

12318

No. _____

Supreme Court of Illinois

Ross, et al

vs.

De^Rer, et al

71641  7

~~177~~

William Ross et al

vs

Stephen Derr et al

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1857

12318

X

State of Illinois }
County of Cook } ss.

Pleas before the Honorable John
M. Wilson Judge of the Cook County Court of Common
Pleas, within and for the County of Cook and State
of Illinois, at a vacation Term of said Cook County
Court of Common Pleas, begun and holden at the
Court House in the City of Chicago in said County
and State on the first Monday being the fifth day
of January in the year of our Lord one thousand
eight hundred and fifty seven and of the Independence
of the United States the eighty first.

Present the Honorable John M. Wilson, Judge

John L. Wilson, Sheriff

Walter Kimball, Clerk

Attest

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Be it remembered that heretofore, to wit, on the
twenty fifth day of January in the year of our Lord
One thousand eight hundred and fifty-six, came
Stephen Herr and Noratio G. Lumbard plaintiffs by
Goodrich Farnell & Scoville their Attorneys and filed in
the Office of the Clerk of the Cook County Court of Common
Pleas, their ^{Contract and account} petition for Mechanics' lien against
William M. Rop and James H. Foster, which said petition
Contract and account are in the words and figures as
follows, to wit.

omit
State of Illinois }
County of Cook } p.

To the Honorable John M. Wilson, Judge
of the Cook County Court of Common Pleas.

The petition of Stephen Herr and Noratio G. Lumbard
respectfully shows unto your Honor that sometime in the
last of the month of April or the fore part of Month of May
last past your petitioners, being Carpenters by trade and
partners doing business in the City of Chicago in said County,
under the name and style of Herr & Lumbard "made
and entered into an agreement in writing with William
M. Rop and James H. Foster who then were and still
are Merchants and partners doing business in Chicago
aforesaid under the name and style of Rop & Foster"
in and by which contract your petitioners agreed among

other things to furnish certain materials and to do certain Carpenter work in and upon a certain building which said Rop & Foster were about to erect on a ~~certain~~ piece or parcel of land which they had before then leased for a term of years, and which piece of land was then and still remains in their possession under and by virtue of such lease, and is situate in said City of Chicago, on the South side of Lake Street between LaSalle & Wells Streets, being eighty feet West from LaSalle Street, and having forty feet front by one hundred and eighty feet deep, and now known as No^s 167 & 169 Lake Street: And the said Rop and Foster agreed among other things, to pay your petitioners for such work and materials the sum of Seven thousand three hundred and ninety dollars, as from said Contract and the specification accompanying the same and forming a part thereof, will more fully appear; which contract and specification are annexed to this petition and form a part thereof.

And your petitioners further show that after such contract was made, the said Rop & Foster after considerable delay, and at a day much later than was contemplated when the said Contract was so made as aforesaid, proceeded to lay the foundation and to erect the walls of said building: that as soon as the Mason work was sufficiently far advanced to admit of your petitioners commencing the work which they had agreed to do as aforesaid, they commenced such work and diligently prosecuted the same as fast as the progress of the Mason-

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work would allow - that before the walls were entirely built your petitioners furnished and placed the joists and, with the consent of said Rop & Foster, laid some of the floors: That on the 28th day of August, and not before that time, the front wall was completed so that your petitioners could proceed to put on the roof of the main building, and your petitioners did immediately thereafter, and as soon as possible put on such roof, and completed the same on the 2nd day of September: That your petitioners then went on with the remainder of the Carpenter-work and furnished materials for the same, under the directions of said Rop and Foster and of Olmsted & Nicholson the architects in said Contract named, as fast as was possible, and without any delay except what arose from the causes hereinafter mentioned.

Your Petitioners further show that during the progress of the work above mentioned the said Rop & Foster and the said architects thought proper to make and did make from time to time divers alterations from the original plan of said building, that among other things, they altered the plan of the front stairs, and removed the wall which was built for such stairs, and decided to have stairs built which required a much greater amount of labor to be bestowed thereon than those specified in the Original plan: That they also altered the plan of the Cornice by which alteration a much greater amount of labor was required:

Your petitioners further show, that immediately

after said contract was made and frequently afterwards, your petitioners applied to said Robt & Foster and to said Architects for the proper & necessary working drawings: That the working drawing of the front stairs was not furnished before the 14th day of August; that the ground plan of the store front was not furnished before the 20th day of August; & that no working drawing of said front was ever furnished; that no working drawing of the inside stairs was ever furnished, but such stairs were finally built according to drawings made by your petitioners. That the working drawings for the Cornice was not furnished before the 6th day of September; that the working drawings for the sky-lights were not furnished before the middle of August, that after the stuff for such sky-lights was got out according to such drawings, they were found to be incorrect and the work was thereby greatly delayed.

Your petitioners further show that by reason of such delay on the part of said Architects in not sooner furnishing such working drawings, the Carpenter work was greatly delayed, and your petitioners were prevented from doing such work any faster or sooner than it was done by them, and from doing it as soon as they would otherwise have done said work if such drawings had been furnished in season.

Your petitioners further show that the masons did not finish their work in the four upper stories before the 20th day of October, that the Carpenter work could not

have been finished until such Mason-work was completed, that immediately after such Mason work was completed your petitioners finished the remainder of the Carpenter-work.

Your petitioners further show that from time to time, after the several payments in said Contract mentioned fell due, your petitioners applied to said Architects for the Certificates in said Contract mentioned, that there-upon the said Architects gave to your petitioners such certificates for certain sums amounting in the aggregate to seven thousand three hundred and ninety dollars; that such certificates were severally presented by your petitioners to said Rop & Foster and were, all of them paid by said Rop & Foster except one for two thousand one hundred and ninety dollars, dated January 2^d 1856; that said Rop & Foster have at various times advanced or paid to your petitioners in money or goods the sum of Seventeen hundred and twenty seven dollars and seven cents, to apply in payment of the sum mentioned in the Certificate last aforesaid, that the sum of Four hundred and sixty two dollars and ninety three cents, together with interest on the same from January 2^d 1856 is due and owing to your petitioners on said Certificate and contract, and that said Rop & Foster neglect and refuse to pay said balance or any part thereof to your petitioners, although often requested to pay the same.

Your petitioners further show that in consequence

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of the various alterations made in the Original plan of said building, a large amount of extra work and material were required in order to complete said building; that at the request of said Rop & Foster & of said Architects your petitioners did such extra work and furnished materials for the same, and in consideration thereof the said Rop & Foster promised & agreed to and with your petitioners to pay your petitioners what such last mentioned labor & materials were worth, when they should be thereunto afterwards requested; that after such work was done your petitioners made out an account or statement in writing of such extra work and materials and presented the same to said Rop & Foster to be settled and paid; that said Rop & Foster requested that said account should be submitted to the said Architects and to one Ruben Cleveland who is a good and competent Mechanic, being a Carpenter and builder by trade, in order that the said work and materials might be valued by them; that accordingly said account was so submitted to said Architects and to said Cleveland, and they together valued said work and materials and made certain deductions from some of the items thereof, and finally settled the same at Two thousand six hundred and seventy six dollars and twenty two cents, and decided and certified that that sum was due to your petitioners from the said Rop & Foster for such extra work and materials, a copy of which account, so certified is annexed to this petition and is made a part thereof.

2474.22

That your petitioners notified said Pop & Foster of the result of such valuation and of the amount so found due and certified to as aforesaid, and requested said Pop & Foster to pay the same, but they have hitherto wholly neglected and refused to pay the same or any part thereof.

Your petitioners therefore claim that the said Pop & Foster are justly indebted to your petitioners in the sum of Four hundred & sixty two dollars & ninety three cents, with interest on the same from January 2^d 1856 and in the further sum of Two thousand six hundred and seventy six dollars and twenty two cents, with interest from Dec^r. 2^d 1855 for the work, labor & materials done, performed and furnished in erecting and finishing said building as herein before stated, and that your petitioners have a lien upon said piece of land, and upon the improvements and buildings thereon, and upon all the right, title and interest of said Pop & Foster in and to the same, for the sums so due them as aforesaid: And they ask the aid of this Honorable Court in the premises, and pray that such lien may be enforced, and that a judgment or decree may be entered directing the sale of said land, improvements and buildings, and all of the right, title and interest of the said Pop & Foster in and to the same or any part thereof, to pay the sums so due to your petitioners as aforesaid; Or that such other further or different order or decree may be made in the premises as to your Honor shall seem meet, and as shall be agreeable to equity.

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And your petitioners further pray that a summons may issue from this Court directed to said William M. Rop and James M. Foster, commanding them to appear and answer this petition.

And your petitioners will ever pray.
Dated Jan'y 24, 1856

Stephen Herr
Noratio G. Lumbard

By Goodrich, Farwell & Scoville, Solicitors
Stephen Herr
Noratio G. Lumbard

Articles of Agreement,

Made this _____ day of April
one thousand eight hundred and fifty five, between
Messrs Rop & Foster of the City of Chicago, of the first part,
and Messrs Herr & Lumbard of the same place of the second
part.

First. The said parties of the second part, doth hereby, for themselves, heirs, executors and administrators, covenant, promise and agree, with and to the said parties of the first part, their executors, administrators or assigns, that they the said parties of the second part, their executors or administrators, shall and will for the considerations hereinafter mentioned, on or before the first day of September next from this date well and sufficiently, erect and finish the new Building for a store on the South side of Lake Street between LaSalle & Wells St. the East corner to commence 80 ft from LaSalle St. being 40 x 180 ft. five

Stories with stone front, agreeable to the several drawings and specifications made by Olmsted & Nicholson and signed by the parties herunto annexed within the time aforesaid, in a good, workmanlike and substantial manner, to the satisfaction, and under the direction of the said Architects to be testified by a writing or certificate under the hand of the said Architects, and also, shall and will find and provide such good, proper and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the Carpenter and joiner Work and other works of the said building mentioned in the Carpenter specifications for the sum of Seven thousand three hundred & ninety (7390) dollars.

And the said parties of the first part, doth hereby, for themselves, heirs, executors, and administrators, covenant, promise and agree, with and to the said parties of the second part, their executors and administrators, that they, the said parties of the first part, their executors or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said parties of the second part, as specified, well and truly pay, or cause to be paid, unto the parties of the second part their executors, administrators or assigns, the sum of Seven thousand three hundred and ninety (7390) dollars, of lawful money of the United States of America, In manner following:

When the first floor joists are on & bridged	600.00
When the second floor joists are on & bridged	800.00
When the third floor joists are on and roof of rear Building	900.00
When the fourth & fifth floor joists are on & bridged	800.00
When the roof of main Building is complete	800.00
When the whole Building is ready for Plastering	1200.00
When the entire work or job shall be completed and accepted and then if the parties of the second part has complied with the stipulations of said Contract to the satisfaction of the Superintending Architects the balance is to be paid (Twenty two hundred ninety)	2290.00

Provided, that in each of the said cases, a certificate be obtained and signed by the said Olmsted & Nicholson

And it is hereby further agreed ^{by and} between the said parties:

First. The specifications and the drawings are intended to cooperate, so that any works exhibited in the drawings, and not mentioned in the specifications, or vice versa, are to be executed the same as if it were mentioned in the specification and set forth in the drawings, to the true meaning and intention of the said drawings and specifications, without any extra charge whatsoever.

Second, The party of the second part grants the Architect the right to reject any work or materials that by him is thought not fit or suitable, or not in accordance with this specification, and plans or drawings furnished - and likewise the power to cause any unsound work to be altered at the Contractors expense, or any work that is

not executed according to the true intent and meaning of this specification, and drawings, and to the directions which may be given, from time to time, by the Architect?

If the proprietor or Architect thinks proper to make any alterations, whether in addition or omission, or deviate in any manner from these specifications or drawings, such alterations shall not make void this specification or contract; but the same to be valued by the Architect, and one good competent mechanic, and either added or deducted as the case may be.

Third. Should the Contractor, at any time during the progress of the said works, refuse or neglect to supply a sufficiency of materials or workmen, the Owner shall have power to provide materials and workmen, after three days notice in writing being given, to finish the said works, and the expense will be deducted from the amount of the Contract.

Fourth. And that the contractor may not feel himself any way aggrieved, he must take special notice that every circumstance appertaining to the well doing of the work, will be most strictly insisted on to the fullest intent and meaning of this specification, and that no indulgence will be allowed; and if any difference of opinion should arise as to the quality or quantity of work, or materials, or any other matter connected with the work, the decision of the Architect will be final and binding.

Fifth. The owner shall not in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts

thereof, respectively, or for any of the materials or other things used and employed in finishing and completing the same, (loss or damage by fire excepted.)

It is also understood that each & every day that the works are delayed for want of Carpenter work, the sum of fifty dollars shall be forfeited by the parties of the second part as liquidated damages. The parties of the first part are to furnish all proper and necessary drawings for the same.

In witness whereof, The said parties to these presents have hereunto set their hands and seals the day and year first above written.

Ros & Foster

Seal

New & Lombard

Seal

Carpenters Specifications

And description of the Carpenter work and materials required to build and erect one Brick Store with Stone front for Messrs Ros & Foster on Lot on the South side of Lake Street between Basalle & Wells Street as shown by plans made by Olmsted & Nicholson, Architects and and their specifications.

Dimensions.

