house according to said account; that the reasonable worth and value thereof was $140,33, which
3 he (Cossum) agreed to pay defendants in error *on request;* that said Cossum had not paid any part thereof; that Cossum, on the 28th day of August, 1857, conveyed said premises to plaintiff in error by deed there-
3 for; that the title conveyed by said deed, is subject to claim for a lien of defendants in error.

4 PRAYER of petition for a mechanic's lien on said premises, to pay said sum of $140,33.

5 COPY of said account.

6 SUMMONS and return of service by sheriff of Rock Island county.

7, 8 DEMURRER of plaintiffs in error to the petition of defendants in error.

8 ORDER of the court overruling the demurrer aforesaid.

9 ANSWER of plaintiff in error to the petition.

Answer denies that Cossum was the owner of the premises as alleged in the petition.

10 Alleges that a large portion of the claim of defendants in error is for money advanced and not for labor and materials; denies that the claim of defendants in error is just; denies that the defendants in error furnished labor and materials as alleged in said petition. Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

11 AFFIDAVIT of truth of answer.

12 EXCEPTIONS to answer of plaintiff in error.

14 Consent that plaintiff in error file an amended answer.

17, 18, 19 AMENDED ANSWER substantially like the original, above referred to.

16 Exceptions one and two to amended answer sustained.

20 FINAL DECREE.

This decree, by agreement, is made in the several cases for mechanic's lien, as follows, to-wit:

Harper & Steele	vs.	John Cossum	and George Mixter.
Atkinson & Reynolds	vs.	"	"
Robert Graham	vs.	"	"
Stephen Ainsworth	vs.	"	"
Charles C. Toomer	vs.	"	"

21 Decree recites, that the several causes above named were heard by the court, upon testimony produced to the court, upon the several petitions taken as confessed against Cossum, and the answers of plaintiffs in error, and the replications thereto, without a jury; that the court found a decree in favor of defendants in error, Harper & Steele, for $188,69; in favor of Atkinson & Reynolds for $603,57; in favor of Robert Graham for $182,09; in favor of Stephen Ainsworth for $71,10.

21 The decree provides that the defendants in error (with others) have a lien on said premises for the amount found due them; and that the said
22 premises be sold by the sheriff of Rock Island county, under a special execution to be issued to him for that purpose.

No time is fixed by the decree for the sale.

23 CERTIFICATE of the clerk to the record.

ASSIGNMENT OF ERRORS.

And now comes the said George Mixter, by Knox & Reed, his attorneys, and says there is manifest error in the record and proceedings aforesaid, and in the rendition of the decree aforesaid in manner and form aforesaid, in this, to-wit:

1. The court erred in overruling the demurrer of the plaintiff in error to the petition of defendants in error.

2. The court should have sustained said demurrer and dismissed the said petition.

3. The court should have dismissed said petition, for the reason that the same is insufficient to give the court jurisdiction.

4. The court erred in rendering the decree for defendants in error in manner and form aforesaid.

KNOX & REED,
Attorneys for Plaintiff in Error.

Brief and Points for Plaintiff in Error.

The petition for a mechanic's lien, filed in this cause, is manifestly insufficient to give the court jurisdiction, for the reason that *no time was fixed* in which the money and materials mentioned in said petition were to be delivered. The petition *entirely fails* to show that any time was fixed for the furnishing or delivery of the money or materials.

This is a fatal defect in the petition.

In the case of *Phillips* vs. *Stone, et. al.*, 25 Ill. 81, this Court says:

"They (meaning parties who endeavor to enforce liens) must show in "their pleading, a time within which the contract was to be performed by "the agreement, and the time when the money was to be paid, as limited "by the act; and on the hearing, these allegations must be proved."

See cases then cited.

On page 169, of the 25 Ill., two cases are described, where the Court says:

"The petitions in both these cases present the same defect which we "have so often described to be fatal. They state no time within which "the contracts were to be performed, as is required by the statute."

In the case of *Scott et. al.* vs. *Keeling*, 25 Ill. 358, the Court says:

"The petition in this case is insufficient. Both the petition and proof "show that no time was specified by the contract within which it should "be performed."

In *Moser* vs. *Matt et. al.*, 24 Ill. 198, the Court says:

"It is essential a definite time shall be alleged for the completion of the "work. We cannot imply a time."

In the case of *Cook et. al.* vs. *Heald et. al.*, 21 Ill. 430, the Court says:

"Again, the petition should have averred a time when the contract was "to be performed by the agreement, and the time when the money was "to be paid, within the times severally limited by the act, as these facts "are material to a proper understanding by the Court, of the rights of "the parties."

