

14727

No. _____

Supreme Court of Illinois

Mixter

VS.

Atkinson

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 44

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

Mitter
Atkinson

1864

~~1863~~

1867

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,

v.

CHRISTOPHER ATKINSON,

ELISHA P. REYNOLDS,

Error to Rock Island.

ABSTRACT OF RECORD.

R. p.

1, 2, 3, 4. PETITION FOR A MECHANIC'S LIEN.

- 2 The petition alleges that on or about the first day of March, 1857, one John Cossum was the owner of the west half of the west half of lot number one (1) in block number nineteen (19) in the original town of Rock Island, in Rock Island county. That he (Cossum) was then about to erect on said
- 2 lot a two-story brick house. That on the said first day of March, 1857, said Cossum made and entered into a contract with the defendants in error, (Atkinson and Reynolds) to provide and furnish brick, lime, sand, and mortar for building said house, and to lay the same in the walls thereof — that he (Cossum) agreed to pay them (Atkinson and Reynolds) eight dollars per thousand — that said Cossum also agreed to pay defendants in error ten dollars per thousand for brick to build a cistern for said house — that Cossum agreed to cement said cistern and to pay for the cement therefor; a reasonable price.

The following is a literal copy from said petition, to wit:

2 "The said work to be done and materials furnished on request of said
"Cossum during the season of 1857, and to be paid for by him on request.
3 "That in accordance with said contract, your petitioners during said
"season, at the request of said Cossum, furnished brick to the number set
"forth in the account hereto annexed marked 'A' and also sand and lime
"necessary for laying the same, and laid the same in the walls of said
"house; and in like manner furnished brick, mortar, &c., and laid the
"same in said cistern, and cemented said cistern, which said brick fur-
"nished, and laid, and cemented was the number and amount, and
"of the value set forth in the said account 'A' annexed. That in con-
"sideration of said work, labor and materials, the said Cossum afterwards,
"on the 21st day of August, 1857, at the county of Rock Island aforesaid,
"promised your petitioners to pay them therefor the amount of said ac-
"count annexed, and being in the whole the sum of \$603.57, whenever
3 "he, the said Cossum, should be thereto afterwards requested."

3 The petition further alleges that said Cossum (although often requested) has not paid the said sum nor any part thereof—that said Cossum and wife on the 28th day of August, 1857, conveyed said premises to George Mixter, the plaintiff in error, and executed to him a deed therefor.

4 PRAYER for a mechanic's lien on said premises to pay the above sum of \$603.57.

ACCOUNT "A,"

JOHN COSSUM,

To Atkinson & Reynolds, Dr.:

1857. To 71,128 brick furnished and laid in walls of your house	
at \$8.00 per M.....	\$569 02
“ 2,455 bricks furnished and laid in walls of cistern at	
\$10 per M.....	24 55
“ cementing cistern	10 00
Amount due on the above.....	\$603 57

6 SUMMONS and return of service thereof by sheriff.

7 DEMURRER of George Mixer, plaintiff in error, to the plaintiff.

8 ORDER of the court overruling the demurrer to petition.

9-10 THE ANSWER of George Mixer, the plaintiff in error, to the petition.

Said answer denies that Cossum was the owner of the premises in question as alleged in said petition, and that there is any such amount due the defendants in error from Cossum which can lawfully be made a lien on said premises.

Said answer admits that Cossum executed to George Mixer, the plaintiff in error, a deed for said premises, on August 28th, as alleged in said petition.

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Said final decree orders and directs a lien on said premises for said amount (together with other amounts found to be due other parties) and orders and directs a sale of said premises by the sheriff of Rock Island county, to pay the said amounts.

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George Mixer ⁴⁴
vs.
Christopher Atkinson et al.
Abstract of Record

Filed April 19. 1864
J. C. Larned MR

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

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George Miller¹⁴⁴
vs.
Christopher Atkinson et al.
Abstract of Record

Filed April 19, 1864
J. H. Landwehr

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPEADED, &c.,

v.