The building will be 40 feet in width both front and rear, and 180 feet from front to rear. The Store and its Cellar with the second story

will be 180 feet from front to rear on alley. The three upper stories will be 63 ft 6 in. deep from front to rear, The Cellar will be in one room with a Girder to the first and second stories with the same to the roof, the said Girders to be put on brick piers in the Cellar made by mason. The second story floor and ceiling to rest on Iron columns furnished by the Iron men, all making and leaving the Store Story in one room as well as in rear of the 63 feet 6 in. to be in one room. Those rooms to be lighted with six skylights, making the Building five stories to the depth of 63 feet 6 inches, the remainder two stories. All divided and subdivided as shown on plans and elevations.

Height of Stories

Cellar 7 ft. Main 2nd Store Story 16 feet, Second Story 13 feet. Third Story 11 feet, Fourth Story 10 feet 6 in. Fifth Story 10 feet, all in the clear when complete

Size of Timbers.

Main Story	3 x 16	placed 12 in from Centre.
Second Story	3 x 12	" 12 in " "
Third "	3 x 10	" 16 " " "
Fourth "	3 x 10	" 16 " " "
Fifth "	3 x 9	" 16 " " "
Roof Joists	3 x 9	" 20 " " "

all headers and trimmers 4 in. thick and placed double around the Sky-light, the trimmer supported

with a stirrup and tuck. Tenons to all framing, the bridging to be put in on each side of Girder & one tier of 2×2 pieces, the girder under the centre ends of joists to the three tiers back of main tiers running from stairs to rear and made of 8×12 in sound dry pine timber. The studding in the second story at the side of stairs to be 2×6 with one tier of bridging.

All studding for all partitions set as shown on plan, and of 2×4 pieces, floor studs set double, the common studs set 12 inch from centres

All joists framed around all air flues and well holes and stair ways and truly levelled on the wall with a $7/8$ by 4 in Oak wall strip under ends of joists and so framed and levelled as to rest $3\frac{1}{2}$ in on the wall at the bottom and $\frac{1}{2}$ in. at the top and bridged before the Mason builds his stage on the same.

Prepare and put up a strong struss under the rear of the 13 ft. 6 in. as shown on section. For sizes of timber reference will be had to the section drawings; Also a truss as shown by drawings, ^{from} columns to support joists and roof girder?

Roof made to descend to the rear and the rafters first covered with $1\frac{1}{4}$ pine plank milled worked tongued and grooved and then on said plank plan a Felt and Asphaltum Composition Roof with gutters made of the same, fit bevelled cants next to all walls and chimneys.

Sky Light, Prepare and put in six as

shown on plan, hipped on each side and end to an angle of 45 degrees with strong bars well secured to frame and then glazed with common double thick French Glass and Light House putty. Each opening in ceiling to be made Circular on the upper edge as a Crown mould.

Cornice.

Prepare and put up a Cornice in front of building as shown on Elevation of the Original front. There shall be at least six Anchors four feet long in Cornice reaching back on to roof joists.

Leaders.

Prepare and put ^{up} two 4 inch tin Leaders from upper roof to rear roof well secured to walls, Also two six inch galvanized Iron Leaders in the rear of building which are to be well secured to rear wall with a shoe at the bottom.

Floors.

Prepare and lay the floor in the first story of yellow Pine between Counters of narrow $1\frac{1}{4}$ inch pine plank, milled, worked, tongued and grooved with the joints headed, the said plank between $2\frac{1}{2}$ & $3\frac{1}{2}$ inch wide and all blind nailed and neatly smoothed off - when all complete, Inside of Counters made of Common width yellow pine $1\frac{1}{4}$ plank, milled, worked, tongued and grooved ^{with} all joints made to run.

All the remainder of floors to the entire building

made of common width white pine $1\frac{1}{4}$ inch thick milled, worked, tongued and grooved and well laid and neatly smoothed off.

Furring.

Prepare and fur the ceiling of the second story level with 2×6 pieces hung from ceiling or roof joists placed 16 inches from centre.

Grounds to all windows and doors to the entire building.

Window Frames.

Prepare and put in windows as shown on plans, for sizes of frames reference will be had to the figures on the elevation, All frames made boxing and the sash hung with Cord and weights and axle pulley.

Inside finish.

All windows and doors to the entire second, third, fourth & fifth stories cased and trimmed with a six inch single Architrave with a $1\frac{1}{8}$ Ogee Moulding as marked in Smith's moulding book N° 103 and $1\frac{1}{8}$ back-band - the doors and windows in the store carved as shown by drawings.

Stairs.

Prepare and build all stairs as shown on plans and as follows - The main stairs the steps $12\frac{1}{2}$ in wide $1\frac{3}{4}$ thick of white oak moulding in front

with moulded skirting the rises of $\frac{7}{8}$ the upper stairs as shown on plan Steps $11\frac{1}{2}$ wide moulded edge and end with an 8 in fancy turned black Walnut newel and rail $2\frac{1}{2} \times 4\frac{1}{2}$ moulded, Black Walnut rail with $2\frac{1}{2}$ fancy turned Bannisters and moulded skirting.

All of the above stairs set on the 4×6 plank string with a strong carriage under the winders.

Doors.

Prepare and make, hang and trim all doors shown on plans $1\frac{3}{4}$ thick three panels wide and two high, bottom rail 12 in wide, Lock rail 10 in wide, Stiles 5 in Muntin 3 in. made bevelled stiles and rails and then hung with two 4 in Cast patent Butt on each door and fastened with first quality of City made Mortice Lock and mineral Knobs with Bronzed trimmings, the Lock and upright $5\frac{1}{2}$ in.

Front Doors to stairs,

Made as shown on plan two in thickness of $1\frac{3}{8}$ each and two in width made to fold one half on each side of door-way with a square transom as shown on Elevation and then hung with 3×5 Cast patent Butt. and fastened with a Rim Lock worth \$10. and a three joint monkey slide bolt on the top of the other and a twelve inch

stile bolt at the bottom.

Store Front.

Prepare and put in two double Store doors, one on each side Stairway $1\frac{3}{4}$ thick made with ornamental bottom rail which will be 16 in wide with the upper part of the door to have a French plate Glap double thick, arched at the top as shown on Elevation with a carved transoms bar with an Arch head light surrounded with a twisted moulding as shown on section. The said Carving and jamb to door as shown by working drawings made and shown.

Base.

Prepare and skint the entire upper part of Building except the Store.

Closets.

Prepare and fit up all Closets as shown on plans with one shelf on the sides and a clothes strip under, and hooks one in 6 ins. Also fit 12 Water Closets seats as shown on plans.

Scuttle,

Prepare and put in one on the Main Roof $2\frac{1}{2} \times 3$ ft. with a step ladder.

Painting.

Prepare and paint all of the joiner work usually painted two coats to the entire second, third, fourth and fifth story, Also paint all outside windows and Cornice four Coats, sanded two coats.

Prepare and paint all of the rear Iron shutters which will be plain Iron and to have two coats of black paint in addition to the one put on by the Iron furnisher.

Glaz.

Prepare and put in all Windows as shown on plan, for sizes reference will be had to the figures as shown on plan. The first story or Store front with the doors to be filled with the best French plate double thick and of the most superior quality. The remainder of the Front - French Glaz double thick, The rear Windows to the Store will be in a tripple Casement as shown on rear plans, The sash filled with French double thick, All other rear windows of French Glaz. Also put up a transom over all doors 20 inches high and in one light.

We the undersigned subscribers acknowledge this Specification the One referred to in Contract bearing date April 17th 1855.

Prop & Foster
Derr & Lombard.

Rep & Foster

To Herr & Sumland

Rs

April.	25	To Timber for Shores under White's Store	2 00	
"	"	Hauling Load	50	
"	"	Labor putting under same	1 75	
June	7	" 4 inch Boards for Masons by order of Architects	3 00	
"	"	1 six foot Drum	4 00	
"	"	2 Centres to turn Window Heads	3 00	
16	"	20 pieces 2x4-14 feet long to brace Iron Columns	3 60	3 60
"	"	Hauling Load	50	
"	"	Labor bracing Columns 1 day	2 25	2 25
"	"	6 pieces 3x12-20 feet long to support partitions	7 20	
"	"	Spikes framing & raising same	3 00	
"	"	1 1/2 days work counting sinking Iron Anchors	3 38	34 18
28	"	Raising & setting 5 Iron Columns in 2 ^d Story	30 00	30 00
"	"	8 1/2 lbs Lead for same	85	85
July	10	" Lumber, Nails & Labor to fill Well holes & sky lights ^{by order of Mr Rep}	50 00	
"	"	" 4 pieces 3x10-20 feet long under truss partitions ^{side of Hall}	4 00	
"	"	Labor taking down & framing joists over Hall	8 00	
"	"	Extra work trussing 3 partitions	15 00	
12	"	50 lbs Lead to flush rear wall of Main Building	5 50	
16	"	1 days work taking up floors for gas fitters	2 25	
"	"	2000 feet 8 th quality Common boards for deaf floor	36 00	2 00
"	"	700 feet 1x2 strips	16 00	
"	"	Hauling same	1 00	
"	"	24 days work laying deaf floor	54 00	
"	"	40 lbs Nails	2 40	
21	"	3 box window frames for West side of Building	15 00	

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July

25	" 54 pieces 3x8 = 16 feet long to support joists around ^{stairway}	31 10	15.03
"	" Hauling 3 loads	1 50	
"	" 4 days work putting up same	9 00	
"	" 1100 feet 2" Clear stuff for brackets in 2 nd story and ^{sky lights}	33 00	7.00
"	" Hauling same to Mill & to Store	2 50	
"	" 5 1/2 days work putting up brackets in 2 nd story	12 38	
"	" 15 lbs Nails	90	33 11 38
"	" Cash paid for sawing brackets	10 00	1.00
"	" 1500 feet Common boards to cover sky lights	27 00	10.00
"	" Hauling same	1 00	
"	" Labor covering sky lights at sundry times	5 00	
"	" Difference in 10,000 feet of flooring	110 00	10.00
"	" 72 feet of timber for girders around front stairs	14 12	
"	" Sawing same	2 10	
"	" 7 days work getting and framing and getting ^{same} up	15 75	
"	" Setting 8 Iron Columns under stairs	40 00	8.00
"	" 8 Iron plates 72 I. wedges & 2 Heavy Stirrups	16 50	
"	" 96 pieces 2x4 - 20 feet long to fur ceiling of 5 th story	26 28	
"	" putting up same and stuff for hangers	24 00	4.00
"	" 15 lbs Nails for same	90	
"	" Hauling 2 loads	1 00	
"	" 90 pieces 2x4 - 12 feet long to fur around ^{clean stuff,} stairs _{front}	14 40	
"	" 20 " 2x4 - 16 " " " " "	3 20	
"	" 20 " 1x1 1/2 " " " " " "	2 50	
"	" Hauling 4 loads	2 00	315 75
"	" 16 days work putting up furring ^{& around stairs} & ironing under	36 00	
"	" 8 gross screws for iron bars for sky lights	4 00	

"	"	6 days work raising Ceiling in 5 th story	13 50	
"	"	250 feet 2x6 to raise partitions of 5 th story	5 00	
"	"	10 pieces 2x6-14 feet long to fur front of 2 ^d story	2 80	
"	"	15 " 2x4-14 " " " " "	2 70	
"	"	100 " 2x4-12 " " " " " 3, 4, 5 th "	16 00	2.40
"	"	Hauling 4 loads	2 00	
"	"	8 days work furring the front walls	18 00	
"	"	60 lbs Nails	3 60	
"	"	Lumber & Labor for Arch over Coal Vault	8 50	
"	"	Hauling load	50	
"	"	72 Iron braces to support Crown Moulding around ^{well holes}	18 00	
"	"	2 gross screws for same	1 25	
"	"	4 days work Countersinking same	9 00	
"	"	300 feet Crown Moulding around ^{2x19} well holes	75 00	15.00
"	"	312 feet of Circular Cornice in Sky lights	936 00	312.00
"	"	Furring side Walls as per Contract 110 squares	136 87	1288 72
"	"	6 days work laying floors after gas fitters	13 50	
"	"	front door Hinges	34 00	1.60
"	"	5 days work Countersinking measuring spots in ^{Counters etc}	11 25	
"	"	1000 feet Clear Ceiling in Stair way	30 00	
"	"	Hauling same	1 00	
"	"	Casing 8 Columns	8 00	
"	"	30 feet of Base in store	3 00	
"	"	1 Sky light on 5 th story	15 00	
"	"	1 Box Window frame in partition	4 00	
"	"	13 days Work Ceiling & Crock furring stairs	29 25	
"	"	25 lbs Nails for same	1 50	
"	"	6 Windows Complete inside of Store	90 00	

Oct	"	to 5 French Window Frames	25 00	15.00
	"	" 6 extra Doors all Complete 3 rd 4 th & 5 th story	72 00	
	"	" finishing 6 extra Closets	30 00	12.00
	"	" 4 days Work Ceiling Stair way	9 00	286 50
	"	" 2 days Work laying floors after gas fitters	4 50	
	"	" 5 Spandrel Bolts as ordered by Express	35 00	
	"	" 2 days Work putting on same	4 50	
	"	" 4 1/2 days Re-hanging front Doors	11 25	
	"	" 1 double Cellar Door in rear of Store	7 00	7.00
	"	" 3 Cellar Windows Complete in Cellar	12 00	
	"	" Extra Work on front	200 00	50.00
	"	" " " " on Stairs as per Contract with Architect	100 00	100.00
	"	" " " " " Cornice	200 00	
	"	" 55 1/2 feet of 2x6 partition in lieu of 2x4	50 00	
	"	" 18 feet of partition in Closets 3 rd 4 th & 5 th stories	5 40	629 65
				2885 18
	"	" 18 Transoms at 2.50	45 00	
	"	" 16 Diagonal Anchors	16 00	
	"	" Lumber, Labor & Nails to arch ceiling of 5 th story skylights	9 00	
	"	" Trussing front partition	2 00	
	"	" 34 Brackets around front Stairs around stair way	3 24	
	"	" 50 " across the front of Miss Fick's Store	5 00	80 24
	"	" 4 extra trapes to support Roof garden in rear of } main building	200 00	200.00
	"	" 700 feet of draped flooring to Ceil up the same } above roof	21 00	
	"	" Nails & Labor ceiling same	14 00	
	"	" Hauling load	50	
	"	" Studding & Ceiling around 6 Skylights above roof average height 1'8" - 18.00 each	108 00	50.00

" " Hauling for the same	1 00	
" " 682 feet of 2x4 Cant strips on side of trunks		
" and around skylights including sawing	20 46	20 46
" putting down same	5 00	
" Casing Scuttle & Lia through Ceiling of 5 th story		371 96
		\$ 3337.38
Amount of Extras due on the above		661 16
less as corrected by		\$ 2676.22
Oliver & Nicholson		
Renton Cleveland		
<u>\$ 2676.22</u>		

And afterwards to wit on the fifth day of February
in the year of our Lord one thousand eight hundred and
fifty-six the following among other proceedings were had
in said Court, and entered of record to wit.