The above quotations are fully sustained by the following authorities: 21 Ill. 431; do. 437; 22d do. 252; 23 do. 79; ibid. 473.

The petition is also fatally defective, for the reason that it fails to show that any *time* was *fixed* for the *payment* for the materials furnished.

The authorities above cited all agree that a lien cannot be enforced where no time was fixed for the payment for materials furnished or labor performed. See cases before cited.

The petition alleges that the material furnished were to be paid for by Cossum, *on request.*

This is not sufficiently definite to comply with the decisions cited, which unequivocally declare that the time for payment must *be fixed definitely* by the contract; and which time must be within one year from the completion of the work.

The request could be lawfully made in one month, or in one year, or in five years; and Cossum was under no obligation to pay until a request was made.

The decree in this case is unlawful, for the reason that a sale of the premises by the decree might be made at any time, as soon as the proper advertisement could be made.

The only clause in the decree which refers to the time of sale, is as follows, to wit.: "and that special execution, with a copy of the decree, "issue to the sheriff of Rock Island county for the sale thereof."

So the sale might have been made in twenty days after the decree was rendered.

This was error, most clearly.

Link vs. *Architectural Iron Works*, 24 Ill, 551.
Claycomb vs. *Cecil*, 27 Ill. 497.

For the foregoing reasons upon the points made, we think the decree in this cause should be reversed.

KNOX & REED,
Attorneys for Plaintiff in Error.

124 12

Moyler
vs
Harper

Abstracts and
Brief of Pltff in
error

Filed Apr 24. 1863
S Lelande
Clk

Printed By Beach & Barnard, 14 South Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

GEORGE MIXTER, Impleaded, &c.
Plaintiff in Error,
vs.
John Harper and Alexander Steele,
Defendants in Error.

Error to Rock Island.

ABSTRACT OF RECORD.

Rec. p. 1 Petition filed November 5th, 1857.

2 Petition for a Mechanic's Lien upon west half of west half of lot one, in block 19, in old town of Rock Island, alleges that on or about the first day of April, 1857, one John Cossum, the owner of said premises, made a contract with defendants in error, whereby they agreed to furnish
2 moneys and materials necessary and proper in and about the digging the cellar, and for the masonry for the foundation of a brick house to be erected on said premises; and for flooring, lumber and other materials, and for nails, &c., and other hardware and materials used in, and proper for, said house, as set forth in an account annexed to said petition.

For which materials the said Cossum agreed to pay defendants in error their reasonable worth and value *on request;* that they, defendants in error, furnished materials, and money in the procurement of materials, in and about the erecting and building of said house according to said account; that the reasonable worth and value thereof was $140,33, which
3 he (Cossum) agreed to pay defendants in error *on request;* that said Cossum had not paid any part thereof; that Cossum, on the 28th day of August, 1857, conveyed said premises to plaintiff in error by deed there-
3 for; that the title conveyed by said deed, is subject to claim for a lien of defendants in error.

4 PRAYER of petition for a mechanic's lien on said premises, to pay said sum of $140,33.

5 COPY of said account.

6 SUMMONS and return of service by sheriff of Rock Island county.

7, 8 DEMURRER of plaintiffs in error to the petition of defendants in error.

8 ORDER of the court overruling the demurrer aforesaid.

9 ANSWER of plaintiff in error to the petition.

Answer denies that Cossum was the owner of the premises as alleged in the petition.

10 Alleges that a large portion of the claim of defendants in error is for money advanced and not for labor and materials; denies that the claim of defendants in error is just; denies that the defendants in error furnished labor and materials as alleged in said petition. Admits the conveyance of said premises to plaintiff in error as alleged in said petition.

11 AFFIDAVIT of truth of answer.

12 EXCEPTIONS to answer of plaintiff in error.

14 Consent that plaintiff in error file an amended answer.

17, 18, 19 AMENDED ANSWER substantially like the original, above referred to.

16 Exceptions one and two to amended answer sustained.

20 FINAL DECREE.

This decree, by agreement, is made in the several cases for mechanic's lien, as follows, to-wit:

Harper & Steele	vs.	John Cossum	and George Mixter.
Atkinson & Reynolds	vs.	"	"
Robert Graham	vs.	"	"
Stephen Ainsworth	vs.	"	"
Charles C. Toomer	vs.	"	"

21 Decree recites, that the several causes above named were heard by the court, upon testimony produced to the court, upon the several petitions taken as confessed against Cossum, and the answers of plaintiffs in error, and the replications thereto, without a jury; that the court found a decree in favor of defendants in error, Harper & Steele, for $188,69; in favor of Atkinson & Reynolds for $603,57; in favor of Robert Graham for $182,09; in favor of Stephen Ainsworth for $71,10.