CHRISTOPHER ATKINSON,

ELISHA P. REYNOLDS,

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144
George Mixer
vs.
Christopher Atkinson et al
Abstract of Record

Filed April 19, 1864
J. L. M. D. C. M. R.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

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⁴⁴⁴
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vs.
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Abstract of Record

Filed April 19, 1864
J. Lelandette

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444
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Abstract of Record

Filed April 19, 1864
J. Leland Clerk

SUPREME COURT OF ILLINOIS.

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8 ORDER of the court overruling the demurrer to petition.

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Said answer denies that Cossum was the owner of the premises in question as alleged in said petition, and that there is any such amount due the defendants in error from Cossum which can lawfully be made a lien on said premises.

Said answer admits that Cossum executed to George Mixter, the plaintiff in error, a deed for said premises, on August 28th, as alleged in said petition.

11 EXCEPTIONS by defendants in error to answer of plaintiff in error.

13 REPLICATION to answer.

14 EXCEPTIONS to answer sustained, and leave to file an amended answer.

15-16 AMENDED answer of plaintiff in error, which is substantially like the original answer above referred to.

17 The clerk of the court below inserts the following certificate in the record of this cause, to wit:

"The final decree in this case is the same as in the case of *Harper & Steele v. John Cossum, and George Mixter*, and there is but one record of such final decree."

By reference to the final decree in the said case of *Harper & Steele v. John Cossum and George Mixter*, it appears that by an agreement entered of record between the several attorneys of the respective parties, this case of the *Plaintiff in Error v. Defendants in Error*, was heard and determined with that case, and only one decree was entered for both cases.

The said case of *Harper & Steele* is before this court at this term by writ of error.

The final decree entered in said cause of *Harper & Steele v. Cossum and the plaintiff in error*, finds the amount due from Cossum to defendants in error (Atkinson & Reynolds) to be \$603.57.

Said final decree orders and directs a lien on said premises for said amount (together with other amounts found to be due other parties) and orders and directs a sale of said premises by the sheriff of Rock Island county, to pay the said amounts.

17 Certificate of clerk of court below to the record.

44
George Miller
vs.
Christopher Atkinson et al.
Abstract of Record

Filed April 19, 1864
J. L. L. m. e. m.

State of Illinois
Third Grand Division
In the Supreme Court
April Term A.D. 1868

Christopher Atkinson et al ~~defts~~ in Error
vs
George Wright, Plff in Error } Error to
Rock Island

And now Come the said ~~defts~~ in
Error ~~vs~~ by J. B. Hawley their Attorney
and move this Court to dismiss this
Suit; and for Cause show 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 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
Att for ~~defts~~

44
Christopher Stenson
at 1000
Grove

Mr. Bydell to. Christen

In full May 4. 1863
J. Leland M

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

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 Clister, Plaintiff

Christopher Atkinson & Elisha P. Reynolds

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

George Clister

as we are informed by his complaint ~~to~~ 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

Christopher Atkinson & Elisha P. Reynolds

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

Christopher Atkinson & Elisha P. Reynolds 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. Island
Clerk of the Supreme Court.



44

George Myster

No. vs.

Atkinson & Reynolds

SCIRE FACIAS.

FILED April 20 A. D. 1864

L. Leland Clerk.

Sherriff fees \$1.25

Rec^d my fees in full
C. A. M. Laughlin Sherriff
R. S. Correll

State of Illinois
Rock Island County

I have executed this writ by reading the same
to each of the within named Christopher Atkinson and Charles
D. Reynolds this 31st day of March A. D. 1863.
C. A. M. Laughlin Sherriff of
Rock Island County

State of Illinois 2^d L. April term A.D. 1843
Supreme Court of the Third Grand Division

George Mixer } Off. in error.

²⁷
Christopher Atkinson } Off. in error
Elisha P. Reynolds }

Erra to Rock Island

Dear Sir, will

You please issue
a scire facias to hear
errors to said Defendants
to Sheriff of Rock Island
County.

