

No. 14726

Supreme Court of Illinois

Mixter

vs.

Graham.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 41

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

1858

Middleton

1863

Custom

1864

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

Robert Graham, Left in Error }
and } Error to
George Dexter, Off in Error } Rock Island

And now Cometh the said
 Defendant in error, And moves this
 Court to dismiss this writ, ~~because~~
~~it was commenced at the present term~~
~~of this Court,~~ because 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 ~~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 Capt.

~~#23~~ 41
Robert-Graham
attys

George Witter

Mr Lydell to Dismiss

Filed May 4, 1863

S. Leland CR

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 Indebted

~~plaintiff~~, and

Robert Graham

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

George Clister

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

Robert Graham

that he 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 he 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

Robert Graham

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.

George Allister

No.

vs.

Robert Graham

SCIRE FACIAS.

Filed April 20 A.D. 1864

L. Leland Clerk.

Sherriff's fees \$0.55

Rec'd my fees in full

C.A. McLaughlin Sheriff

P.D. Cordes

State of Illinois }
Rock Island County }I have executed this writ by reading the
same to the within named Robert Graham. This 31st day of
March A.D. 1863.C.A. McLaughlin Sheriff of
Rock Island County Ill

1
P L E A S before the Honorable J. Wilson Drury
Judge of the Sixth District of the State of
Illinois, at a term of the Circuit Court begun
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
Dunicy McNeil 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 and County and State
aforesaid a Petition for Lien in behalf of Robert
Graham and against John Cassum and George
Minton and which is in the words and figures
following to wit

State of Illinois } ss
Rock Island County }

Rock Island County Circuit Court

To December Term AD 1857

To the Honorable J. Wilson Drury, presiding
Judge of said Court.

The petition of Robert Graham of the City
of Rock Island and State of Illinois, respectfully
~~respectfully~~ represents unto your Honor, that
on or about the 15th day of May AD 1857,
one John Cassum, who was then the owner of
a certain lot or parcel of land situated in

(1)

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 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 petitioner
 to furnish certain tin sheetiron and other
 materials, and to perform work and labor in and
 about the construction and putting up of
 spouts, gutters, roofing, conductors Etc on and
 for the said dwelling house, and for other neces-
 sary materials and work in and about the said
 house in the building thereof, on the request
 of said Cossum during the year 1857 and
 for which the said Cossum agreed to pay your
 petitioner the reasonable worth and value when-
 ever he the said Cossum should be thereto after-
 wards required. That in accordance with said
 contract your petitioner furnished and provided
 materials, and by himself, servants & agents, did
 and performed work and labor in and about
 the construction and putting up of spouts gut-
 ters roofing conductors Etc, on and for the
 said house, and other work and materials
 in and about the said house in the erection
 & building thereof according to the account
 thereof annexed hereto and referred to marked A,
 the reasonable worth and value whereof are
 as in the said account set down and charged

That in consideration thereof the said Cossum afterwards to wit on the twenty first day of August 1857 at the County of Rock Island aforesaid promised your petitioner to pay him the reasonable worth and value of the said work labor and materials; and amounting to the sum of one hundred ~~eighty~~ two $9/100$ Dollars. whenever he should be thereto requested. And your petitioner alleges that the said Cossum, although often requested has not paid to your petitioner the aforesaid amount or any part of the same, but that the whole of the aforesaid sum is unpaid due to petitioner.

Your petitioner further alleges that the said Cossum and his wife, on or about the 28th day of August 1857 - as your petitioner is informed and believes - made and executed a deed of conveyance to one George Wither of and for the lot and parcel of land aforesaid. And that the said George Wither, as your petitioner is informed and believes, now claims to own the said described premises, but your petitioner alleges and charges the fact to be that if any such deed of conveyance was made by the Cossum and wife to said Wither. The same was made and executed subsequent to the contract of your petitioner 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 petitioner. And that the said deed, if any such there be, is subject to the prior claim or lien of your petitioner upon the said dwelling house and premises under and by virtue of the contract aforesaid.

said, and to the amount aforesaid.