21 The decree provides that the defendants in error (with others) have a lien on said premises for the amount found due them; and that the said
22 premises be sold by the sheriff of Rock Island county, under a special execution to be issued to him for that purpose.

No time is fixed by the decree for the sale.

23 CERTIFICATE of the clerk to the record.

ASSIGNMENT OF ERRORS.

And now comes the said George Mixter, by Knox & Reed, his attorneys, and says there is manifest error in the record and proceedings aforesaid, and in the rendition of the decree aforesaid in manner and form aforesaid, in this, to-wit:

1. The court erred in overruling the demurrer of the plaintiff in error to the petition of defendants in error.

2. The court should have sustained said demurrer and dismissed the said petition.

3. The court should have dismissed said petition, for the reason that the same is insufficient to give the court jurisdiction.

4. The court erred in rendering the decree for defendants in error in manner and form aforesaid.

KNOX & REED,
Attorneys for Plaintiff in Error.

Brief and Points for Plaintiff in Error.

The petition for a mechanic's lien, filed in this cause, is manifestly insufficient to give the court jurisdiction, for the reason that *no time was fixed* in which the money and materials mentioned in said petition were to be delivered. The petition *entirely fails* to show that any time was fixed for the furnishing or delivery of the money or materials.

This is a fatal defect in the petition.

In the case of *Phillips* vs. *Stone, et. al.*, 25 Ill. 81, this Court says:

"They (meaning parties who endeavor to enforce liens) must show in "their pleading, a time within which the contract was to be performed by "the agreement, and the time when the money was to be paid, as limited "by the act; and on the hearing, these allegations must be proved."

See cases then cited.

On page 169, of the 25 Ill., two cases are described, where the Court says:

"The petitions in both these cases present the same defect which we "have so often described to be fatal. They state no time within which "the contracts were to be performed, as is required by the statute."

In the case of *Scott et. al.* vs. *Keeling*, 25 Ill. 358, the Court says:

"The petition in this case is insufficient. Both the petition and proof "show that no time was specified by the contract within which it should "be performed."

In *Moser* vs. *Matt et. al.*, 24 Ill. 198, the Court says:

"It is essential a definite time shall be alleged for the completion of the "work. We cannot imply a time."

In the case of *Cook et. al.* vs. *Heald et. al.*, 21 Ill. 430, the Court says:

"Again, the petition should have averred a time when the contract was "to be performed by the agreement, and the time when the money was "to be paid, within the times severally limited by the act, as these facts "are material to a proper understanding by the Court, of the rights of "the parties."

The above quotations are fully sustained by the following authorities: 21 Ill. 431; do. 437; 22d do. 252; 23 do. 79; ibid. 473.

The petition is also fatally defective, for the reason that it fails to show that any *time* was *fixed* for the *payment* for the materials furnished.

The authorities above cited all agree that a lien cannot be enforced where no time was fixed for the payment for materials furnished or labor performed. See cases before cited.

The petition alleges that the material furnished were to be paid for by Cossum, *on request*.

This is not sufficiently definite to comply with the decisions cited, which unequivocally declare that the time for payment must *be fixed definitely* by the contract; and which time must be within one year from the completion of the work.

The request could be lawfully made in one month, or in one year, or in five years; and Cossum was under no obligation to pay until a request was made.

The decree in this case is unlawful, for the reason that a sale of the premises by the decree might be made at any time, as soon as the proper advertisement could be made.

The only clause in the decree which refers to the time of sale, is as follows, to wit.: "and that special execution, with a copy of the decree, "issue to the sheriff of Rock Island county for the sale thereof."

So the sale might have been made in twenty days after the decree was rendered.

This was error, most clearly.

Link vs. *Architectural Iron Works*, 24 Ill, 551.
Claycomb vs. *Cecil*, 27 Ill. 497.

For the foregoing reasons upon the points made, we think the decree in this cause should be reversed.

KNOX & REED,
Attorneys for Plaintiff in Error.

42 124

Miller
vs
Harper

Abstract of
Brief of Plff in
error

Filed Apl 24. 1843
L Leland
Clk

1

PLEAS before the Honorable J Wilson Drury, Judge of the Sixth District of the State of Illinois, at a term of the Circuit Court began and held at the Court House within and for the county of Rock Island and State aforesaid, on the first Monday, the seventh day of December in the year of our Lord one thousand eight hundred and fifty seven

Present, Honorable J. Wilson Drury Judge
Ezra M Beardsley Sheriff
Quincy McNeil Clerk

Be it Remembered that on the twenty fifth day of November A 1857 there was filed in the office of the Clerk of the Circuit Court in the City of Rock Island in the County and State aforesaid a Petition for Lien on behalf of John Harper and Alexander Steele and against John Cossum and George Whipter and which is in the words and figures following to wit