Yours

Harold Reed
Atty for Off. in error

A. Ireland Esq

Clerk Supreme Ct

Ottawa Ill.

44 126
Geo. Minter
vs

Christopher Atkinson
Elisha P. Reynolds

Piece

Filed March 28
1863

I Seal and cm

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

GEORGE MIXTER, IMPLEADED, &c.,

v.

CHRISTOPHER ATKINSON,

ELISHA P. REYNOLDS,

Error to Rock Island.

ABSTRACT OF RECORD.

R. p.

1, 2, 3, 4. PETITION FOR A MECHANIC'S LIEN.

- 2 The petition alleges that on or about the first day of March, 1857, one John Cossum was the owner of the west half of the west half of lot number one (1) in block number nineteen (19) in the original town of Rock Island, in Rock Island county. That he (Cossum) was then about to erect on said
- 2 lot a two-story brick house. That on the said first day of March, 1857, said Cossum made and entered into a contract with the defendants in error, (Atkinson and Reynolds) to provide and furnish brick, lime, sand, and mortar for building said house, and to lay the same in the walls thereof — that he (Cossum) agreed to pay them (Atkinson and Reynolds) eight dollars per thousand — that said Cossum also agreed to pay defendants in error ten dollars per thousand for brick to build a cistern for said house — that Cossum agreed to cement said cistern and to pay for the cement therefor; a reasonable price.

The following is a literal copy from said petition, to wit:

2 "The said work to be done and materials furnished on request of said
"Cossum during the season of 1857, and to be paid for by him on request.
3 "That in accordance with said contract, your petitioners during said
"season, at the request of said Cossum, furnished brick to the number set
"forth in the account hereto annexed marked 'A' and also sand and lime
"necessary for laying the same, and laid the same in the walls of said
"house; and in like manner furnished brick, mortar, &c., and laid the
"same in said cistern, and cemented said cistern, which said brick fur-
"furnished, and laid, and cemented was the number and amount, and
"of the value set forth in the said account 'A' annexed. That in con-
"sideration of said work, labor and materials, the said Cossum afterwards,
"on the 21st day of August, 1857, at the county of Rock Island aforesaid,
"promised your petitioners to pay them therefor the amount of said ac-
"count annexed, and being in the whole the sum of \$603.57, whenever
3 "he, the said Cossum, should be thereto afterwards requested."

3 The petition further alleges that said Cossum (although often requested) has not paid the said sum nor any part thereof—that said Cossum and wife on the 28th day of August, 1857, conveyed said premises to George Mixer, the plaintiff in error, and executed to him a deed therefor.

4 PRAYER for a mechanic's lien on said premises to pay the above sum of \$603.57.

ACCOUNT "A."

JOHN COSSUM,

To Atkinson & Reynolds, Dr.:

1857. To 71,128 brick furnished and laid in walls of your house	
at \$8.00 per M.	\$569 02
“ 2,455 bricks furnished and laid in walls of cistern at	
\$10 per M.	24 55
“ cementing cistern	10 00
Amount due on the above	\$603 57

6 SUMMONS and return of service thereof by sheriff.

7 DEMURRER of George Mixter, plaintiff in error, to the plaintiff.

8 ORDER of the court overruling the demurrer to petition.

9-10 THE ANSWER of George Mixer, the plaintiff in error, to the petition.

Said answer denies that Cossum was the owner of the premises in question as alleged in said petition, and that there is any such amount due the defendants in error from Cossum which can lawfully be made a lien on said premises.

Said answer admits that Cossum executed to George Mixer, the plaintiff in error, a deed for said premises, on August 28th, as alleged in said petition.

11 EXCEPTIONS by defendants in error to answer of plaintiff in error.

13 REPLICATION to answer.

14 EXCEPTIONS to answer sustained, and leave to file an amended answer.

15-16 AMENDED answer of plaintiff in error, which is substantially like the original answer above referred to.

17 The clerk of the court below inserts the following certificate in the record of this cause, to wit:

"The final decree in this case is the same as in the case of *Harper & Steele v. John Cossum, and George Mixer*, and there is but one record of such final decree."