The premises considered your petitioner prays that the said John Cossum and George Wyster 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 and discharge of the aforesaid demand of your petitioner. And that your petitioner may have such other and further relief, orders &c as the statute in such allows, and your petitioner may be entitled to, and as in duty bound your petitioner will ever pray &c

Robert Graham petitioner

By Wilkinson Pleasants his Solicitor

State of Illinois

Rock Island County } ss C. T. Fountain agent
for Robert Graham, the above named petitioner, being duly sworn, on oath, states that the allegations of fact of fact stated and set forth in the foregoing petition ~~are true~~, as on the knowledge of the petitioner, are true, and that the other matters therein stated he the said deponent believes to be true, and further that deponent performed the work set forth in said petition and is acquainted with the facts in said petition alleged.

Sworn & Subscribed before me } C. T. Fountain
this 25th day of November 1857 }

Quincy W. Neil Clerk

(A) Mr John Cossum
 1857 In afc with Robert Graham Dr
 August To roof, gutter, spout & cornish
 work on your dwelling house 181.29
 8 Shingles .80
 \$182.09

And afterwards to wit on the same day the
 said 25th day of November 1857 there issued
 forth of the office of the clerk of the Circuit
 of said county and State of Illinois
 Court a writ of summons which is the
 words and figures following to wit
 State of Illinois
 Rock Island County } 3rd

The People of the State of Illinois
 To the Sheriff of Rock Island County Greeting
 We command you to summon John Cos-
 sum and George Wyster if to be found in
 your County, personally to be and appear before
 the Circuit Court of said County on the first
 day of the the 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)
 And have you then and there this writ
 and make return thereon in what manner
 you execute the same.

Seal

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 was an endorsement in the words and figure following to wit

I have served the within summons by delivering a copy to the within named, John Cossum leaving a copy at the residence of George Myster with a white person over the age of twelve years making them acquainted with the contents of the same
 November 26. 1837 E M Beardsley Sheriff
 R. I. Co Ill

And be it further remembered that afterwards to wit on the 24th day of December 1837 there was filed in the office of said Circuit Clerk in the county and State aforesaid a demurrer which is in the words following.

The demurrer of George Myster one of the Defendants to the petition of Robert Graham

Robert Graham
 vs
 Cossum & Myster }

And the said George Myster one of the defendants, in the above entitled suit, comes and says that the above named Plff ought not to his action aforesaid against him because he says the petition aforesaid and the matter and things therein contained are not sufficient in law to maintain the action aforesaid, and that he is not bound by law to answer the same. Wherefore he prays judgement and the said Plff may be bound of his action against him &c.
 (6) Thus & Willingson
 for George Myster

7

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 proceedings were had.

Robert Graham

vs

John Cossum & George Wyster } ss Mechanics Lien

This day came the parties by their attorneys and defendant Wyster entered his motion for a continuance herein which is overruled by the Court. Thereupon the said defendant filed his demurrer 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 29th day of January 1858 the answer of George Wyster was filed in the 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
March Term 1858

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

The answer of George Wyster one of the defendants to the petition of Robert Graham, complainant.

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 to the many errors, uncertainties or imperfections in the said petition contained, for answer thereto or so much thereof as this defendant is advised it is material or necessary for him to make answer to. answering saith

That on or about the 15th day of May A.D 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 Robert Graham for the work, labor 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 petitioner herein has since the 15th day of May 1857 furnished materials for other buildings for the erection said Cossum was a contractor besides the building described in this petition, and that from time to time payments have been made by said Cossum to said Graham, and that the balance, if any, which may now be due the petitioner herein from said Cossum, is due for materials furnished and work done on all the buildings for which he may have furnished labor and materials for said Cossum during the past season, and not solely for work done and materials furnished for the particular building described in this petition. (8)

9
This defendant admits that the said Crossman wife did make and execute a deed to this defendant on the 28th day of August last of the premises described in the 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 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.