State of Illinois
Rock Island County } Rock Island County Circuit Court
December Term AD 1857

To the Honorable J Wilson Drury presiding Judge of said Court

The petition of John Harper and Alexander Steele parties trading and doing business under the firm name and style of "Harper & Steele" respectfully represents and shows unto your Honor that, on or about the first

2

day of April A.D. 1857, one John Cossum, who was then the owner of a certain lot or parcel of land situated in the County of Rock Island and State of Illinois, known and discribed as the West one half of the west half of Lot No one (1) in Block Number nineteen (19) in that part of the City of Rock Island know as the old or original town, was then and thereabout erecting and building thereon, a two story dwelling house of brick, That the said John Cossum, to wit at the time and place aforesaid made and entered into a contract with your petioners to furnish monies and materials necessary and proper in and about the digging the cellar, and for the masonary for the foundation of said house and for flooring, lumber and other materials for said house, and for nails, brads, glass, doors, door rails, butts, screws, knobs, window fixtures escutcheons, locks, and other hardware and materials used in and proper for said house as set forth in the account thereof hereto annexed marked "A" and for which said materials the said Cossum agreed to pay your petioners the reasonable worth and value, on request, That in accordance with said contract your petioners furnished materials and moneys in the procurement of materials, in and about the erection and building of the aforesaid dwelling house according to account "A" hereto annexed, and amounting, at the reasonable worth and value thereof to the sum of two hundred and forty dollars and thirty

(2)

3

three cents, and for which said Cossum agreed to pay to your petitioners the said reasonable worth and value on request.
And your petitioners allege that the said Cossum, although often requested has not paid to your petitioners the aforesaid account or any part of the same, but that the whole of the same is yet unpaid and due to your petitioners. Your petitioners further allege that the said Cossum & his wife on or about the 28th day of August 1857 as your petitioners are informed and believe — made and executed a deed of conveyance to one George Mipter of and for the lot and house of land aforesaid. And that the said George Mipter, as your petitioners are informed and believe now claims to own the said discribed premises, but your petitioners allege and charge the fact to be that if any such deed of conveyance was made by the said Cossum & Wife to the said Mipter the same was made and executed subsequent to the contract of your petitioners with the said Cossum as aforesaid, and after the whole or greater part of the amount of said contract accrued to and became payable to your petitioners.
And that said deed if any such there be, is subject to the prior claim and lien of your petitioners upon said dwelling house and premises under by virtue of the contract aforesaid, and to the amount aforesaid.
The premises considered your petitioners pray that the said John Cossum and George Mipter

be made parties defendants to this petition and be required severally to answer the same, and that upon a hearing hereof your Honor will be pleased to order a sale of the aforesaid premises and appurtenances, and that the proceeds thereof be applied to the payment and discharge of the aforesaid demand of your petitioners. And that your petitioners may have such other and further relief, orders &c as the statute in such case allows, and as you petitioners may be entitled to, and as in duty bound your petitioners will ever pray &c

Alexander Steel
John Harper petitioners
By Wilkinson & Pleasants
their Solicitors

State of Illinois
Rock Island County } Alexander Steel
being duly sworn, according to law on oath states that he has heard read the foregoing petition and knows the contents thereof, that the matters therein stated as on the knowledge of petitioners are true, and the other matters therein stated he the 1d petitioner believes to be true

Sworn and subscribed
before me this 25th day
of November 1857
Quincy McNulty } Alexander Steel

(4)

5. Mr John Cosgrove To Harper & Steel Dr

1857							
Apr	1	To cash paid for digging cellar		7	52	7	52
	7	" Amt paid on Masonry foundation		42	50	42	50
	16	1000 feet Flooring		27	00		
		100 " Lumber		2	00	29	00
	25	cash paid for Survey of Lot				1	00
May	4	Iron for Building				6	39
June	12	2 Kegs Nails	475			9	50
	14	3 of 2¼ Apple Pillays	250			7	50
	17	4 grs Sand Paper	20			"	80
	25	3 Four Pannel Doors	285			8	55
	29	Glass for House				31	22
July	11	Randall & Thompsons Bill Iron Caps		Sills		60	83
	17	4 Papers Brads				"	50
	30	12 feet Door Rail	10			1	20
Aug	10	Stained Glass				12	50
		40 feet Fencing	20 & 40				80
	18	4 Locks	40	1	60		
		1 Do		1	00		
		3 Porcelain Door Knobs	50	1	50		
		1 Escutcheons " "		"	75		
		3 prs Escutcheons	15	"	45		
		1 Pr " for Front Door		"	30		
		1 pr 4 x 4 Butts & Screws		"	25		
		8 " 3½ x 3½ " "	20	1	60		
		8 Sash Fastening & Screws	15	1	20		
		4 prs Small Butts	10	"	40		
		2 Box Screws	55	1	10	10	15
		Express on Glass		"	62		
		1 Front Door Lock		2	75		
		3 Mortice " "	75	2	25	5	62
	21	1 Keg 8d Nails				4	75
						240	35