By reference to the final decree in the said case of *Harper & Steele v. John Cossum and George Mixer*, it appears that by an agreement entered of record between the several attorneys of the respective parties, this case of the *Plaintiff in Error v. Defendants in Error*, was heard and determined with that case, and only one decree was entered for both cases.

The said case of *Harper & Steele* is before this court at this term by writ of error.

The final decree entered in said cause of *Harper & Steele v. Cossum and the plaintiff in error*, finds the amount due from Cossum to defendants in error (Atkinson & Reynolds) to be \$603.57.

Said final decree orders and directs a lien on said premises for said amount (together with other amounts found to be due other parties) and orders and directs a sale of said premises by the sheriff of Rock Island county, to pay the said amounts.

17 Certificate of clerk of court below to the record.

George Miller 44
^{vs.}
Christopher Atkinson et al.
Abstract of Record

Filed Apr. 19. 1864.
L. Selance
CLERK.

PLEAS before the Honorable J. Wilson Drury
Judge of the Sixth Judicial 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 W. Neil Clerk

Be it Remembered that on the twenty
fifth day of November 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 Christopher Atkinson and
Elisha P. Reynolds against John Cosen
and George Wyster which is in the words and
figures following to wit

State of Illinois }
Rock Island County } Rock Island County Circuit Court
To December Term A.D. 1857
To the Honorable J. Wilson Drury presiding
Judge of said Court

The petition of Christopher Atkinson and
Elisha P. Reynolds late partners in business
under the firm name and stile of Atkinson &
Reynolds, - of the county of Rock Island aforesaid, respectfully represents unto your Honor

That on or about the first day of March 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 described as 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, was then and there about erecting and building there on a two story dwelling house of brick. That the said John Cossum, took at the time and place aforesaid made and entered into a contract with your petitioners to provide and furnish brick lime, sand and mortar for building the said house and to lay the same in the walls thereof, for which the said Cossum agreed to pay the ~~same~~ your petitioners the price and rate of Eight dollars per thousand, and also contracted with your petitioners to furnish brick for and lay ^{and set, pertaining} the same in the walls of a cistern belonging to said house for which he said Cossum agreed to pay your petitioners the price and rate of ten dollars per thousand and also to cement said for which he agreed to pay your petitioners the reasonable price and value. The said work to be done and materials furnished on request of said Cossum during the season of 1857 and to be paid for by him ^{on} request. That in accordance with said contract your petitioners during said season at the

(2)

3
request of said lessee, furnished brick to the number set forth in the account hereto annexed marked "A" and also said, &c. &c. necessary for laying the same, and laid the same in the wall of said house and like manner furnished brick, mortar &c and laid the same in said cistern and cemented said cistern, which said brick furnished & laid and cementing was the number and amount and of the value set forth in the said account "A" annexed. That in consideration of said work, labor & materials the said lessee afterwards on the 21st day of August 1857 at the County of Rock Island aforesaid promised your petitioners to pay them therefor the amount of said account annexed, & being in the whole sum of \$603.57⁵ whenever he the said should be thereto afterwards requested. And your petitioners allege that the said lessee, although often requested, has not paid to your petitioners the aforesaid amount or any part thereof, but that the aforesaid sum remains wholly unpaid and due to your petitioners. Your petitioners further allege that the said lessee and wife on or about the 25th day of August 1857, as your petitioners are informed and believe, made and executed a deed of conveyance to George Wixter of and for the lot and house of land aforesaid. And that the said George Wixter as your petitioners are informed and believe, now claims to own the said described premises, but your petitioners allege and charge the fact

to be that if any such deed of conveyance was made by ^{the} said Cassum wife to the said Mixer the same was made and executed subsequent to the contract of your petitioners with the said Cassum as afore said, and afterwards the greater part of the work on said contract had been performed by your petitioners, and the amount became due and payable to them. And that the said deed, if any such there be, is subject to the prior claim and lien of your petitioners upon the said dwelling house and premises under and by virtue of the contract afore said, ^{and to the amount thereof}. The premises considered your petitioners pray that the said John Cassum and George Mixer be made parties defendant 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 & appurtenances, and that the proceeds thereof be applied to the payment to the payment and discharge of the aforesaid demands 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 in duty bound your petitioners will ever pray &c.