George Myster

By Knox Wilkinson atty

State of Illinois }
County of Rock Island } ss

George Myster being duly sworn says that the matters set forth in the foregoing answer are true so far as they purport 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 and subscribed this
24th day of December

A.D. 1857 Quincy McNeil Clerk

Geo. Myster

Be it Remembered that on the 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 Mixter in the words and figures following to-wit

Robert Graham	}	R I Cir Ct
vs		March 3 1858
John Cassum & George Mixter		Petr for Mech lin

And the said petitioner comes and excepts to the answer of deft Mixter filed herein and says the same is irrelevant unresponsive, immaterial and evasive, ~~is~~ not full complete or specific, and is otherwise insufficient to be replied unto. Wherefore &c

Wilkinson & Pleasant

Attys for Petr

And for causes of exception petitioner assigns the following

- 2 The deft Mixter does not answer fully and specifically upon his knowledge or upon his information and belief
- 1 The deft Mixter does not answer all the allegations of the petition proper to be answered unto by him.
- 3 He does not specifically admit or deny the material allegations of said petition.
- 4 The said answer is otherwise insufficient

Wilkinson & Pleasant
for Petr,

And afterwards on the 18th day of March 1858 a replication was filed in the office of Clerk of

11
Circuit Court in the City of Rock Island and
county and State aforesaid in the words fol-
lowing to wit
State of Illinois }
Rock Island County } ss. Of the March Term AD 1858
of the Rock Island County
Circuit Court

Robert Graham
vs
John Cossum et al } Replication

The said complainant re-
serving to himself all advantage of exception
to the many insufficiencies of said answer
for replication thence saith that he will
over and prove his said petition to be true
certain and sufficient in the law to be an-
swered unto and that the said answer of the
said defendant is uncertain untrue and
insufficient to be replied unto by this complain-
ant without this that matter or thing what-
soever in the said answer contained mate-
rial or effectual in the law to be replied unto,
confessed or avowed, traversed or denied is true,
all which matters and things this complain-
ant is and will be ready to over and prove
as this Hon. Court may direct and pray
as in and by his said petition he has already proved
Wilkinson & Pleasant
for Compl't.

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
on the 14th day of said term the following
proceedings were had.
(11)

Christopher Atkinson & Elisha P Reynolds
Partners & Atkinson & Reynolds

vs

John Cossum & George Myster

John Karpur & Alexander Stet
Partners & Karpur & Stet

vs

John Cossum & George Myster

Mechanics Lien

Robert Graham

vs

John Cossum & George Myster

Stephen Ainsworth

vs

John Cossum & George Myster

Charles C. Forner

vs

John Cossum & George Myster

At this day
came the above
named complain-
ants by Wilkinson
& Pleasant and
R M Marshall
their solicitors and
the defendant George
Myster 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 petitions of the said several
respective complainants 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 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 Mixter leave is given him to file amended answers in the said several causes and the said causes are now continued

And afterwards to wit on the 14th day of December 1838 there was filed in the office of the Clerk of the Circuit Court of the county and State aforesaid the amended answer of George Mixter which is in the words and figures following to wit

State of Illinois }
Rock Island County } ss

Rock Island Circuit Court
December Term 1838

I, the Hon. J. Wilson Durg, Judge of the Sixth Judicial Circuit in the State of Illinois.

The amended answer of George Mixter, one of the defendants to the petition of Robert Graham, complainant.

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} 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 it is material or necessary for him to make answer to answering oath.

That the work, and materials set forth

in the said petition and the account or bill thereto attached marked "A", as furnished by the petitioner in and about the dwelling house therein mentioned, if furnished at all, were not furnished by the petitioner to John Cossum, one of the defendants to this bill, by contract with the said Cossum made on or about the 15th day of May A.D. 1857, as the owner at that time of the part of a lot described in the 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 known as the old or original town.