And afterwards to wit on the same day the said 25th day of November 1857 there issued forth of the office of the Circuit Clerk of said county & State aforesaid a writ of Summons which is in the words and figures following

The People of the State of Illinois

State of Illinois
Rock Island County } ss. To the Sheriff of Rock Island County, Greeting.

We command you to summon John Cossum and George Wipter, if to be found in your County, personally to be and appear before the Circuit Court of said County on the first day of next term thereof to be holden at the Court House in Rock Island, on the first Monday of December next, to answer to a bill of complaint filed in our said Circuit Court against them (for Mechanics lien &c) by John Harper and Alexander Steel. And have you then and there this writ, and make return thereon in what manner you execute the same.

Witness: Quincy McNeil, Clerk of the said court, and the seal thereof affixed this 25th day of November in the year of our Lord, one thousand eight hundred and fifty seven.

Quincy McNeil Clerk

And on the back of said writ is an endorsement in the words and figures following to wit.

I have served the within summons by delivering a copy to the within named John Cossum & leaving a copy of the same

7

at the residence of George Mipter with a white person over the age of twelve years making them acquainted with the contents of the same. Nov. 26. 1857

E M Beardsley Shff
R O Co Ills

And be it further remembered that afterwards to wit of the 24th day of December 1857 there was filed in the office of said Circuit Clerk in the county and State aforesaid a demurrer which is the words following.

The Demurrer of George Mipter one of the Defendants to the petition of Alexander Steel and John Harper

The said defendant by protestation, not confessing or acknowledging all or any of the matters and things in and by said petition set forth and complained of to be true in manner and form as the same are therein set forth and alledged. Saith he is advised by his counsel that there is no matter or thing in the said petition contained good and sufficient in law to call this defendant in question in this court for the same, but that there is good cause of demurrer thereunto, and therefore this defendant saith that complainants said petition, in case the allegations therein contained were true, which this defendant doth in no sort admit, contains not any matter or thing of equity wherein this court can ground any decree, or give the plaintiffs any relief or assistance as against

this defendant, Wherefore and for divers other errors and imperfections in the said petition appearing, this defendant doth demur in law, and humbly asks of this Court, whether he shall be compelled to put in any further or other answer to the said petition, and prays to be dismissed hence with his costs in this behalf sustained

Knox & Wilkinson for Deft. Mipter

And afterwards to wit on the same day before the judge aforesaid at the December term 1857 of said Circuit Court and on the 6th day of said term being the 24th of December 1857 the following proceeding was had.

John Harper &
Alexander Steel
vs
John Cossum &
George Mipter
} ss Mechanics Lien

This day came the parties by their attornies and defendant Mipter entered his motion for a continuance herein which is overruled by the court, Thereupon the said defendant filed his demur to plaintiffs petition, which being heard is overruled by the court. And on plaintiffs motion it is ordered that the defendants answer by the first day of February next.

And be it further remembered that on the 29.

(8)

9

day of January 1858 the answer of George Whipter was filed in the said office of Circuit Clerk of said County and which is in the words following.

State of Illinois
Rock Island County } ss

Rock Island Circuit Court
of the March Term AD 1858

To the Hon L. Wilson Drury Judge of the eighth Judicial Circuit in the State of Illinois

The answer of George Whipter one of the defendants to the petition of Harper & Steel petitioners.

The defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition, for answer thereto or so much thereof as this defendant is advised it is necessary for him to make answer to, answering saith

That on or about the first day of April AD 1857 the time at which it is alledged in the petition filed herein, the contract was made by John Cossum one of the defendants to said petition, with said Alexander Steel and John Harper, for the materials set forth in said petition for the construction of the building therein mentioned in said petition ~~for~~ the ~~co~~ said Cossum was not the owner of the lot mentioned in the said petition. The defendant further shows into your Honor that a large part of the claim of petitioners herein is for services advanced by the petitioners

to and for the use of John Cossum and not for Labor or Materials furnished by the petitioners for erecting or repairing any building or the appurtenances of any building on the lot or part of lot in the said petition discribed

This defendant further says that the petitioners herein have since the first day of April AD 1857 furnished materials for other buildings for the erection of which said Cossum was a contractor beside the building discribed in the petition and from time to time payments have been made by the said Cossum to the said petitioners and that the balance if any which may now be due the said petitioners herein from said Cossum for materials furnished is due and owing for materials furnished for all the buildings for which they may have furnished materials for said Cossum during the past season, and not solely for materials furnished for the particular building discribed in this petition

This defendant denies that the amount of materials mentioned in the said petition and the schedule thereto attached "Marked A" were furnished by the said petitioners in and about the erection of the particular building on the lot or part of lot in said petition discribed

The defendant admits that the said Cossum & wife, did make and execute a deed to this defendant on the 28th day of August AD 1857 of the premises discribed in said petition that a claim or lien as set forth in the said petition existed at the time of the execution of said deed.