Stephen Herr &	}	Mch ^d Lien.
Noratio G. Sumbard		
vs		
William W. Rop &		
James H. Foster		

And now come the said defend-
ants by Blackwell Thomas & Roberts their solicitors
and on their motion it is ordered that the time to
answer in the above entitled cause be extended ten
days from this day.

And thereafter to wit, On the fifteenth day of February in the year last aforesaid, the said Defendants by Blackwell, Thomas & Roberts their Attorneys filed in the Office of the Clerk of said Court their Answer in this cause, which said Answer is in the words and figures as follows, to wit,

In the Cook County Court of Common Pleas
February Term A.D. 1856

The separate answer of William M. Rop to the petition of Stephen Herr & Noratio G. Lombard filed against him and his partner James M. Foster.

The said Rop answering says, that it is true as alleged that the petitioners made a contract about the last of April 1855 with this respondent and his partner Foster, & that the contract which is made a part of said petition is the same Contract as alleged.

Respondent admits that the building so to be erected in pursuance of said Contract, was erected on the piece or parcel of land as alleged, and respondent admits that said piece of ground was leased by him and said Foster for the period of 21 years from the first day of May 1855 which lease is still subsisting & in full force, and the said piece of ground is still in the possession of respondent & the said Foster under and by virtue of said lease.

Respondent admits that by said Contract the Petitioners were to receive the sum of seven thousand three hundred and ninety dollars for work and materials furnished

in and about said Contract.

Respondent denies that the Defendants proceeded to lay the foundations and erect the walls of said building at a day much later than was contemplated when the said Contract was so made as aforesaid, or that there was any delay in prosecuting the work necessary to be done before the petitioners could commence their work. But respondent says that the excavating for the Cellar was commenced about the 14th of April and was diligently prosecuted - that the Masons commenced laying the foundations about the — day of April, and as early as the 26th of April had made good progress in the same, and respondent believes that said Masons had made considerable progress in the work about the time the aforesaid contract of petitioners was made, and said Masons diligently prosecuted the work on their part to be done save when delayed by the petitioners.

Respondent denies that the petitioners commenced their work and diligently prosecuted the same as fast as the progress of the Mason work would allow as alleged, but respondent says, that when the West wall of the first story was ready for the second floor joists the Architects in said Contract mentioned instructed the petitioners to erect the Iron Columns in the Centre of the building & place the trusses upon them in order that said second floor joists might be placed on said West wall and trusses, while the masons were erecting the East wall of said first story, and thus expedite the work, but the

said petitioners neglected and refused to obey the said instructions as they were bound to do by said Contract—

That when the said East wall of the first story was erected the petitioners were again instructed to proceed immediately & erect said columns and put up said second floor joists, and respondent says that he then discovered that the petitioners had not framed said trusses, and he charges that by reason of the neglect of said petitioners & their disobedience of ^{the} instructions of the Architect as aforesaid the Mason work was delayed at this stage at least two weeks.

Respondent says the same instructions were given petitioners and the same delay was made on their part in the erection of the third floor joists as occurred in reference to the said second floor joists.

Respondent admits that the floors were laid before the roof was on by the permission of said Architects and that this was allowed although out of the usual order of prosecuting similar works, in order to expedite the work of said petitioners, it being manifest to respondent that the petitioners would be behind on their said Contract if held strictly to the usual and workmanlike order in which their said Contract work should have been prosecuted.

Respondent says that the Carpenter work of the roof was not delayed as charged by reason of the incompleteness of the front wall, but charges that the work necessary to be done on said roof after the completion of said front

walls could have been done and actually was done in the space of three or four days.

Respondent denies that after the completion of the said roof the petitioners then went on with the remainder of the Carpenter work as fast as was possible and without delay as alleged. - But he says that the said Architects & this respondent at this stage of the work & prior thereto repeatedly remonstrated with the petitioners about the small number of workmen employed by petitioners in and about their said work, & respondent charges that he & the said Olmstead frequently during the progress of said work counted the number of workmen employed by the petitioners and found them not to exceed at times ten persons at which times the petitioners might & should have employed from thirty to forty workmen & worked them to good advantage. - Respondent & said Olmstead notified the petitioners of said facts & informed them at the time that they would be held to a strict performance of their said contract & responsibility for their delay.

Respondent further says that the said petitioner Lumbard had the charge & supervision of the said work, that he repeatedly neglected and refused to obey the directions and instructions of the said Architect Olmstead as they were given from time to time during the progress of said work; that said Lumbard was totally incompetent to have the charge and management of a work of the character & importance of said work, and that by reason of his said incompetency & of the premises

aforesaid, together with an entire absence of all system in the manner of conducting the different portions of said Carpenter work with reference to the Mason & other work the said petitioners retarded the progress of the building in almost all its various stages.

Respondent says that the petitioner Derr was absent from the City most of the time up to the middle of August, while the said work was progressing, that about the middle of August as aforesaid he returned & took the management & supervision of the said Carpenter work and employed a much larger number of workmen and carried the work forward with much greater expedition.

Respondent admits that alteration was made in the plan of the front stairs, but says that the additional labor required of the petitioners in consequence thereof was but very slight most of the labor having been furnished by other parties.

Respondent admits that in consequence of the alteration in the plan of the Cornice a greater amount of labor was required to construct the same than by the original plan, but he says that the said alterations did not require more than ten days to complete the same in addition to the time required to do said work under the original plan.

Respondent further says that with reference to the charge of delaying petitioners in not furnishing drawings, that all necessary drawings were furnished as required,

had petitioners prosecuted the said work in the manner and order directed by said Architect Olmstead.

That the drawings for nearly the entire Carpenter work were furnished the petitioners by the 15th of May, that the drawings for the Store front were furnished in ample time, there being very little Carpenter work on said front from the fact that said front was constructed almost entirely of glass & metal. - That sometime after the petitioners had been urged by respondent & said Olmstead to delay no longer in putting up said front the petitioners informed respondent that they had said Store front ready at their shop to put up & respondent on going to said shop found that said information was untrue & that the petitioners were just about commencing the work on said front.

Respondent says that it is not customary or usual to furnish working drawing for stairs, that all necessary directions for the guidance of petitioners in making stairs were contained in the specifications to said written contracts. - That the stairs in the main building ought to have been erected by petitioners as early as August 1st. - That they were requested at that time by the respondent and by said Olmstead and repeatedly afterwards to erect said stairs immediately. - That petitioners gave various pretexts for delaying the erection of said stairs but never intimated the want of drawings as the reason for said delay. - That said stairs were not completed until about the 20th of December. - That in

consequence of the neglect and refusal of petitioners to erect said stairs when the same ought to have been done it was impossible for the masons to go forward and complete the plastering, and the said neglect of the petitioners about the erection of said stairs hindered and delayed the said masons at least thirty days.

That the petitioners made a mistake in getting and preparing the material for the well holes, and when the said masons commenced finishing said well holes the said mistake of petitioners was discovered and in consequence thereof divers alterations were required in said material which alterations delayed the masons about two weeks. - That said mistake was occasioned wholly by the negligence and unskillfulness of the petitioners.

Respondent would state further in reference to said Cornice, that the defendants nor said Architect Olmstead did not at any time during the progress of the said work hasten the completion of said Cornice, but allowed the petitioners to furnish the same at their convenience, as it was not essential to the occupation of the building that said Cornice should be first completed.

Respondent further says that all necessary drawings for the skylights were furnished in ample time,

That the alterations in said skylights were of a slight character requiring but very little additional labor except such work as was taken by the petitioners as extra work & defendants expressly stipulated and agreed with

the petitioners in giving them extra work, that the same should in no manner interfere with the completion of the said written contract work according to the terms of said Contract.

Respondent further says that the defendants employed two Master Mechanics to perform the greater part of the extra carpenter work necessary to be done about the said building, well knowing that if much of said extra work were given to the petitioners that a still further delay would occur, and they desired to give said petitioners no pretext of that kind for the non-performance of their said contract, for respondent at all times during the progress of said work notified the petitioners that they would be held to a strict performance of the said contract.

Respondent further says that a considerable portion of the bill of extras charged by the petitioners was occasioned by the fact that a better quality of material was furnished than that called for in the specification, that no changes or alterations were made except as contemplated in said contract and within the fair scope of the same unless the change in said cornice might be regarded as an exception.

That the Masons could not finish their work in the four upper stories until said stairs were up. that said Masons commenced work as aforesaid immediately after said stairs were erected and completed the same in three or four days thereafter.

Respondent admits that the balance unpaid on the Certificate of January 2^d 1856 is as stated in said petition.

Respondent also admits that the account of extras &c was submitted as alleged and that petitioners were allowed thereon the sum of \$2676 ²²/₁₀₀ & that the same was certified as alleged, And respondent admits that these defendants have refused to pay the petitioners the said several sums of money so claimed by them to be due.

But respondent says that by the terms of said written Contract the said petitioners agreed to forfeit the sum of fifty dollars per day as liquidated damages to the defendants for each & every day that the said works might be delayed for want of Carpenter work,

And respondent says that the said works were delayed for want of Carpenter work at least 100 days exclusive of the said ten days allowed for change in the plan of Cornice - by reason of the said default of petitioners.

Respondent says that the sum of \$5000.00 then and then became due to defendants as their liquidated damages as aforesaid of all which the said petitioners had notice and respondent says that defendants have always been ready to pay the petitioners whatever balance might be found due them on said Contract after deducting said sum of \$5000.00 so due the

defendants as liquidated damages, but Respondent says that the petitioners have refused to settle with these defendants and allow them their liquidated damages as aforesaid.

And having fully answered, respondent prays to be dismissed &c.

Blackwell, Thomas & Roberts

W. W. Rop.

Atty for Defs.

The State of Illinois }
Cook County, } p.

William M. Rop the respondent in the above and foregoing answer being duly sworn says that he has read said answer and knows the contents thereof, that the matters and things therein contained as stated of his own knowledge are true, and those stated upon information he believes to be true

W. M. Rop.

Subscribed and sworn to before me
this 15th day of February A.D. 1856

W. Kimball, Clerk

The separate answer of James H. Foster to the petition of Stephen Derr and Noratio G. Lombard.

For answer to said petition this Respondent says, that he together with said Rop made the contract with said Derr & Lombard as charged

in said petition. - But this respondent says that he is not personally advised of the various facts charged in said petition from the fact that his said partner Rop took the entire management & superintendence of the construction of said building so far as the partnership firm of Rop & Foster could properly do so, and this Respondent sanctioned and ratified all the acts and doings of said Rop in the premises. That the payments as alleged in said petition were made as appears by the partnership books of said Rop and this Respondent, That the lease of the premises as stated in the answer of said Rop is true.

And having fully answered, prays to be dismissed &c.

Blackwell Thomas & Roberts } James M. Foster
Atty for Defl. }

The State of Illinois }
Cook County, p. }

James M. Foster the Respondent in the above and foregoing answer, being duly sworn, says that he has read said answer and knows the contents thereof. That the matters and things therein contained as stated of his own knowledge are true, and those stated upon information he believes to be true.

James M. Foster.

Subscribed and sworn to before me

this 15th day of February A.D. 1856. W. Kimball, Ck.

And afterwards to wit, on the twenty first day of February in the year last aforesaid the said plaintiffs by their attorneys aforesaid, filed in the office of the Clerk of said Court their replications to Defendants answers, which said replications are in the words and figures as follows, to wit.

Cook County Court of Common Pleas
February Term A.D. 1856.

The usual
replication's
filed.