Christopher Atkinson &
Elisha P. Reynolds petitioners
By Wilkinson & Pleasants
their attys.

State of Illinois }
Cook Island County } ss Christopher Atkinson
one of the above named petitioners being duly

5

sworn on oath states, that he has heard read the foregoing petition and knows the contents thereof, that the allegations of fact stated and set forth therein as on the knowledge of the petitioner, are true and that the other matters therein alleged, and set forth, said affiant believes to be true

Sworn & Subscribed before me } Christopher Atkinson
this 25th day of November 1857 }
Quincy McNeil clk

Account (A)

Mr John Cossurn

1857	To 71,128 Bricks furnished & laid in walls of your house	at \$8.00 per m	\$569.02
"	2455 bricks furnished and laid in walls of Cistern at 10.¢ per m		24.55
"	Cementing Cistern		10.00
	Amount due on above		\$603.57

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 and State aforesaid a writ of summons which is in the words and figures following.

State of Illinois } The People of the
Rock Island County } ss State of Illinois
To the Sheriff of Rock Island County
We command you to summon John Cossurn and George Myster if to be found in your County, personally to be and appear

before the Circuit Court of said County if to be found in your County, ~~personally~~ on the first day of the next term thereof to 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 Christopher Atkinson and Elisha P Reynolds. And have you them and there this writ, and make return thereon in what manner you execute the same

Witness Quincy McNeil Clerk of said Court, and the seal thereof is affixed this 23rd day of November in the year of our Lord one thous and eight hundred and fifty seven
Quincy McNeil Clk.

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 Crossum and leaving a copy of the same with the wife of George Myler at his Residence & acquainting her with the contents
E M Beardsley Sheriff R I Co Ills

And be it further remembered that afterwards to wit on 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 in the words following (6)

7

The demurrer of George Myster one of the defendants to the petition of Christopher Atkinson and Elisha P Reynolds.

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 true in manner and form as the same are therein set forth and alleged. 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 demur thereunto, and therefore this defendant saith that the complaints said petition, in case the allegations therein contained contained were true, which this defendant doth in no wise admit, contains not any matter or thing of equity, wherein this court can ground any decree, or give the plaintiff any relief or assistance as against this defendant. Wherefore and for divers other reasons errors and imperfections in the said Petition, appearing, this defendant doth demur in law thereto, and asks of this Court, whether he shall be compelled to put in any further or other answer to said petition, and prays to be dismissed hence with his costs - in this behalf sustained

Kn^t P Atkinson
for George Myster

(7)

8

And afterwards to wit on the same day before the Judge aforesaid at the December term 1857 of said Circuit Court and on the 16th day of said term being the 24th of December 1857 the following proceeding was had,

Christopher Atkinson	}	Mechanics Lien
& Elisha P. Reynolds		
vs		
John Cossum &	}	
George Mitter		

This day came the parties by their attorneys and defendant Mitter entered his motion for 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 defendant answer by the first day of February next.

And be it further remembered that on the 29th day of January 1858 the answer of George Mitter was filed in the said office of Circuit Clerk of said county and which is in the words following to wit

State of Illinois	}	ss
Rock Island County		
		Rock Island Circuit Court
		March Term AD 1858
		To the Honorable J. Wilson Drury
		(8)

9

Judge of the Sixth Judicial Circuit in the State of Illinois.

The answer of George Wister one of the defendants to the petition of Christopher Atkinson and Elisha P Reynolds Complainants.

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

That on or about the first day of March AD 1857 the time at which it is alleged in the petition filed herein, the contract was made by John Cossum, one of the defendants to said petition with the said Christopher Atkinson and Elisha P Reynolds for the work and materials set forth in said petition for the construction of the building therein mentioned, the said John Cossum was ~~not~~ the owner of the lot described in the petition.