This defendant further expressly denies that

(6)

11

any other matter or thing in said petition contained not herein sufficiently answered, confessed and avoided or denied is true according to the best knowledge, information and belief of this defendant

And now having fully and said petition this defendant asks to be dismissed hence with his reasonable costs in this suit

George Wipter
by Knox & Wilkinson

State of Illinois
Rock Island County } ss

George Wipter ~~having been~~ being duly sworn says that the matters set forth in foregoing answer are true so far as the same purport to be stated of his own knowledge, and so far as they not so stated he has been informed and believes them to be true

Sworn & subscribed to before me this 29th day of Jany. AD 1858
Quincy McNeil Clk

Geo Wipter

Be it Remembered that on seventeenth day of March 1858 there was filed in the office of the Clerk of the Circuit Court in the City of Rock Island and county and State aforesaid Exceptions to the answer of George Wipter in the words and figures following to wit

Harper & Steel
vs
John Cossum &
George Wipter } R I Cir Ct
Mar 7. 1858

(11)

And the said petitioners come and excepts to the demur of the defendant George Myster and says the same is uncertain, irrelevant, irresponsive immaterial and otherwise insufficient to be replied unto

Wilkinson & Pleasants
Attys for Pltffs

And for causes of exceptions to the said answer the said petitioners asig in the following
The said deft Myster does not answer fully and explicitly according to his knowledge or his information and belief the several matters alleged and set forth the petition herein
This defendant Myster does not on knowledge or on information and belief deny or admit the several allegations of the petition herein.
The 8 answer is otherwise ineffectual

Wilkinson & Pleasants
for Petr

And afterwards on the 18th Day March 1858 a replication was filed in office of ~~Court~~ Clerk of Circuit Court in the City of Rock Island and county and State aforesaid in the words ~~and~~ following to wit

John Harper & Alexander Steel
partners &c
vs
George Myster & John Cossum

Mechanics Lien

This day came the parties ~~and~~ by their attorneys and by consent of parties leave is given to defendants to amend their answer and the amended answer being filed plaintiff file their exceptions to the same

13

State of Illinois
Rock Island County } ss

Of the March Term AD 1858
of the Rock Island County
Circuit Court

Harper & Steel
vs
John Cossum and
George Wigton

Replication

The Complainants reserving to themselves all advantage of exception to the many insufficiences of the said answer for replication thereto say that they will aver and prove their said petition to be true, certain and sufficient in the law to be answered unto, and that the answer of said defendant is uncertain, untrue, and insufficient to be replied unto by these complainants. Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto confessed ~~or de~~ avoided traversed or denied is true — All of which matters & things these complainants are & will be ready to aver and prove as the Honorable Court may direct — and pray as in and by their said petition they have already prayed

Williamson & Pleasants
for Complts

And afterwards to wit before the judge aforesaid at the September term 1858 of said Circuit Court and on the 5th day of said term being the 11th of September 1858 the following proceeding was had

John Harper & Alexander Steel
partners R Harper & Steel
vs
George Miller & John Lessum
} Mechanics Lien

This day came the parties by their attorneys and by concent of parties leave is given to defendants to amend their answer and the amended answer being filed, plaintiff file their exceptions to the same

coming on now to be heard by the court and being argued by the counsell and by the court duly considered the said exceptions number one and two are sustained — and on motion of

15

And afterwards to wit on the 25th day of September 1858 before the judge aforesaid at the September term 1858 of said circuit court and on the 14th day of said term the following proceeding was had

Christopher Atkinson & Elisha P. Reynolds Partners &c Atkinson & Reynolds
vs
John Cossum & George Wipter } Mechanics Lien

John Harper & Alexander Steel partners &c Harper & Steel
vs
John Cossum & George Wipter