The replication of Stephen Serr and Noratio G. Lombard petitioners to the separate answer of James N. Foster, one of the defendants to the petition of the above named petitioners.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiency of the said Answer, for replication thereunto, say that they will aver and prove their said petition to be true, certain and sufficient in the law to be answered unto by these repliants, 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 and avoided, traversed or denied is true.

All which matters and things these repliants are and will be ready to prove as this Honorable Court shall direct, and humbly pray, as in and by their said petition they have already prayed.

Goodrich, Fairwell & Scoville Solr.^s for
Petitioners

Cook County Court of Common Pleas
February Term A.D. 1856

The replication of Stephen New and Moratio G. Lumbard, petitioners, to the separate answer of William M. Rop, one of the defendants, to the petition of the above named petitioners.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said Answer, for replication thereunto 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 said Answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants, 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 and avowed, traversed or denied is true,

All which matters and things these repliants are and will be ready to aver and prove as this Honorable Court shall direct, and humbly pray, as in and by their said petition they have already prayed.

Goodrich Fairwell & Scoville
Solicitors for Petitioners

And afterwards, to wit, on the nineteenth day of September in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit.

✓

Stephen Derr & Moratio G. Lombard or William M. Rop & James M. Foster	}	Petition for Mechanics Lien.
---	---	---------------------------------

✕

And now at this day come the said petitioners by Goodrich Farwell & Scoville their solicitors, and the said defendants by Blackwell, Thomas & Roberts their solicitors also come, And on motion of said petitioners it is ordered that a jury come, and thereupon come a jury of good and lawful men, to wit,

J. C. Kennedy, Arthur Hitchcock, Wm Wiggins, M. S. Nichols, Wm Sawyer, J. A. Barker, William Fleming, W. H. Pierce, Wm Wayman, Peter Roy, J. H. S. Slayton & Asa Fitch, who were duly elected, tried & sworn well & truly to try the issue joined in this Cause, And thereupon on motion of said defendants leave is given them to amend their answer to the petition herein on payment of the costs of this suit up to this time, to which the said petitioners here except. And after hearing a part of the evidence adduced, the further hearing of.

this cause is postponed until tomorrow morning, to which time the jury are permitted to separate.

T

And thereafter to wit, on the same day and year last aforesaid, the said defendants by their solicitors aforesaid filed their Amendment to Answer, which said Amendment to answer is in the words and figures as follows, to wit:

Amendment of Answer of Defendants filed by leave of the Court.

Dev & Lumbard

vs

Rop & Foster

} Amendment to Answer.

And these respondents in this connection further answering say, That prior to the time of the giving the Certificate of January 2^d 1856 by the Architects aforesaid, one of the petitioners (which these respondents are ignorant) applied to the said Architects for a certificate relative to the sum of money due to them upon said work and labor so performed by them as aforesaid; representing to the said Architects that the object of said Certificate was to enable the parties (petitioners and defendants) to compromise the controversy between them in relation to the value of the work done by the petitioners and the damages claimed by the said defendants under

the contract aforesaid; That under these circum-
stances said Certificate was granted to these pe-
titioners by the said Architects - merely giving the
amount due for the work done without regard
to the claim of said respondents for damages which
claim was not adjudicated by said Architects.

That said Compromise was not effected between
said parties

W. W. Rop.

Blackwell Thomas & Roberts
Solicitors

Subscribed & sworn to by W. W. Rop
before me this 19 day of Sept^r 1856.

W. Kimball, Clk.

And thereafter, to wit, on the same day and
year last aforesaid the parties aforesaid by their
Solicitors aforesaid, filed with the Clerk of said
Court their Stipulation, which said Stipulation is
in the words and figures as follows to wit.

Leu & Sumbard plaintiffs }

Rop & Foster defendants }

It is hereby stipulated
by the defendants that no objection shall be made or
insisted upon on the trial of this cause on account of
the omission of the petitioners to prove the issuing of any
Certificate provided for in the contract set forth in the

petition in this case if the facts set forth in the amendment of this day to the Answer shall be proven.

Goodrich & Farnell for petitioners
Arnold & Blackwell for defendants

Chicago Sept 19. 1856

And afterwards, to wit, on the twentieth day of September in the year last aforesaid, the following among other proceedings were had in said Court and entered of record, to wit:

Stephen New & Horatio G. Sumbard

vs

William W. Rop & James M. Foster

} Mechanics Lien

And now again come the parties by their Solicitors aforesaid. And the Jury empannelled in this Cause also come, And after hearing a part of the evidence, by agreement of parties the further hearing of this cause is postponed until Monday Morning next, to which time the Jury are permitted to separate.

And afterwards, to wit, on the twenty second day of September in the year last aforesaid, the following among other proceedings were had in said Court, and entered of record, to wit:

Stephen Derr & Noratio G. Sumbard

vs

William M. Rop & James H. Foster

} Meck^e Lien.

X And now again come the said parties by their Solicitors aforesaid, and the Jury empannelled in this cause also come, and after hearing the remainder of the testimony, argument of counsel, and instructions of the Court, retire to consider of their verdict, And afterwards come into Court and say, we the Jury find the issue for the petitioners, and that there is due to them from the said defendants the sum of Three thousand two hundred and eighty eight dollars and forty eight cents.

And thereupon the said defendants enter their motion herein for a new trial in this cause.

And afterwards, to wit, on the twenty eighth day of October in the year last aforesaid, the following among other proceedings were had in said Court, and entered of record, to wit:

Stephen Derr et al

vs

William M. Rop &
James H. Foster

} Meck^e Lien.

X And now again come the said defendants by their Solicitors aforesaid, and on their motion it is ordered that thirty days time be given

said defendants to prepare & file a bill of exceptions in this cause.

And afterwards, to wit, on the seventh day of January in the year of our Lord one thousand eight hundred and fifty-seven, the following among other proceedings were had in said Court, and entered of record, to wit.

Stephen New & Horatio G. Lumbard }
 vs } Petition for Mechanic's Lien.
 William M. Rop & James M. Foster }

And now again come the said parties by their Solicitors aforesaid, And the Court after hearing the Argument of said Solicitors on the said Defendants motion for a new trial in this cause, being now fully advised in the premises over-rules said motion, and said defendants enter their exceptions herein to the ruling and decisions of the Court.

\$3288.48 It is therefore considered by the Court, that the said petitioners have and recover of the said defendants the sum of Three thousand two hundred and eighty eight dollars and forty eight cents, in form aforesaid by the jury assessed, And that they have a Mechanic's lien upon all the right, title and interest of the said defendants in and to the premises described in the petition in this cause, and situate in the City of Chicago, on the

South side of Lake Street between LaSalle & Wells streets, being eighty feet West from LaSalle Street, and having forty feet front by one hundred and eighty feet deep, and now known as No¹ One hundred & sixty seven (167) and One hundred & sixty nine (169) Lake Street, together with the building thereon situate, And that said petitioners have execution against said premises, and also recover of the said defendants their costs and charges by them about their suit in this behalf expended.

And thereupon the said defendants pray an appeal to the Supreme Court of the State of Illinois, which is allowed upon their filing their appeal bond in the penal sum of Five thousand dollars with security to be approved by the Judge of this Court, said bond to be filed in ten days from this day, And thirty days time is given the said defendants to prepare and file their bill of exceptions herein.

And afterwards, to wit, on the fifteenth day of January in the year last aforesaid, the said defendants filed in the Office of the Clerk of said Court, their Appeal bond, which said Appeal bond is in the words and figures as follows, to wit:

Know all men by these presents, That we William M. Rop, James M. Foster and Adam Murray of the County of Cook and State of Illinois, are held and firmly,

bound unto Stephen Herr & Horatio G. Lombard also of the same County of State in the penal sum of Five thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly & severally, firmly by these presents. . Witness our hands and seals this 14th day of January A.D. 1857.

The Condition of the above obligation is such, that whereas, the said Stephen Herr & Horatio G. Lombard did on the 7th day of January A.D. 1857 in the Cook County Court of Common Pleas, within and for the County of Cook and State of Illinois, recover a judgment against the said William M. Rop and James M. Foster, for the sum of Three thousand two hundred & eighty eight ⁴⁸⁹100 dollars and costs of suit, from which said judgment of the said Court of Common Pleas the said William M. Rop and James M. Foster have prayed for and obtained an appeal to the Supreme Court of said State for the third grand division.

Now if the said William M. Rop and James M. Foster shall duly prosecute their said appeal to effect, and shall moreover pay the amount of the judgment, costs, interest & damages rendered and to be rendered against them in case the said judgment shall be affirmed in the Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

^{in law.}
Taken & entered into

before me this
day of January AD 1857

W. M. Rop Seal
J. M. Foster Seal
by W. M. Rop his Attorney in fact
A. Murray Seal

Approved by me this 15th day
of January 1857.

John W. Wilson Judge
of the Cook Co Ct of C Pleas.

And afterwards, to wit, on the fourth day of Febru-
ary in the year last aforesaid the said parties by their
Solicitors, filed in the Clerks Office of said Court, their
Stipulation which said stipulation is in the words and
figures as follows, to wit,

Nev & Sumtard

vs

Rop & Foster

} Cook Co Court of Common Pleas.

It is agreed by and between the
Attornies to the above entitled cause, that the time for
filing the bill of exceptions herein, mentioned in the order
at January term 1857, is hereby extended to the fifteenth
day of February AD 1857 at which date the same shall
be filed and no exception taken for failure to file the
same in pursuance of the order entered herein at the
January term 1857 of said Court. - This Stipulation shall
be filed in said Court.

February 4th 1857

Blackwell, Thomas & Roberts
 Atty^s for Deft^s
 Goodrich, Fairwell & Scoville
 Atty^s for Plff^s.

And afterwards, to wit, on the fourteenth day of February in the year last aforesaid, the following among other proceedings were had in said Court, and entered of record, to wit,

Stephen Derr & Noratis G. Lombard	} Mich ^x . Lien.
William M. Robt & James N. Foster	

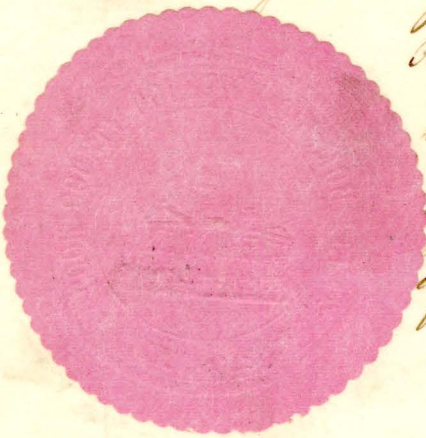
And now come the said parties by their said Attorneys and by agreement the time to file bill of exceptions in this cause is extended to the twenty third day of February instant.

State of Illinois }
County of Cook } p

I, Walter Kimball, Clerk of the
Cook County Court of Common Pleas, within and for
said County and State, do hereby certify that the fore-
going is a true transcript of the papers, proceedings and
record of said Court as the same are now on file in
my Office in the case of Stephen Derr and Noratio
G. Sumner plaintiffs or petitioners, and William
M. Rop and James N. Foster defendants.

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court, at Chicago this 18th day
of April A.D. 1857.

Walter Kimball Clerk



State of Illinois } Supreme Court Third
Grand division, June Term 1837

Stephen Ferr & Horace E
Sambard

vs

William McRop & James
H. Foster

And now come the
said William McRop & James H. Foster the
Appellants by Blackwell their solicitor &
say ~~that~~ in the record & proceedings in
said Cause there is manifest error in the
1st The Court erred in rendering the
decree for the complainants below

2^d Said decree should have been in favor
of the defendants below

3^d The said decree is against the
law & the ~~rights~~ ^{rights} of the defendants below
4th There is no evidence
J. M. Maxwell
for plaintiffs in error

Stephen ... 174
Hiram G. ...
...
...
...

Recd April 28, 1887
L. Leland
Clerk

174-1513

1

Wm M Ross et al } In the Supreme Court of Missouri,
 vs } ss of the term of April 1857.
 Deer & Lumbard } Third Grand Jurisdiction

Robert S Mackinnell being duly sworn
 deposes and says that he is one of the Counsel of
 appellants, that some time last fall or winter
 a judgment was recovered in the Cook County
 Court of Common Pleas Missouri by the appellees
 against the appellants for upwards of 3000\$ -
 that an appeal was prayed & bond given
 according to the condition of the order
 granting the appeal, that time was given
 to file a bill of exceptions, which time has
 since the original order been extended
 by consent for several times, that a bill
 of exceptions was made out ~~by the~~ by
 this affiant to be settled by the opposite Counsel
 & Judge of the Court, that a misunderstanding
 has ~~arisen~~ arisen as to whether or not
 the bill was presented within the
 time limited, that this question is
 undetermined & because undetermined
 no record was ordered by this affiant;
 that this affiant delayed for the purpose
 of procuring the affidavit of his former
 Clerk who as this affiant is informed
 has been absent from the City & who is
 still absent, but who is daily expected
 to return. But besides this the Clerk not
 having returned on Wednesday last this
 affiant directed the Clerk of the Cook
 County Court of Common Pleas to make
 a record of said Cause without reference
 to the said bill of exceptions, so
 that this affiant might be enabled

to comply with the statute in such case
made & provided and file the record
3 days prior to the return day or
commencement of the term of this
court, that on account of the
press of business in said court which
is in session, and the number of
supreme court records to be made out
by the clerk of said court, and
the want of a sufficient force in
said clerk's office, and the confusion
occasioned by the earlier meeting
of the supreme court than was
usually anticipated said records
was not made out in time to file
according to the statute. This
affidavit is made without the records
being before affiant but he is confident
that the dates are substantially correct
the reason why affiant is not more
accurate is that affiant is now
engaged in the trial of a cause
in the US court which will last
several days and he is unable, in
time to answer the design con-
templated, to go personally and
examine the records of this cause
in the court below. He therefore prays
that a reasonable time (say until Saturday
next) shall be allowed him to file the
said record. And further this
affiant swears not.