This defendant further says that the petitioners herein have during the past season furnished labor and materials for other buildings for which the said Cossum was a contractor, besides the building described in said petition

and that from time to time payments have been made to them by the said Cossum for materials furnished and work ^{done} and that the balance, if any, which may now be due the said petitioner, is due on account of materials furnished and work done on all the buildings which the said Cossum has erected the past season, and not solely for materials furnished and work done for the particular building described in this petition or is due for other work and materials than set forth in said petition.

This defendant admits that the said Cossum and his wife did make and execute a deed to this defendant on the 28th day of August last of the premises described in said petition, but 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 herein expressly denies that any other matter or thing in said petition contained, not herein sufficiently answered, confessed and avoided traversed or denied, is true according to the best knowledge and belief of this defendant.

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

Geo. Minter by
Thos & Wilkinson Attys

State of Illinois } ss
County of Rock Island }

George Minter being duly sworn, says that the matters set forth in the

11

foregoing answer are true, so far as they pur-
port to be stated on his own knowledge, and so
far as they are not so stated he has been informed
and believes them to be true.

Sworn to & subscribed this }
24th day of December }
AD 1837. }

Geo. Myster

Quincy W. Neil clk

Bel it Remembered that on the seventeenth day
of March 1838 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 Myster in the
words and figures following to wit
Atkinson & Reynolds } R D Cir Ct March
vs } 1838

John Cossum & } Pitt for Mechanics lien
George Myster }

And the said petitioners
come and except to the ~~answer~~ ^{answer} of the said
defendant Myster, and says the same is un-
certain, immaterial, irrelevant, ~~unimportant~~ ^{unresponsive}
and evasive and is not full, specific or com-
plete, and is otherwise insufficient to be re-
plied unto wherefore &c Wilkinson & Pleasant
Attys for Pitts

And for cause of exception the said
petitioners assign the following.

The said deft does not answer all the
allegations of the 8th petition material and
proper to be answered unto

12
12

2

He does not answer fully & specifically upon his knowledge, or upon his information & belief.

3 He does not specifically admit or ~~deny~~ ^{deny} all the material allegations of said petition

4 The said answer is otherwise insufficient

Wilkinson vs. Casanto

Atty for p'tts

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

State of Illinois

Rock Island County

3rd Of the March Term
AD 1858 of the Rock
Island County Circuit Court

Atkinson vs Reynolds

vs

John Cowan &
George Mixer

The said Complainants reserving to themselves all advantage of exception to the many insufficiencies of the said answer for replication thereto, with, that will aver and prove their said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by 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

(12)

confessed or avoided traversed or denied, is true, all which matters and things these complainants are will be ready to aver and prove as the Hon. Court may direct, and pray as in and by their said petition they have already prayed. Wilkinson & Pleasants
for Com.pts

And afterwards to wit on the 28th day of September 1858 before the judge aforesaid at the September term 1858 of said Circuit Court and the 14th day of said term the following proceedings were had

Christopher Atkinson & Etisha P. Reynolds

Partners v C Atkinson & Reynolds

vs

John Cossum & George Myster

John Karpur & Alexander Steel

Partners v C Karpur & Steel

vs

John Cossum & George Myster

Robert Graham

vs

John Cossum & George Myster

Stephen Ainsworth

vs

John Cossum & George Myster

Charles C. Coomer

vs

John Cossum & George Myster

Mechanics Lien

At this day

came the above

named com-

plainants by

Wilkinson & Pleas-

ants and R M

Marshall their

solicitors and the

defendant George

Myster by Thos &

Wilkinson and

Beardsley & Smith

his solicitors and

John Cossum being

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 ~~ordered and~~ decreed by the petitioners of the said several respective complainants to be taken as ~~to~~ confessed as against him - And the exceptions filed by the said several complainants to the several answers of the said defendant George Myster coming on now to be heard by the Court and being argued by the counsel and by the Court duly considered the said exceptions number one and two are sustained and on motion of said defendant Myster leave is given him to file amended answers in the said several causes and the said several causes are now continued