Robert Graham
vs
John Cossum & George Wipter

Stephen Ainsworth
vs
John Cossum & George Wipter

Charles C. Tooner
vs
John Cossum & George Wipter } At this day came the above named complainants by Wilkinson & Pleasant and R. W. Marshall their solicitors and the defendant George Wipter by Knox & Wilkinson and Beardsley & Smith his solicitors and the defendant John Cossum having been duly served with a process of summons herein and being three times solemnly called came not but made default. It is therefore ordered and decreed by the Court that the petitioners of the said several respective complainants to be taken as confessed as against him — And the exceptions filed by the said several complainants to the several answers of the said defendant George Wipter

coming on now to be heard by the Court and being argued by the counsel and by Court duly considered the said exceptions number one and two are sustained and on motion of said defendant Mister leave is given him to file amended answers in said several causes and the said causes are now continued

And afterwards to wit: on 13th day of December 1858 there was filed in the office of the Clerk of the Circuit Court in the county and State aforesaid the amended answer of George Mister which was and is in the words and figures following to wit

State of Illinois
Rock Island County } ss

Rock Island Circuit Court
of the December Term 1858

To the Honorable J. Wilson Drury Judge of the Sixth Judicial Circuit in the State of Illinois

The amended answer of George Mister one of the defendants to the petition of Harper & Steel. Petitioners

This defendant now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition contained, for answer there to, or so much thereof as this defendant is advised is material or necessary for him

17

to make answer thereto, answering, saith

That the materials set forth in said petition and the schedule thereto attached marked "A" as furnished by the complainants for the construction of the building and its appurtenances therein mentioned, if furnished at all, were not furnished by ~~said~~ the complainants to John Cossum, one of the defendants to this bill, by contract made on or about the 1st day of April 1857 as the owner at that time of the part of the lot discribed in said petition to wit; the west half of the west half of lot No one (1) in Block No Nineteen (19) in that part of the City of Rock Island know as the old or original town;

Nor were they furnished, if furnished at all, be the said petitioners, for the construction of said building and its appurtenances, by contract with the said Cossum made at any other time when the said Cossum was the owner of said lot or part of a lot

And that the said Cossum was not on the said 1st day of April 1857, not at any other time when he made a contract with said petitioners for the materials set forth in the said petition and schedule thereto attached, marked (A), the owner of said lot or part of lot.

This defendant further says, that that the petitioners herein mentioned, have since the first day of April 1857, furnished materials for other buildings for the erection of which the said Cossum was a contractor besides the building discribed in this Petition

and that from time to time payments have been made by the said Cossum to the said petitioners, and that balance, if any, which may now be due the petitioners herein from said Cossum, for materials furnished, is due and owing for materials furnished for all the buildings for which they may have furnished materials for the said Cossum during the year 1857. and not solely for materials furnished for the particular building discribed in this petition.

This defendant denies that the materials mentioned in the said petition and the schedule thereto attached marked "A" were furnished by the said petitioners in and about the particular building in the lot or part of the lot in said petition discribed.

This defendant admits, that the said Cossum and wife did make and execute a deed to this defendant on the 25th day of August 1857 of the premises discribed in the said petition and that he now claims to own the said premises, but he denies that a claim or lien as set forth in the said petition existed at the time of the execution of said deed

This defendant further says, that a large part of the claim of the petitioners herein is for monies advanced by the petitioners to, and for the use of the said John Cossum, and not for labor or materials furnished by the petitioners for erecting or repairing any building or the appurtenances

(18)

25. of any building on the lot or part of a lot in the said petition discribed.

This defendant herein expressly denies that any other matter or thing in said petition contained, not herein sufficiently answered, confessed, avoided, or denied, is true according to the best knowledge, information and belief of this defendant

And now having fully answered said petition this defendant asked to be dismissed hence with his reasonable costs in this suit.

State of Illinois
Rock Island County } ss

George Mister being duly sworn, says that the matters set forth in the foregoing answers are true so far as they purport to be stated on his own knowledge. And so ~~forth~~ as they are not so stated he has been informed and believes that they are true —

Geo. Mister

Sworn to and subscribed
this 14th day of December
1858 Quincy McNeil Clk

And afterwards to wit on the 19th day January AD 1859 the same being the 3rd day of the January Special Term of the Circuit Court within and for the county and State aforesaid before the Judge thereof the following proceedings were had to wit

Christopher Atkinson &
Elisha P Reynolds partners &c
8 John Cossum vs George Mifter
John Harper & Alexander Steel Partners &c
9 John Cossum vs George Mifter
Robert Graham
10 John Cossum vs George Mifter
Stephen Ainsworth
11 John Cossum vs George Mifter
Charles le Fossier
12 John Cossum vs George Mifter