R. M. Maxwell

Subscribed & sworn to before me this 20th day of
April AD 1857. Victor B. Bell
Notary Public

Supreme Court

Stephen Derr

et al

ad3

Wm M. Rofs

et al

} Additional points on part
of Defts

After the trial had commenced, the Defts in the Court below, asked leave to amend their answer, which leave was given on terms, and the answer was amended, and they at the same time gave a stipulation dispensing with proof of certificates of architect.

Replications had been filed to the original answers. No further replication was necessary, unless insisted upon at the time. If another had been put in, it would have been in the same form. It would have been a useless ceremony to refile those already put in.

It was decided in *Jameson vs Connor*, 5 Gil, 227, that where no replication was filed, and the parties proceeded to a hearing on the pleadings and proofs, the objection was deemed waived, and the Court regarded the cause as if one had been filed.

Second. Even if The Court should overrule
Kelly vs Chapman 13 Ill, 550,
still the judgment in this suit should not
be reversed, because, upon the pleadings
and papers on file, The Petitioners were
not called upon, in the first instance
to make any proof:

See the 4th
article of the
agreement.

The agreement provided that The
Petitioners were to have \$7,390, on the
completion of the job, and were also to
have pay for all extra work, and that
"if any difference of opinion should arise
"as to the quality or quantity of work
"or materials, or any other matter con-
"nected with the work, the decision of
"the architect would be final and
"binding"

that in order to entitle the Petitioners to
their pay they must first obtain the
certificates of the architect.

The Petition states that the certificates
were given for the full sum of \$7,390,
& that there remained unpaid, on the
last one the sum of \$462⁸³ and interest,
that the extra work was estimated as
provided for in the Contract, and a
certificate given for the amount \$2,676.¹²
all of which, with interest, was due and
unpaid,

The answer, although it avers that the work was not done as agreed upon, admits that the Certificates were given and that the balance due on them is as alleged in the Petition, but claims that the works were delayed 100 days by the Petitioners, & claims \$5000 damage.

The reply to that claim is, that the Certificate of the Architect is conclusive, All matters in dispute were left to him. Neither party could go back of his Certificate, unless they could impeach the same for fraud or mistake.

The Defts below, must have finally taken this view of the case; hence, their amendment of their answer. It was for them to prove the statements contained in the amendment.

If no proof was given on either side, the Petitioners were entitled to their Judgment which is only for the balance due on the Certificates & and interest as claimed in the petition, as will appear on a computation.

Goodrich & Hamwell
Atty for Defts -

Supreme Court

Stephen Derr
et al

Adz

Wm. M. Rofs
et al

Brief for Defts.

Filed May 8, 1889

L. Leland
Clerk

Goodrich & Lamorell

Attys for Defts.

Shumway State House
Alfred

Dr. & Sumland

^{add}
Rep. & Foster 3

Appeal from
Circuit Court of Pleas

Ith I am advised by counsel for plaintiffs appellants, that the only point relied upon to reverse this case, is that the evidence on which the verdict was rendered, or which was introduced before the jury, does not appear in the record -

a. The Court will see by reference to the record, that the case was submitted to the jury, and by stipulation of the parties certain testimony was dispensed with on the part of the plaintiffs - that the Court upon evidence offered by both parties was submitted to the jury, & they rendered the verdict set forth in the record; that a motion was made for a new trial, & over ruled - an appeal prayed, time to file bond given - and also time for defts. to file their list of 24 exceptions - which time was by Counsel twice extended - such was not signed or filed

b. The appellants, contend that as this Court in Simbol et al. vs. Leach 1 Hill. 433, has determined that in such respects this is a Chancery proceedings, and as this Court has under the law allowing testimony in Chancery to be taken voir voir, ^{deposed} and must be taken down

and as far as in the record, the decree as if it had been taken in the ordinary way, the same rule is to apply in the proceeding of this case -

II II To answer this position it would be sufficient for us simply to refer to the decisions of this Court, in which it has determined the very point -

a In the Case of Kimble vs Cook, the Court say at page 429, that the provision in the 8th Sec, which declares that "Oral testimony shall be received as in cases at law" is "the only substantial departure to be found in this act from the usual & approved practice."

b It was undoubtedly the intention of the Legislature to provide a summary remedy, & simplify & cheapen the proceedings, in favor of mechanics for recovery of money due for their labor -

To require all testimony to be taken in writing, ^{would} put them to a ruinous expense, & enable one who had received the fruits of their labor to make the proceedings so expensive, & dilatory as to drive a mechanic from a resort to a Court for redress, & in fear of the expense & delay to abandon his claim -

c In the Courts of Cook County, where enactment ^{under this statute} than an from ten to thirty suits, the Courts could do no other business, if the proceedings were retarded by such a rule -

d Besides, it is no hardship on the debtors,

they are at liberty to present the testimony, & by bill of exception present it as in a court of law for review in this court.

e. Such has been the uniform practice under this statute - the contemporaneous construction, and to give it a different, & less liberal for so long benefit it was made, so obvious a construction, to accomplish no practical end, or to prevent the insuperable difficulty, is not to unsettle established rights, & create confusion & irreparable mischief.

f. For in the City of Chicago judgments & claims under this proceeding exist to immense amounts, to say nothing of the balance of the state, & in no one so far as I know is the evidence preserved, & consequently under the rule contended for by the appellants, all would be unsalvageable on error; & legal rights be subverted.

The appellants in this case do understand the rule, & ask leave to file bill of exceptions.

III II But in 13th W. in the case of Kelly et al. vs Chapman, this point was directly decided. The Court say at page 532 "it is the duty of the party who complains of the verdict to preserve the same evidence in the record either by a bill of exceptions or a certificate of the judge, so that he can show to this Court that the verdict is not supported by the evidence". If Smiton can rely upon the decision of this Court, then have we done all we were required, and the plaintiff in error has failed to do what the Court has said he must do if he complains of the

of the verdict -

a. If in any class of cases the doctrine of stare decisis ought to be observed, it is in a case of this kind -

There is no great mischief to be avoided by overruling this case, & by so doing irreparable mischiefs will ensue -

b. At all courts we rest with confidence upon the previous decisions of this Court, for the preservation of those our rights, and assert those our judgments, we are affirmed with damages.

Grant G. Dodge
for Appellants

137

Dr. & C. C. C. C.

nd

W. C. C. C.

Aggravation

Dypt.

137

103

Filed May 2, 1887

L. Leland

Clark

G. G. Dodge

per def.

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

**WILLIAM M. ROSS AND JAMES H. FOSTER vs. STEPHEN
DERR AND HORATIO G. LUMBARD.**

Appeal from Cook County Court of Common Pleas.

ABSTRACT OF THE RECORD.

THE form of this action is a petition to enforce a mechanic's lien for work and labor done and materials furnished by the appellees in the erection of a storehouse for the appellants, in the City of Chicago.

The petition was filed Jan. 25, 1856. The appellants appeared and answered severally February 15, 1856.

The appellees filed replications to each of the answers, Feb. 21, 1856.

On Sept. 19, 1856, the appellant, Ross, filed his amended answer, to which no replication was filed.

On the same day the parties appeared and the cause was tried by jury.

On Sept. 22, '56, the jury returned their verdict, finding the issues for the appellees, and the sum due them to be \$3,288.48.

January 7, 1857, the Court having overruled a motion for a new trial, rendered judgment upon the verdict aforesaid.

The defendants below appeal from said decision to this Court.

The Record does not preserve the evidence in the cause by bill of exceptions, master's report, certificate of the Judge, or otherwise.

The appellants insist that, inasmuch as this is a chancery cause, the Record must show enough to sustain the decree of the Court below.

This case solely depending upon the pleadings, agreements of parties, and the action of the Court, it has been deemed expedient to set out the entire Record, which is in these words, to wit:

1. The bill is these words:

The petition of Stephen Derr and Horatio G. Lumbard respectfully shows unto your honor, that some time in the last of the month of April or the fore part of month of May last past, your petitioners, being carpenters by trade, and partners doing business in the City of Chicago, in said County, under the name and style of "Derr & Lumbard," made and entered into an agreement, in writing, with William M. Ross and James H. Foster, who then were and still are merchants and partners doing business in Chicago aforesaid, under the name and style of "Ross & Foster," in and by which contract your petitioners agreed, among other things, to furnish certain materials, and to do certain carpenter work in and upon a certain building, which said Ross & Foster were about to erect on a piece or parcel of land which they had before then leased for a term of years, and which piece of land was then and still remains in their possession, under and by virtue of such lease, and is situate in said City of Chicago, on the south side of Lake Street, between La Salle and Wells Streets, being eighty feet west from La Salle Street, and having forty feet front by one hundred and eighty feet deep, and now known as Nos. 167 and 169 Lake Street; and the said Ross & Foster agreed, among other things, to pay your petitioners for such work and materials the sum of seven thousand three hundred and ninety dollars,

as from said contract and the specification accompanying the same and forming a part thereof, will more fully appear; which contract and specification are annexed to this petition, and form a part thereof.

And your petitioners further show, that after such contract was made, the said Ross & Foster, after considerable delay, and at a day much later than was contemplated when the said contract was so made as aforesaid, proceeded to lay the foundation and to erect the walls of said building; that as soon as the mason work was sufficiently far advanced to admit of your petitioners commencing the work which they had agreed to do as aforesaid, they commenced such work and diligently prosecuted the same as fast as the progress of the mason work would allow; that before the walls were entirely built, your petitioners furnished and placed the joists, and, with the consent of the said Ross & Foster, laid some of the floors. That on the 28th day of August, and not before that time, the front wall was completed so that your petitioners could proceed to put on the roof of the main building, and your petitioners did immediately thereafter and as soon as possible put on such roof, and completed the same on the 2d day of September. That your petitioners then went on with the remainder of the carpenter work and furnished materials for the same, under the directions of said Ross & Foster, and of Olmsted & Nicholson, the architects in said contract named, as fast as was possible and without any delay except what arose from the causes hereinafter mentioned.

Your petitioners further show, that during the progress of the work above mentioned, the said Ross & Foster and the said architects thought proper to make, and did make, from time to time, divers alterations from the original plan of said building; that among other things they altered the plan of the front stairs, and removed the wall which was built for such stairs, and decided to have stairs built which required a much greater amount of labor to be bestowed thereon than those specified in the original plan; that they also altered the plan of the cornice, by which alteration a much greater amount of labor was required.

Your petitioners further show, that immediately after said contract was made, and frequently afterwards, your petitioners applied to said Ross & Foster, and to said architects, for the proper and necessary working drawings; that the working drawing of the front stairs was not furnished before the 14th day of August; that the ground plan of the store front was not furnished before the 20th day of August, and that no working drawing of said front was ever furnished; that no working drawing of the inside stairs was ever furnished, but such stairs were finally built according to drawings made by your petitioners.

That the working drawings for the cornice was not furnished before the 6th day of September; that the working drawings for the sky-lights were not furnished before the middle of August; that after the stuff for such sky-lights was got out according to such drawings, they were found to be incorrect, and the work was thereby greatly delayed.

Your petitioners further show, that by reason of such delay on the part of said architects in not sooner furnishing such working drawings, the carpenter's work was greatly delayed, and your petitioners were prevented from doing such work any faster or sooner than it was done by them, and from doing it as soon as they would otherwise have done said work if such drawings had been furnished in season.

Your petitioners further show, that the masons did not finish their work in the four upper stories before the 20th day of October, that the

I Stewart for Pless also

work in the said upper stories before the 30th day of October: that the
Lomb Builders further shew, that the masons did not finish their
work in each dwelling but soon finished in season.

Item, and from doing it as soon as they might otherwise have done and
sented from doing such work any water or sooner than it was done by
the carpenter's work was already delayed, and Lomb Builders were be-
lieve of said architects in not sooner finishing such working dwellings.