And afterwards to wit on the 17th day of January 1859 there was filed in the office of the ~~Circuit~~ Clerk of the Circuit Court in the county and State aforesaid the amended answer of George Myster which was and is in the words following to wit

State of Illinois }
 Rock Island County } ss

Rock Island Circuit Court
 of the January Term 1859
 To the Honorable J. Wilson Drury, Judge of
 the sixth Judicial Circuit in the State of
 Illinois.

The amended answer of George Myster and
 the defendants to the petition of Christopher

Atkinson and Elisha P. Reynolds, 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 thereto, or so much thereof as this defendant is advised ~~is~~ is material or necessary for him to make answer to, answering saith. That the labor and materials set forth in said petition and the schedule thereto attached, marked "A" as furnished by the petitioners for the construction of the building and its appurtenances therein ^{mentioned} ~~mentioned~~ ^{by the petitioners} if furnished at all, were not furnished, to John Cossum, one of the defendants to this bill, by contract with the said Cossum, made on or about the first day of March AD 1857 as the owner at that time of the part of the lot described in the said petition to wit, the west half of the west half of lot No. one, (1) in Block No (19) in that part of the City of Rock Island known as the old or original town. Nor were they furnished, if furnished at all, by 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 lot, and that this said Cossum was not on the first day March AD 1857, nor at any other time when he made a contract with said petitioners

for work and materials set forth in the said petition and the schedule thereto attached marked "A" the owner of said lot or part of a lot. This defendant further says, that the petitioners herein did during the season of 1857 furnish labor and materials for other buildings for which the said Cossum was a contractor, beside the building described in said petition, and ^{from} time to time payments have been made to them by the said Cossum for materials furnished and work done, and that the balance, if any, which may now be due the said petitioners from said Cossum is due on account of materials furnished and work done on all the buildings which the said Cossum erecting during the season of 1857 and not for materials furnished and work done on the particular building described in this petition, or is due for other work and materials than those set forth in this petition.

This defendant admits that the said Cossum and his wife did make and execute a deed to this defendant on the 28th day of August AD 1857 of the premises described in the said petition but ~~admits~~ 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 herein expressly denies that any other matter or thing in said petition, ^{contained} not herein sufficiently answered, confessed and avoided, traversed or denied, is true according to the best knowledge, information

and belief of this defendant.

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

Geo. Wilkinson for
Def. Myster

State of Illinois } ss
County of Rock Island }

George Myster being duly sworn, says, that the answers set forth in the foregoing are true, so far as the facts set forth to be stated on his own knowledge and so far as they are not so stated he has been informed and believes them to be true.

Sworn to & Subscribed Geo. Myster
this 17 day of January

A.D. 1859 Quincy McNeil Clk

The final Decree in this case is the same as in the case of
Harris & State vs John Cassant & George Myster & there is but one record
of such final decree. E.H. Boromaw Clk

State of Illinois } ss.

Rock Island County } J. Edward H. Boroman Clerk
of the Circuit Court within and

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 and true copy of the several Original papers on file therein, as entire as the same now remain of Record, or on file in my Office.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Rock Island this 20th day of March A.D. 1863

Edward H. Boroman
Clerk

Supreme Court of Illinois
Third Grand Division
April April term A.D. 1864.

George Mister } Plff. in error.
impleaded & }
vs } Error to Rock Island
Christopher Atkinson }
Elisha R. Reynolds } Defts in error

And now comes the said
George Mister, 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

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

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

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

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

Knox & Reed
Attorneys for Plaintiff in Error

44 240 ~~125~~
Geo. Winter
impleaded &
vs
Christopher Atkinson
et al

Record

Filed April 23^d 1863

L. Leland
Clerk

Errors & omissions July 9, 1864

L. Leland cwr

\$5.35 fns paid
C.H.B.