Petitions for Mechanics Lien

At this day came the above several complainants by Wilkinson & Pleasants and R. M. Marshall their solicitors and the defendant George Mifter by Thos Wilkinson, and Beardsley & Smith his solicitors, and the agreement of said parties by their said solicitors the said several entitled causes are submitted to the court for ~~a~~ hearing trial and decision together, and without the intervention of a jury. And the said causes coming on now to be tried and determined upon the respective petitions of the said several complainants, taken for confessed by defendant Cossum, and upon the amended answers thereto of the defendant Mifter, and the replications to said answers on the part of the said several complainants, and upon oral testimony of witnesses produced sworn and examined in open Court by the said parties in said causes respectively, and the court having heard the said several causes and the evidence

21

adduced therein respectively, as also the arguments of council therein, and being now sufficiently advised in the premises, doth find and adjudge that the allegations of the said several petitioners of the said complainants are true, and that there is due and owing from the defendant Coesum to the said several complainants for materials furnished by them respectively, and for work done by them respectively in and about the erection of a certain brick dwelling house upon the lot in the said several petitions mentioned to wit The west one half of the west half of Lot number one (1) in Block number nineteen (19) in that part of the city of Rock Island, known as the old or original town, and situated in the county of Rock Island and State of Illinois. — in pursuance of their several contracts with said defendant Coesum as in the said petitions respectively stated and set forth — the sums of money following, Viz To the complainants Atkinson & Reynolds the sum of six hundred and three 57/100 Dollars. To the complainants Harper & Steel the sum of one hundred & eighty Eight 69/100 Dollars To the complainant Robert Graham the sum of one hundred and eighty two 9/100 Dollars. To the complainants Stephen Ainsworth the sum of seventy one 1/100 Dollars — To the complainant Charles C Toomer the sum of eighty dollars and sixty three cents, And that the said several complainants are entitled to liens for the said amounts so due and owing to them respectively upon the building and improvements upon the aforesaid

lot and premises and upon the interest and right of the said defendant Cossum in the said mentioned and discribed lot on the first day of June AD 1857, and which interest and right was of and for the fee simple estate therein It is therefore ordered adjudged and decreed by the court that the said complainants do severally recover of and from the defendant John Cossum the amounts herein above mentioned and found to be due and owing to them respectively, and also their several costs by them in and about their respective suits in this behalf expended. And that the said several complainants have their lien upon the aforesaid interest of the said John Cossum in and to the aforesaid lot and upon the improvements thereon, and that the same be sold for the satisfaction of the said several sums of money with interest thereon from the date of this decree at the rate of six per cent per annum, and costs, and that special execution with a copy of this decree issue to the Sheriff of Rock Island County for the sale thereof. And it is further ordered, adjudged and decreed that if the proceeds of such sale shall be insufficient and satisfy the aforesaid sums of money with interest and costs, that the same shall be paid to and shared by the said complainants pro rata in proportion to the respective amounts due them as aforesaid, and the said complainants may severally have execution for the balance then remaining due

therein respectively against the goods and chattels lands and tenaments of the said defendant Possum as upon a judgement at law. And if the proceeds arising from such sale, amount to more than the aforesaid sums with interest and costs, that then in that case the said Sheriff report the same to this court at its next term after the making of said sale.

J. W. Drury

State of Illinois } ss
Rock Island County }

I, Edward H. Bowman Clerk of the Circuit Court within & for said County State aforesaid hereby certify that the foregoing is a true full and complete transcript of the Record of Proceedings had in said Cause in said Circuit Court, as also a full complete & true Copy of the several Original papers on file therein, as entered as the same now remain of Record or on file in my Office.

In testimony whereof I have hereunto set my hand & affixed the Seal of said Circuit Court at Rock Island this 20th day of March AD 1863

Edward H. Bowman
Clerk

~~243~~ 124

124

Cossum et al

vs

Stuler & Harper

Filed April 23d 1863

L. Leland

Clerk

#7: 15 fees

paid

E.H.B.

Supreme Court of the State of Illinois
Third Grand Division
In the April term A.D. 1884

George Minster } Plff. in Error
vs.
John Harper
Alexander Stale } Def. in Error

Assignment of Errors.

And now comes the said George Minster by Wilson & Reed his attorneys and says that there is manifest error in the record and proceedings aforesaid and in the rendition of the decree aforesaid in manner and form aforesaid, in this, to wit:

1 The court erred in overruling the demurrer of the Plaintiff in error to the petition of the Defendants in error.

2 The court should have sustained said demurrer and dismissed said petition.

3 The court should have dismissed said petition because the same was insufficient to give the court jurisdiction.

4 The court erred in rendering the decree aforesaid in manner and form aforesaid.

Thos Reed
Attys for Plff. in Error

42

Geo. Marsden
vs
Potter Harper
et al
Assignment of
Error.

Filed July 5, 1864
L. Leland, Clk