Lomb Builders further shew, that by reason of such delay on the
to be completed, and the work was thereby greatly delayed.

and skylights was not out according to each dwelling, they were found
were not finished before the middle of August: that after the time for
the 31st day of September: that the working dwellings for the skylights

That the working dwellings for the cornice was not finished before
being according to dwelling made by Lomb Builders.

ing of the inside walls was also finished, but such walls were finally
working dwelling of said front was also finished: that no working dwel-
ling was not finished before the 30th day of August, and that no
finished before the 1st day of August: that the ground plan of the store
ing dwellings: that the working dwelling of the front walls was not fin-
ished of Foster, and to said architects, for the higher and necessary work-
was made and prepared by architects, Lomb Builders obliged to said

Lomb Builders further shew, that immediately after and contract
relation a much greater amount of work was required.

ordering them: that they were obliged the plan of the cornice, by which ar-
at amount of work to be returned thereon than those specified in the
such walls and decided to have such walls which required a much greater
the plan of the front walls, and removed the wall which was built for
the original plan of said building: that among other things they ordered
higher to make, and did make, from time to time, great alterations from
those mentioned, the said Ross & Foster and the said architects provided

Lomb Builders further shew, that during the progress of the work
and delay except what arose from the causes respectively mentioned.

the architects in said contract named, as far as was possible and without
for the questions of said Ross & Foster, and of Ormsted & Nicholson,
master of the carpenter work and finished materials for the same, in-
31st day of September. That Lomb Builders then went on with the re-
and as soon as possible put on each roof, and completed the same on the
of the main building, and Lomb Builders did immediately thereafter
was completed so that Lomb Builders could proceed to put on the roof
That on the 31st day of August, and not before that time, the front wall
and, with the consent of the said Ross & Foster, and some of the books
walls were entirely built, Lomb Builders finished and placed the joists
as far as the progress of the mason work would allow: that before the
storeyard, they commenced such work and diligently prosecuted the same
Lomb Builders commencing the work which they had agreed to do as
that as soon as the mason work was sufficiently in advance to admit of
proceeding to lay the foundation and to erect the walls of said building:
from was contemplated when the said contract was so made as aforesaid,
the said Ross & Foster, after considerable delay, and at a day much later

And Lomb Builders further shew, that after such contract was made,
section was annexed to this petition, and form a part thereof.

forming a part thereof, will more fully appear: which contract and speci-
as from said contract and the specification accompanying the same and

carpenter work could not have been finished until such mason work was completed, that immediately after such mason work was completed, your petitioners finished the remainder of the carpenter work.

Your petitioners further show, that from time to time, after the several payments in said contract mentioned fell due, your petitioners applied to said architects for the certificates in said contract mentioned; that thereupon the said architects gave to your petitioners such certificates for certain sums, amounting in the aggregate to seven thousand three hundred and ninety dollars; that such certificates were severally presented by your petitioners to said Ross & Foster, and were all of them paid by said Ross & Foster, except one for two thousand one hundred and ninety dollars, dated January 2d, 1856; that said Ross & Foster have at various times advanced or paid to your petitioners, in money or goods, the sum of seventeen hundred and twenty-seven dollars and seven cents, to apply in payment of the sum mentioned in the certificate last aforesaid; that the sum of four hundred and sixty-two dollars and ninety-three cents, together with interest on the same from January 2d, 1856, is due and owing to your petitioners on said certificate and contract, and that said Ross & Foster neglect and refuse to pay said balance, or any part thereof, to your petitioners, although often requested to pay the same.

Your petitioners further show, that in consequence of the various alterations made in the original plan of said building, a large amount of extra work and material were required in order to complete said building; that at the request of said Ross & Foster and of said architects, your petitioners did such extra work and furnished materials for the same, and in consideration thereof the said Ross & Foster promised and agreed to and with your petitioners, to pay your petitioners what such last mentioned labor and materials were worth, when they should be thereunto afterwards requested; that after such work was done, your petitioners made out an account or statement in writing of such extra work and materials and presented the same to said Ross & Foster to be settled and paid; that said Ross & Foster requested that said account should be submitted to the said architects and to one Reuben Cleveland, who is a good and competent mechanic, being a carpenter and builder by trade, in order that the said work and materials might be valued by them; that accordingly said account was so submitted to said architects and to said Cleveland, and they together valued said work and materials and made certain deductions from some of the items thereof, and finally settled the same at two thousand six hundred and seventy-six dollars and twenty-two cents, and decided and certified that that sum was due to your petitioners from the said Ross & Foster for such extra work and materials, a copy of which account, so certified, is annexed to this petition, and is made a part thereof.

That your petitioners notified said Ross & Foster of the result of such valuation and of the amount so found due and certified to as aforesaid, and requested said Ross & Foster to pay the same, but they have hitherto wholly neglected and refused to pay the same, or any part thereof.

Your petitioners therefore claim that the said Ross & Foster are justly indebted to your petitioners in the sum of four hundred and sixty-two dollars and ninety-three cents, with interest on the same from January 2nd, 1856, and in the further sum of two thousand six hundred and seventy-six dollars and twenty-two cents, with interest from December 2nd, 1855, for the work, labor, and materials, done, performed, and fur-

nished in erecting and finishing said building as herein before stated; and that your petitioners have a lien upon said piece of land, and upon the improvements and buildings thereon, and upon all the right, title, and interest of said Ross & Foster in and to the same, for the sums so due them as aforesaid; and they ask the aid of this Honorable Court in the premises, and pray that such lien may be enforced, and that a judgment or decree may be entered directing the sale of said land, improvements, and buildings, and all of the right, title, and interest of the said Ross & Foster in and to the same or any part thereof, to pay the sums so due to your petitioners as aforesaid, or that such other, further, or different order or decree may be made in the premises as to your Honor shall seem meet, and as shall be agreeable to equity.

ARTICLES OF AGREEMENT, Made this —— day of April, one thousand eight hundred and fifty-five, between Messrs. Ross & Foster, of the City of Chicago, of the first part, and Messrs. Derr & Lumbard, of the same place, of the second part.

First.—The said parties of the second part doth hereby, for themselves, heirs, executors, and administrators, covenant, promise, and agree, with and to the said parties of the first part, their executors, administrators, or assigns, that they, the said parties of the second part, their executors or administrators, shall and will, for considerations hereinafter mentioned, on or before the first day of September next, from this date, well and sufficiently erect and finish the new building for a store on the south side of Lake Street, between La Salle and Wells Streets, the east corner to commence 80 ft. from La Salle St., being 40x180 ft., five stories, with stone front, agreeable to the several drawings and specifications made by Olmsted & Nicholson, and signed by the parties hereunto annexed, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction and under the direction of the said architects, to be testified by a writing or certificate under the hand of said architects, and also shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the carpenter and joiner work, and other works of the said building mentioned in the carpenter specification, for the sum of seven thousand three hundred and ninety (7,390) dollars.

And the said parties of the first part, doth hereby, for themselves, heirs, executors, and administrators, covenant, promise, and agree, with and to the said parties of the second part, their executors and administrators, that they, the said parties of the first part, their executors or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said parties of the second part, as specified, well and truly pay, or cause to be paid, unto the parties of the second part, their executors, administrators, or assigns, the sum of seven thousand three hundred and ninety (7390) dollars, of lawful money of the United States of America, in manner following:—

When the first floor joists are on and bridged,	\$600 00
When the second floor joists are on and bridged,	800 00
When the third floor joists are on and bridged,	900 00
When the fourth and fifth floor joists are on and bridged,	800 00
When the roof of main building is complete,	800 00
When the whole building is ready for plastering,	1200 00
When the entire work or job shall be completed and accepted, and then, if the parties of the second part has complied with the stipulations of said contract, to the satisfaction of the su- perintending architects, the balance is to be paid—twenty-two hundred and ninety,	2290 00

Provided, that in each of the said cases, a certificate be obtained and signed by the said Olmstead & Nicholson.

And it is hereby further agreed by and between the said parties,—

First.—The specifications and the drawings are intended to co-operate, so that any works exhibited in the drawings and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specification and set forth in the drawings, to the true meaning and intention of the said drawings and specifications, without any extra charge whatsoever.

Second.—The party of the second part grants the architects the right to reject any work or materials that by him is thought not fit or suitable, or not in accordance with this specification and plans or drawings furnished, and likewise the power to cause any unsound work to be altered at the contractors' expense, or any work that is not executed according to the true intent and meaning of this specification and drawings, and to the directions which may be given from time to time by the architect.

If the proprietor or architect thinks proper to make any alterations, whether in addition or omission, or deviate in any manner from the specifications or drawings, such alterations shall not make void this specification or contract, but the same to be valued by the architect and one good, competent mechanic, and either added or deducted, as the case may be.

Third.—Should the contractor, at any time during the progress of the said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have power to provide materials and workmen, after three days' notice in writing being given, to finish the said works, and the expense will be deducted from the amount of the contract.

Fourth.—And that the contractor may not feel himself any more aggrieved, he must take special notice, that every circumstance appertaining to the well doing of the work will be most strictly insisted on, to the fullest intent and meaning of the specification, and that no indulgence will be allowed, and if any difference of opinion should arise as to the quality or quantity of work, or materials, or any other matter connected with the work, the decision of the architect will be final and binding.

Fifth.—The owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same, (loss or damage by fire excepted.)

It is also understood that each and every day that the works are delayed for want of carpenter work, the sum of fifty dollars shall be forfeited by the parties of the second part, as liquidated damages. The

parties of the first part are to furnish all proper and necessary drawings for the same.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

ROSS & FOSTER. [SEAL.]

DERR & LOMBARD. [SEAL.]

Carpenters' Specifications

And description of the carpenter work and materials required to build and erect one brick store, with stone front, for Messrs. Ross & Foster, on lot on the south side of Lake street, between La Salle and Wells street, as shown by plans made by Olmsted & Nicholson, Architects, and their specifications.

Dimensions.

The building will be 40 feet in width, both front and rear, and one hundred and eighty feet from front to rear. The store and its cellar, with the second story, will be 180 feet from front to rear on alley. The three upper stories will be 63 ft. 6 in. deep from front to rear. The cellar will be in one room with a girder to the first and second stories with the same to the roof, the said girders to be put on brick piers in the cellar made by mason. The second story floor and ceiling to rest on iron columns furnished by the iron men, all making and leaving the store story in one room, as well as in rear of the 63 ft. 6 in. to be in one room. Those rooms to be lighted with six sky-lights, making the building five stories to the depth of 63 ft. 6 in., the remainder two stories, all divided and subdivided as shown on plans and elevations.

Height of Stories.

Cellar, 7 feet; main 2d store story, 16 feet; second story, 13 feet; third story, 11 feet; fourth story, 10 feet 6 inches; fifth story, 10 feet; all in the clear when complete.

Size of Timbers.

Main story	3x16	placed	12 inches	from	centre.
Second "	3x12	"	12 "	"	"
Third "	3x10	"	16 "	"	"
Fourth "	3x10	"	16 "	"	"
Fifth "	3x9	"	16 "	"	"
Roof joists	3x9	"	20 "	"	"

All headers and trimmers 4 inches thick, and placed double around the sky-light, the trimmer supported with a stirrup and tusk. Tenons to all framing, the bridging to be put in on each side of girder, and one tier of 2x2 pieces; the girder under the centre ends of joists to the three tiers back of main tiers running from stairs to rear, and made of 8x12 inch sound dry pine timber. The studding in the second story at the side of stairs to be 2x6, with one tier of bridging.

All studding for all partitions set as shown on plan, and of 2x4 pieces. Door studs set double, the common studs set 12 inches from centre.

All joists framed around all air flues, and well holes, and stairways, and truly levelled on the wall with a 7-8 by 4 in. oak wall strip under ends of joists, and so framed and levelled as to rest 3 1-2 in. on the wall at the bottom, and 1-2 in. at the top, and bridged before the mason builds his stage on the same. Prepare and put up a strong struss under the rear of the 63 ft. 6 in. as shown on section. For sizes of timber reference will be had to the section drawings; also a truss as shown by drawing from iron columns to support joists and roof girder.

Roof made to descend to the rear, and the rafters first covered with 1 1-4 pine plank, milled work, tongued, and grooved; and then on said plank plan a felt and asphaltum composition roof, with gutters made of the same; fit bevelled cants next to all walls and chimneys.

Sky-Light.

Prepare and put in six as shown on plan, hipped on each side and end to an angle of 45 degrees, with strong bars well secured to frame, and then glazed with common double thick French glass and lighthouse putty.

Each opening in ceiling to be made circular on the upper edge as a crown mould.

Cornice.

Prepare and put up a cornice in front of building as shown on elevation of the original front. There shall be at least six anchors, four feet long, in cornice, reaching back on to roof joists.

Leaders.

Prepare and put up two 4 inch tin leaders from upper roof to rear roof, well secured to walls; also two six inch galvanized iron leaders in the rear of building, which are to be well secured to rear wall with a shoe at the bottom.

Floors.

Prepare and lay the floor, in the first story, of yellow pine, between counters of narrow 1 1-4 pine plank, milled work, tongued and grooved, with the *joints headed*, the said plank between 2 1-2 and 3 1-2 inches wide, and all blind nailed, and neatly smoothed off when all complete.

Inside of counters made of common width yellow pine 1 1-4 plank, milled work, tongued and grooved, with all joints made to run.

All the remainder of floors to the entire building made of common width pine, 1 1-4 inch thick, milled worked, tongued and grooved, and well laid and neatly smoothed off.

Furring.

Prepare and fur the ceiling of the second story level with 2x6 pieces, hung from ceiling or roof joists placed 16 inches from centre.

Grounds to all windows and doors to the entire building.

Window Frames.

Prepare and put in windows as shown on plans—for sizes of frames reference will be had to the figures on the elevation. All frames made boxing, and the sash hung with cord and weights and axle pulley.

Inside Finish.

All windows and doors to the entire second, third, fourth, and fifth stories cased and trimmed with a six inch single architrave, with a 1 1-8 ogee moulding as marked in Smith's moulding book, No. 103, and 1 1-8 back band; the doors and windows in the store carved as shown by drawings.

Stairs.

Prepare and build all stairs as shown on plans, and as follows:

The main stairs the steps 12 1-2 in. wide, 1 3-4 in. thick, of white oak, moulding in front with moulded skirting, the rises of 7-8; the upper stairs as shown on plan, steps 11 1-2 wide, moulded edge and end, with an 8 in. fancy turned black walnut newel and rail, 2 1-2x4 1-2 moulded, black walnut rail with 2 1-2 fancy turned bannisters and moulded skirting.