Nor were they furnished, if furnished at all, by the said petitioner in and about the dwelling house therein mentioned by contract with the said Cossum made at any other time when the said Cossum was the owner of the said lot or part of a lot, and that the said Cossum was not on the said 15th day of May A.D. 1857 nor at any other time when he made a contract with the said petitioner for the labor and materials set forth in the said petition and the account or bill thereto attached, marked "A" the owner of said lot or part of lot.

This defendant further says, that the petitioner herein has, since the 15th day of May 1857, furnished labor and materials for other buildings for the erection of which the said Cossum was a contractor, besides the building described in this petition, and that from time to time payments have been made by the said Cossum to the

(14)

the said petitioner, and that the balance, if any, which may now be due to the petitioner herein from the said Cossum, is due for materials furnished and work done on all the buildings for which he may have been a contractor during the year 1857 and not solely for done and materials furnished for the particular building described in this petition herein. This defendant admits that the said Cossum and his wife did make and executed a deed to this defendant on the 28th day of August A.D. 1857 of the premises described in the said petition, but denies that any 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, 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 reasonable costs in this suit.

Geo. V. Wilkinson
for Seth Wixter

State of Illinois
Rock Island County, } ss

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

that they are true.

Sworn to & subscribed

Geo. Mytton

this 14th day of December

AD 1858 Quincy McNeil Clk

The final decree in this case is the same as in the case of
Harper & Steele v. John Cossum & George Mytton & there is but
one Record of such final decree. - E. H. Bowman CLK

Robert Graham

Judgement
& decree

vs

John Cossum & George Mytton

Be it Remembered that on the 4th day of
March 1859 the assignment of Robert
Graham to Ira Q. Wilkinson of aforesaid
decree was filed in the office of said Circuit
Clerk in the county and State aforesaid
which is in the words and figures following
to wit

Robert Graham

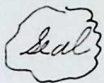
vs

John Cossum &
George Mytton

Judgement & decree of the
Circuit Court of Rock Island
County Illinois at January
Special Term 1859 in favor
of said Comptroller for \$

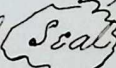
For value received of Ira Q. Wilkinson
I hereby assign transfer and set over unto the
said Ira Q. Wilkinson this assigns all my
right title interest and claim, legal and
equitable in and to the judgement & decree
of the Rock Island County Circuit Court in
my favor in the above entitled cause, with full
power and authority to the said Wilkinson and
his assigns to take use and employ any and
all lawful measures for the collection or
the security of the said judgement and decree
mentioned to sale, or in any other manner

to manage and direct, in the best manner,
for the realization of the amount secured by
the said decree. All in as full and complete
a manner as I might or could do if this
assignment were not made. In witness
whereof I have set my hand and seal this 4th
day of March AD 1859.

R. Graham 

And on the back of said assignment is
the following acknowledgement to-wit:

State of Illinois

Rock Island County } ss Before me this day personally
appeared the within named Robert Graham
who is personally known to me to be the same
person whose subscribed to the within written
assignment, and acknowledged the execution
thereof to be his act and deed for the use and
purpose therein expressed. Witness my hand
& seal at my office in Rock Island this 4th day of
March AD 1859 Alex J. Swander Poll 

State of Illinois } ss

Rock Island County } J. Edward H. Bowman

Clk 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

68 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 this 20th day
of March AD 1863.

Edward H. Bowman
Clerk

Supreme Court of Illinois
Third Grand Division
April Term AD 1864

George Minter } Plff. in error
impleaded &c }
vs. } Error to Rock Island
Robert Graham } Dft. in Error

And now comes the said George Minter, 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 defendant in error

2nd The Court should have sustained said demurrer and dismissed the 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 defendant in error in manner and form aforesaid

Knox & Reed
Attorneys for Plaintiff in Error

411 ~~241~~ 123

Cossum

Graham

Record

Filed April 23^d 1863

L. Leland
Clerk

Errors Filed July 9, 1864

L. Leland Mr

\$5.35 fees paid
C.H.B.