All of the above stairs set on the 4x6 plank string, with a strong carriage under the winders.

Doors.

Prepare and make, hang and trim all doors shown on plans, 1 3-4 in. thick, three pannels wide and two high, bottom rail 12 in. wide, lock rail 10 in. wide, stiles 5 in. muntin 3 in., made bevelled stiles and rails and then hung with two 4 in. cast patent butts on each door, and fastened with first quality of city made morticed lock and mineral knobs with bronzed trimmings, the lock and upright 5 1-2 in.

Front Door to Stairs.

Made as shown on plan, two in. thickness, of 1 3-8 each and two in width, made to fold one-half on each side of door way with a square transom as shown on elevation, and then hung with 3x5 cast patent butts, and fastened with a rim lock worth \$10, and a three joint monkey slide bolt on the top of the other, and a twelve inch stile bolt at the bottom.

Store Front.

Prepare and put in two double store doors, one on each side stairway 1 3-4 thick, made with ornamental bottom rail, which will be 16 in. wide, with the upper part of the door to have a French plate glass double thick, arched at the top as shown on elevation, with a carved transom bar with an arch head light, surrounded with a twisted moulding as shown on section. The said carving and jamb to door as shown by working drawings made and shown.

Base.

Prepare and skirt the entire upper part of building except the store.

Closets.

Prepare and fit up all closets as shown on plans, with one shelf on the sides and a clothes strip under and hooks, one in 6 in.; also fit 12 water closets, seats as shown on plans.

Scuttle.

Prepare and put in one on the main roof 2 1-2x3 ft. with a step ladder.

Painting.

Prepare and paint all of the joiner work usually painted, two coats to the entire second, third, fourth, and fifth story; also, paint all outside windows and cornice four coats, sanded two coats.

Prepare and paint all of the rear iron shutters, which will be plain iron and to have two coats of black paint in addition to the one put on by the iron furnisher.

Glass.

Prepare and put in all windows as shown on plan, for sizes reference will be had to the figures as shown on plan. The first story or store front with the doors to be filled with the best French plate double thick, and of the most superior quality.

The remainder of the front, French glass double thick. The rear windows to the store will be in a tripple casement as shown on rear plans.—The sash filled with French double thick, all other rear windows of French glass; also, put up a transom over all doors, 20 inches high, and in one light.

We the undersigned subscribers, acknowledge this specification, the one referred to in the contract, bearing date April 17th, 1855.

ROSS & FOSTER,
DERR & LUMBARD,

ROSS & FOSTER,

To DERR & LUMBARD,

DR.

April	25	To timber for shores under White's store,	\$2 00	
	"	" hauling load,	50	
	"	" labor putting under same,	1 75	
June	7	" 4 invert boards for masons, by order architects,	3 00	
	"	" 1 six foot drum,	4 00	
	"	" 2 centres to turn window heads,	3 00	
	16	" 20 pieces 2x4, 14 feet long, to brace iron column,	3 60	\$3 60
	"	" hauling load,	50	
	"	" labor bracing columns, 1 day,	2 25	2 25
	"	" 6 pieces 3x12, 20 feet long, to support partitions,	7 20	
	"	" spikes, framing and raising same,	3 00	
	"	" 1 1/2 day's work constructing iron anchors,	3 38	34 18
	28	" raising and setting five iron columns in second story,	30 00	30 00
	"	" 8 1/2 lbs. lead for same,	85	85
July	10	" lumber, nails, and labor to fill well holes and sky lights, by order of Mr. Ross,	50 00	
	"	" 4 pieces 3x10, 20 feet long, under trussen partitions side of hall,	4 00	
	"	" labor taking down and framing joists over hall,	8 00	
	"	" extra work trussing 3 partitions,	15 00	
	12	" 50 lbs. lead to flush rear wall of main building,	5 50	
	16	" 1 day's work taking up floors for gas fitters,	2 25	
	"	" 2000 feet first quality common boards for deaf floor,	36 00	2 00
	"	" 700 feet 1x2 strips,	16 00	
	"	" hauling same,	1 00	
	"	" 24 days' work laying deaf floor,	54 00	
	"	" 40 lbs nails,	2 40	
	"	" 3 box window frames for west side of building,	15 00	
	25	" 54 pieces 3x8, 16 feet long, to support joists around stairway,	31 10	
	"	" hauling three loads,	1 50	
	"	" 4 days' work putting up same,	9 00	
	"	" 1100 feet second clear stuff for brackets in 2d story and sky lights,	33 00	7 00
	"	" hauling same to mill and to store,	2 50	
	"	" 5 1/2 days' work putting up brackets in second story,	12 38	
	"	" 15 lbs. nails,	90	230 33
	"	" cash paid for sawing brackets,	10 00	
	"	" 1500 feet common boards to cover sky lights,	27 00	10 00
	"	" hauling same,	1 00	
	"	" labor covering sky lights at sundry times,	5 00	
	"	" difference in 10,000 feet of flooring,	110 00	10 00
	"	" 72 feet of timber for girders around front stairs,	14 12	
	"	" sawing same,	2 10	
	"	" 7 days' work getting out and framing and getting up same,	15 75	
	"	" setting eight iron columns under stairs,	40 00	8 00
	"	" 8 iron plates, 72 iron wedges, and 2 heavy stirrups,	16 50	
	"	" 96 pieces 2x4, 20 feet long, to fur ceiling of fifth story,	26 28	
	"	" putting up same and stuff for hangers,	24 00	4 00
	"	" 15 lbs nails,	90	
	"	" hauling two loads,	1 00	
	"	" 90 pieces 2x4, 12 feet long, to fur around front stairs, clear stuff,	14 40	
	"	" 20 pieces 2x4, 16 do do do do do	3 20	
	"	" 20 pieces 1x1 1/2 do do do do do	2 50	
	"	" hauling four loads,	2 00	315 75
	"	" 16 days' work putting up, furring, and ironing around stairs,	36 00	
	"	" 8 gross screws for iron bars for sky lights,	4 00	
	"	" 6 days' work raising ceiling on fifth story,	13 50	
	"	" 250 feet 2x6 to raise partitions of fifth story,	5 00	
	"	" 10 pieces 2x6, 14 feet long, to fur front of second story,	2 80	
	"	" 15 pieces 2x4, 14 feet long, to do do	2 70	
	"	" 100 pieces 2x4, 12 feet long, to fur front of 3d, 4th, and 5th stories,	16 00	2 40
	"	" hauling 4 loads,	2 00	
	"	" 8 days' work framing the front walls,	18 00	
	"	" 60 lbs nails,	3 60	
	"	" lumber and labor for arch over coal vault,	8 50	
	"	" hauling load,	50	
	"	" 72 iron braces to support crown moulding around well holes,	18 00	
	"	" 2 gross screws for same,	1 25	
	"	" 4 day's work countersinking same,	9 00	
	"	" 300 feet crown moulding around well holes, 2x10,	75 00	15 00
	"	" 312 feet of circular cornice in sky lights,	936 00	312 00
	"	" Furring side walls as per contract 110 squares,	136 87	1288 73
	"	" six days' work laying floors after gas fitters,	13 50	
	"	" front door hinges,	34 00	1 60
	"	" five days' work countersinking, measuring spots in counters, &c.,	11 25	
	"	" 1000 feet clear ceiling in stairway,	30 00	
	"	" hauling same,	1 00	
	"	" casing eight columns,	8 00	
	"	" thirty feet base in store,	3 00	
	"	" one sky light in 5th story,	15 00	
	"	" one box window frame in partition,	4 00	
	"	" 13 days' work ceiling and cross furring stairs,	29 25	
	"	" 25 lbs nails for same,	1 50	
	"	" 6 windows complete inside of store,	90 00	
	"	" 5 French window frames,	25 00	15 00
	"	" 6 extra doors, all complete, third, fourth, and fifth story,	72 00	
	"	" finishing six extra closets,	30 00	12 00
	"	" four days' work ceiling stairway,	9 00	286 50
Aug.	10	" two days' work laying floors after gas fitters,	4 50	
	"	" five spandril bolts as ordered by express,	35 00	
	"	" two days' work putting on same,	4 50	
	"	" 4 1/2 days re-hanging front doors,	11 25	
Carried over,			2400 78	2,691.28

	Brought over,	\$2,400 75	\$2,619 23
Oct. 10	" 1 double cellar door in rear of store,	7 00	7 00
"	" 3 cellar windows complete in cellar,	12 00	
"	" extra work on front,	200 00	50 00
"	" " " on stairs as per contract with architect,	100 00	100 00
"	" " " on cornice,	200 00	
"	" 556 feet of 2x8 partition in lieu of 2x4,	50 00	
"	" 18 feet of partition in closets 3d, 4th, and, 5th stories,	5 40	629 65
"	" 18 transoms at \$2.50,	45 00	
"	" 16 diagonal anchors,	16 00	
"	" lumber, labor, and nails to arch ceiling of fifth story sky lights,	9 00	
"	" trussing front partition,	2 00	
"	" 34 brackets around front stairs around stairway,	3 24	
"	" 50 brackets across the front of Messrs. Fisk's store,	5 00	80 24
"	" 4 extra trusses to support roof girder in rear of main building,	200 00	200 00
"	" 700 feet of dressed flooring to ceil up the same above roof,	21 00	
"	" nails and labor ceiling same,	14 00	
"	" hauling load,	50	
"	" studding and ceiling around six sky lights above roof, average height 1's, 1800 each,	103 00	50 00
"	" hauling for same,	1 00	
"	" 682 ft. 2x4 cant strips on side of trusses and around sky lights including sawing, putting down same,	20 46	
"	" casing scuttle and lea through ceiling of fifth story,	5 00	371 95
			\$2,337 38
			661 16
	Amount of extra due on the above bill as corrected by Olmsted & Nicholson and Reuben Cleveland,		\$2,676 22

The said Ross answering says, that it is true, as alleged, that the petitioners made a contract about the last of April, 1855, with this respondent and his partner, Foster; and that the contract which is made a part of said petition is the same contract as alleged.

Respondent admits, that the building so to be erected in pursuance of said contract, was erected on the piece or parcel of land as alleged; and respondent admits, that said piece of ground was leased by him and said Foster, for the period of 21 years from the first day of May, 1855, which lease is still subsisting and in full force, and the said piece of ground is still in the possession of respondent and the said Foster, under, and by virtue of said lease.

Respondent admits, that by said contract the petitioners were to receive the sum of seven thousand three hundred and ninety dollars for work and materials furnished in and about said contract.

Respondent denies, that the defendants proceeded to lay the foundation, and erect the walls of said building at a day much later than was contemplated when the said contract was so made as aforesaid, or that there was any delay in prosecuting the work necessary to be done before the petitioners could commence their work; but respondent says that the excavating for the cellar was commenced about the 14th of April, and was diligently prosecuted; that the masons commenced laying the foundations about the — day of April, and as early as the 26th of April had made good progress in the same, and respondent believes that said masons had made considerable progress in the work about the time the aforesaid contract of petitioners was made, and said masons diligently prosecuted the work on their part to be done, save when delayed by the petitioners.

Respondent denies, that the petitioners commenced their work and diligently prosecuted the same as fast as the progress of the mason work would allow, as alleged; but respondent says, that when the west wall of the first story was ready for the second floor joists, the architects in said contract mentioned instructed the petitioners to erect the iron columns in the centre of the building, and place the trusses upon them in order that said second floor joists might be placed on said west wall and trusses, while the masons were erecting the east wall of said first story, and thus expedite the work, but the said petitioners neglected and refused to obey the said instructions as they were bound to do by said contract.

That when the said east wall of the first story was erected, the petitioners were again instructed to proceed immediately and erect said columns, and put up said second floor joists; and respondent says, that he then discovered that the petitioners had not framed said trusses; and he charges that, by reason of the neglect of said petitioners and their disobedience of the instructions of the architects as aforesaid, the mason work was delayed at this stage at least two weeks.

Respondent says, the same instructions were given petitioners, and the same delay was made on their part in the erection of the third floor joists, as occurred in reference to the said second floor joists.

Respondent admits, that the floors were laid before the roof was on, by the permission of said architects, and that this was allowed, although out of the usual order of prosecuting similar works, in order to expedite the work of said petitioners, it being manifest to respondent that the petitioners would be behind in their said contract if held strictly to the usual and workmanlike order in which their said contract work should have been prosecuted.

Respondent says that the carpenter work of the roof was not delayed as charged by reason of the incompletion of the front wall, but charges that the work necessary to be done on said roof, after the completion of said front walls, could have been done and actually was done in the space of three or four days.

Respondent denies that after the completion of the said roof, the petitioners then went on with the remainder of the carpenter work as fast as was possible, and without delay, as alleged; but he says, that the said architects and this respondent, at this stage of the work and prior thereto, repeatedly remonstrated with the petitioners about the small number of workmen employed by petitioners in and about their said work. And respondent charges that he and the said Olmsted frequently, during the progress of said work, counted the number of workmen employed by the petitioners and found them not to exceed at times ten persons, at which times the petitioners might and should have employed from thirty to forty workmen and worked them to good advantage. Respondent and said Olmsted notified the petitioners of said facts, and informed them at the time that they would be held to a strict performance of their said contract, and responsibility for their delay.

Respondent further says, that the said petitioner, Lombard, had the charge and supervision of the said work, that he repeatedly neglected and refused to obey the directions and instructions of the said architect Olmsted, as they were given from time to time during the progress of said work; that said Lombard was totally incompetent to have the charge and management of a work of the character and importance of said work, and that by reason of his said incompetency and of the premises aforesaid, together with an entire absence of all system in the manner of conducting the different portions of said carpenter work with reference to the mason and other work, the said petitioners retarded the progress of the building in almost all its various stages.

Respondent says that the petitioner, Derr, was absent from the city most of the time up to the middle of August, while the said work was progressing, that about the middle of August, as aforesaid, he returned and took the management and supervision of the said carpenter work and employed a much larger number of workmen and carried the work forward with much greater expedition. Respondent admits that alterations

was made in the plan of the front stairs, but says that the additional labor required of the petitioners in consequence thereof was but very slight, most of the labor having been furnished by other parties.

Respondent admits, that in consequence of the alteration in the plan of the cornice, a greater amount of labor was required to construct the same than by the original plan, but he says that the said alterations did not require more than ten days to complete the same in addition to the time required to do said work under the original plan.

Respondent further says, that with reference to the charge of delaying petitioners in not furnishing drawings, that all necessary drawings were furnished as required, had petitioners prosecuted the said work in the manner and order directed by said architect Olmsted; that the drawings for nearly the entire carpenter work were furnished the petitioners by the 15th of May; that the drawings for the store front were furnished in ample time, there being very little carpenter work on the said front, from the fact that said front was constructed almost entirely of glass and metal; that some time after the petitioners had been urged by respondent and said Olmsted to delay no longer in putting up said front, the petitioners informed respondent that they had said store front ready at their shop to put up, and respondent, on going to said shop, found that said information was untrue, and that the petitioners were just about commencing the work on said front.

Respondent says, that it is not customary or usual to furnish working drawing for stairs; that all necessary directions for the guidance of petitioners in making stairs were contained in the specifications to said written contracts.

That the stairs in the main building ought to have been erected by petitioners as early as August 1st; that they were requested at that time by the respondent and by said Olmsted, and repeatedly afterwards, to erect said stairs immediately; that petitioners gave various pretexts for delaying the erection of said stairs, but never intimated the want of drawings as the reason for said delay; that the said stairs were not completed until about the 20th of December; that in consequence of the neglect and refusal of petitioners to erect said stairs when the same ought to have been done, it was impossible for the masons to go forward and complete the plastering, and the said neglect of the petitioners about the erection of said stairs hindered and delayed the said masons at least thirty days; that the petitioners made a mistake in getting and preparing the material for the well-holes, and when the said masons commenced finishing said well-holes the said mistake of petitioners was discovered, and in consequence thereof, divers alterations were required in said material, which alterations delayed the masons about two weeks; that said mistake was occasioned wholly by the negligence and unskilfulness of the petitioners.

Respondent would state further, in reference to said cornice, that the defendants, nor said architect, Olmsted, did not at any time during the progress of the said work hasten the completion of said cornice, but allowed the petitioners to furnish the same at their convenience, as it was not essential to the occupation of the building that said cornice should be first completed.

Respondent further says, that all necessary drawings for the sky lights were furnished in ample time.

That the alterations in said sky-lights were of a slight character, re-

quiring but little additional labor, except such work as was taken by the petitioners as extra work, and defendants expressly stipulated and agreed with the petitioners, in giving them extra work, that the same should in no manner interfere with the completion of the said written contract work according to the terms of said contract.

Respondent further says, that the defendants employed two master mechanics to perform the greater part of the extra carpenter work necessary to be done about the said building, well knowing that if much of said extra work were given to the petitioners, that a still further delay would occur, and they desired to give said petitioners no pretext of that kind for the non-performance of their said contract, for respondent, at all times during the progress of said work, notified the petitioners that they would be held to a strict performance of the said contract.

Respondent further says, that a considerable portion of the bill of extras charged by the petitioners was occasioned by the fact that a better quality of material was furnished than that called for in the specification; that no changes or alterations were made, except as contemplated in said contract and within the fair scope of the same, unless the change in said cornice might be regarded as an exception.

That the masons could not finish their work in the four upper stories until said stairs were up; that said masons commenced work as aforesaid immediately after said stairs were erected, and completed the same in three or four days thereafter.

Respondent admits that the balance unpaid on the certificate of January 2d, 1856, is as stated in said petition.

Respondent also admits, that the account of extras, &c., was submitted as alleged, and that petitioners were allowed thereon the sum of \$2,676.22, and that the sum was certified as alleged; and respondent admits that these defendants have refused to pay the petitioners the said several sums of money so claimed by them to be due.

But respondent says that by the terms of said written contract the said petitioners agreed to forfeit the sum of fifty dollars per day, as liquidated damages to the defendants, for each and every day that the said work might be delayed for want of carpenter work.

And respondent says, that the said works were delayed for want of carpenter work at least one hundred days, exclusive of the said ten days allowed for change in the plan of cornice, by reason of the said default of petitioners.

Respondent says, that the sum of \$5000 then and there became due to defendants as their liquidated damages as aforesaid, of all which the said petitioners had notice; and respondents says, that defendants have always been ready to pay the petitioners whatever balance might be found due them on said contract after deducting said sum of \$5000 so due the defendants as liquidated damages; but respondent says, that the petitioners have to settle with these defendants, and allow them their liquidated damages as aforesaid.

And having fully answered, respondent prays to be dismissed, &c.

W. M. ROSS.

BLACKWELL, THOMAS & ROBERTS,
Attorneys for Defendants.

The separate answer of James H. Foster to the petition of Stephen Derr and Horatio G. Lumbard.

For answer to said petition this respondent says, that he together with

said Ross, made the contract with said Derr & Lumbard, as charged in said petition. -

But this respondent says, that he is not personally advised of the various facts charged in said petition, from the fact that his said partner, Ross, took the entire management and superintendence of the construction of said building, so far as the partnership firm of Ross & Foster could properly do so; and this respondent sanctioned and ratified all the acts and doings of said Ross in the premises. That the payments, as alleged in said petition, were made as appears by the partnership books of said Ross and this respondent. That the lease of the premises, as stated in the answer of said Ross, is true.

And having fully answered, prays to be dismissed, &c.

JAMES H. FOSTER.

BLACKWELL, THOMAS & ROBERTS,
Attorneys for Defendants.

The usual replications were filed to the foregoing answers.

And now, at this day, come the said petitioners, by Goodrich, Farwell & Scoville, their solicitors, and the said defendants, by Blackwell, Thomas & Roberts, their solicitors, also come; and on motion of said petitioners, it is ordered, that a jury come, and thereupon come a jury of good and lawful men, to wit:

J. C. Kennedy, Arthur Hitchcock, Wm. Wiggins, M. S. Nichols, Wm. Sawyer, P. A. Barker, William Flemming, W. H. Peirce, Wm. Wayman, Peter Dox, J. H. L. Slayton, and Asa Fitch, who were duly elected, tried, and sworn well and truly to try the issue joined in this cause; and thereupon, on motion of said defendants, leave is given them to amend their answer to the petition herein, on payment of the costs of this suit up to this time, to which the said petitioners here except. And after hearing a part of the evidence adduced, the further hearing of this cause is postponed until to-morrow morning, to which time the jury are permitted to separate.

And thereafter, to wit: on the same day and year last aforesaid, the said defendants, by their solicitors aforesaid, filed their amendments to answers, which said amendments to answer are in the words and figures as follows, to wit:

And these respondents, in this connection, further answering say, that prior to the time of the giving the certificate of January 2d, 1856, by the architects aforesaid, one of the petitioners (which, these respondents are ignorant) applied to the said architects for a certificate relative to the sum of money due to them upon said work and labor so performed by them as aforesaid, representing to the said architects, that the object of said certificate was to enable the parties (petitioners and defendants) to compromise the controversy between them in relation to the value of the work done by the petitioners, and the damages claimed by the said defendants, under the contract aforesaid; that under these circumstances said certificates was granted to these petitioners by the said architects—merely giving the amount due for the work done, without regard to the claims of said respondents for damages, which claim was not adjudicated by said architects.

That said compromise was not effected between said parties.

WM. M. ROSS.

BLACKWELL, THOMAS & ROBERTS, *Solicitors.*

It is hereby stipulated by the defendants, that no objection shall be made or insisted upon on the trial of this cause, on account of the omission of the petitioners to prove the issuing of any certificate provided for in the contract, set forth in the petition in this case, if the facts set forth in the amendment of this day to the answer, shall be proven.

GOODRICH & FARWELL, *for Petitioners.*
ARNOLD & BLACKWELL, *for Defendants.*

And now again come the parties by their solicitors aforesaid, and the jury empanelled in this cause also come, and after hearing a part of the evidence, by agreement of parties, the further hearing of this cause is postponed until Monday morning next, to which time the jury are permitted to separate.

And now again come the said parties by their solicitors aforesaid, and the jury empanelled in this cause also come, and after hearing the remainder of the testimony, argument of counsel, and instructions of the court, retire to consider of their verdict, and afterwards come into court and say: We, the jury, find the issue for the petitioners, and that there is due to them from the said defendants the sum of three thousand two hundred and eighty-eight dollars and forty eight cents.

And thereupon the said defendants enter their motion herein for a new trial in this cause.

And now again come the said defendants, by their solicitors aforesaid, and on their motion it is ordered that thirty days time be given said defendants to prepare and file a bill of exceptions in this cause.

And now again come the said parties, by their solicitors aforesaid, and the Court, after hearing the argument of said solicitors on the said defendants' motion for a new trial in this cause, being now fully advised in the premises, overrules said motion, and said defendants enter their exceptions herein to the ruling and decisions of the Court. It is therefore considered by the Court, that the said petitioners have and recover of the said defendants the sum of three thousand two hundred and eighty-eight dollars and forty-eight cents, in form aforesaid by the jury assessed, and that they have a mechanic's lien upon all the right, title, and interest of the said defendants in and to the premises described in the petition in this cause, and situate in the City of Chicago, on the south side of Lake Street, between La Salle and Wells Streets, being eighty feet west from La Salle Street, and having forty feet front by one hundred and eighty feet deep, and now known as Nos. one hundred and sixty-seven (167) and one hundred and sixty-nine (169) Lake Street, together with the building thereon situate, and that said petitioners have execution against said premises, and also recover of the said defendants their costs and charges by them about their suit in this behalf expended.

And thereupon the said defendants pray an appeal to the Supreme Court of the State of Illinois, which is allowed upon their filing their appeal bond in the penal sum of five thousand dollars, with security to be approved by the Judge of this Court, said bond to be filed in ten days from this day, and thirty days' time is given the said defendants to prepare and file their bill of exceptions herein.

It is agreed by and between the attorneys to the above entitled cause,

that the time for filing the bill of exceptions herein mentioned in the order, at January term, 1857, is hereby extended to the fifteenth day of February, A. D. 1857, at which date the same shall be filed, and no exception taken for failure to file the same in pursuance of the order entered herein, at the January term, 1856, of said Court. This stipulation shall be filed in said Court.

February 4th, 1857.

BLACKWELL, THOMAS & ROBERTS,
Attorneys for Defendants.

GOODRICH, FARWELL & SCOVILL,
Attorneys for Plaintiffs.

And now come the said parties, by their said attorneys, and by agreement, the time to file bill of exceptions in this cause is extended to the twenty-third day of February instant.

STATE OF ILLINOIS—*Supreme Court, Third Grand Division, June Term, 1857.*

Stephen Derr & Horace G. Lumbard, }
ats.

William M. Ross & James H. Foster. }

And now come the said William M. Ross and James H. Foster, the appellants, by Blackwell, their solicitor, and say, that in the record and proceedings in said cause there is manifest error in this,—

1st.—The court erred in rendering the decree for the complainants below.

2d.—Said decree should have been in favor of the defendants below.

3d.—The said decree is against the law and the evidence.

4th.—There is no evidence to sustain said decree.

R. S. BLACKWELL,
for Plaintiffs in Error.

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Recd 88 al
w
Dm 88 al

For Plaintiff in Error
R. S. BLACKWELL

4th.—There is no evidence to sustain said decree.

5d.—The said decree is against the law and the evidence.

5d.—Said decree should have been in favor of the defendants below.

1st.—The court erred in rendering the decree for the complainants.

proceedings in said cause there is no evidence in this—

And now come the said William H. Foster, the
William M. Ross & James H. Foster,
Stephen Dorr & Horace G. Foster,

State of Illinois—against the said James H. Foster, James
G. Foster, Stephen Dorr & Horace G. Foster, and James H. Foster,

twenty-third day of February, instant.

And now come the said parties by their said attorneys and in virtue

Attorneys for Plaintiff
GEO. BRICH, FARRWELL & SCOVILLE,
Attorneys for Defendants.

February, 1837.

shall be filed in said Court.

of herein, at the January term, 1837, of said Court. This stipulation
caption taken for failure to file the same in pursuance of the order entered
February, A. D. 1837, at which date the same shall be filed, and no ex-
order at January term, 1837, is hereby extended to the fifteenth day of
that the time for filing the bill of exceptions herein mentioned in the

Filed May 8th 1837
L. B. Bell
Clerk