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

George Minter } Plff. in error
vs
Robert Graham } Deft. in error

Error to Rock Island.
Dear Sir

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

Yours
Thos. M. Reed
Attys for Plff in error.

L. Island Esq
Clerk Supreme Ct
Ottawa Ill.

Geo. Minter

vs

Robert Graham

Prize

Filed Dec. 28, 1863,
S. Island
Ch.

- 13 The amended answer of George
Mixer filed which ~~is~~
14-15 is substantially like the
original answer filed by
him and above referred to
- 15 Affidavit of George Mixer
to amended answer.
- 16 The clerk here inserts the following
to wit:
- " The final decree in this case is the same
" as in the case of Harper & Steele
" vs George Mixer & John Kossum
" and there is but one record of such final
" decree
- 16 Certificate of clerk to the record.

SUPREME COURT OF ILLINOIS.

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

GEORGE MIXTER, IMPEADED, &c.,

v.

ROBERT GRAHAM,

Error to Rock Island.

ABSTRACT OF RECORD.

R. p. 1 PETITION FILED, November 25th, 1857.

2 The petition alleges, that on or about the 15th day of May, 1857, one John Cossum was the owner of the west one-half of the west half of lot one, in block nineteen, in the original town of Rock Island, in Rock Island county. That he (Cossum) was then about to erect on said lot a two-story brick house. That the said Cossum, on the said 15th day of May, 1857, made and entered into a contract with the defendant in error, (Robert Graham) to furnish certain tin sheet iron and other material and to perform work and labor in and about the construction and putting up of spouts, gutters, roofing, conductors, etc., for said house, and for other necessary materials and work in and about said house.

The following is a literal copy from said petition, to wit: "The said work to be done and materials furnished on request of said Cossum during the year 1857, and to be paid for by him on request. That in

3 “accordance with said contract, your petitioner furnished and provided
“materials, and by himself, servants and agents, did and performed work
“and labor in and about the construction, and putting up of spouts, gut-
“ters, roofing, conductors, etc., on and for the said house and other work
“and material in and about said house in the erection and building
“thereof according to the account thereof annexed hereto, and referred
“to marked ‘A’ the reasonable worth and value whereof are, as in the
“said account set down and charged. That in consideration thereof, the
“said Cossum afterwards, to wit, on the twenty-first day of August,
“1857 at the county of Rock Island aforesaid, promised your petitioner
“to pay him the reasonable worth and value of the said work, labor and
“material; and amounting to the sum of \$182.09, whenever he should
“be thereunto requested.”

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

4 PRAYER for a mechanic’s lien on said premises to pay the above \$182.09.

5 “ACCOUNT ‘A.’

 “MR. JOHN COSSUM,
 “1857.”

In Account with Robert Graham, Dr.:

 “August. To roof, gutter, spout and cornish work on your
 “dwelling house..... \$181 29
 “ 8 thimbles..... 80
 \$182 09.”

5-6 SUMMONS and return of service thereof by sheriff of Rock Island county

6 DEMURRER of George Mixter, plaintiff in error to the petition.

7 ORDER of the court overruling the demurrer to petition.

7-8 THE ANSWER of George Mixter, plaintiff in error to the petition.

8 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 defendant in error from Cossum, which can be lawfully made a lien on said premises.

9 Said answer admits that Cossum executed to plaintiff in error, a deed for said premises, on the 28th day of August, 1857, as alleged in said petition.

AFFIDAVIT of truth of answer.

10 EXCEPTIONS by defendant in error to the answer of plaintiff in error, because irrelevant, irresponsible, immaterial and evasive.

11 REPLICATION to answer.

13 EXCEPTIONS one and two to answer sustained, and leave to file an amended answer.