

14313

No. \_\_\_\_\_

# Supreme Court of Illinois

Mitchell

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vs.

Thomas

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 914313

1862

*Matchell  
to  
Shannon*

366 52 7

Mitchell vs Thomas

Abstract

Filed May 3<sup>d</sup> 1859

L. Deland

Clerk

# IN SUPREME COURT OF ILLINOIS,

APRIL TERM, . . . . . A. D. 1859,

JAMES MITCHELL and  
HOLDEN PUTNAM, }  
                                  *Appellants,* }  
                                  *vs.* }  
JAY THOMAS, }  
                                  *Appellee.* }

*Appeal from the Stephenson Circuit Court.*

- 1 On the 12th November, 1857, the appellee, Jay Thomas, filed his petition, in the Stephenson County Circuit Court, to establish a Mechanics' Lien, and summons was issued to John K. Brewster, James Mitchell, Holden Putnam, Alexander Neely, Joseph B. Smith, John A. Clark, Daniel S. Brewster, and Homer N. Hibbard.
- 4 The petition sets forth that appellee made a written contract, dated February 14, 1857, with J. K. Brewster, whereby he agreed to furnish materials and do the work for plastering a hotel building for said Brewster, situated on lots 5, 6 and 7, block 56, in the city of Freeport—Brewster to pay for said
- 5 work and materials certain prices stipulated in the contract.
- 6 At the date of the contract, said Brewster was the owner in fee of said lots on which he was erecting a brick hotel.
- 7 In pursuance of the contract, appellee proceeded to furnish work and materials as fast as the condition of the building would admit, to the amount of \$5,765 25 by the 9th November, 1857, at which time the work was com-
- 8 pleted, and the balance unpaid became due to appellee by the terms of the contract.
- 9 March 22d, 1856—Brewster and his wife conveyed said lots 5 and 6 to Joseph B. Smith, in trust to secure to James Mitchell & Co. the sum of \$5000, said trust deed also embracing lots 3, 4 and 5, in block 51, in Freeport, and being dated 11 months before the date of appellee's contract and sometime prior to the commencement of said hotel.
- 10 The deed was recorded, March 26, 1856,  
July 5th, 1856—Brewster and his wife executed a deed of trust to H. N. Hibbard, conveying to him said lots 5 and 6, to secure to John A. Clark the sum of \$15,000 00, but the deed was not recorded until September 8, 1856,  
November 4th, 1857—Brewster assigned his property to John A. Clark and Daniel S. Brewster for the benefit of his creditors, but appellee refused to accept the terms of the assignment. The deed of assignment was recorded November 5, 1857.
- 11 Prayer of the petition—That the lien or incumbrance under said trust deed to said J. B. Smith should be limited to the value of said lots 5 and 6 at the date of the deed, and to such proportion of said sum of \$5,000.00 as the value of said lots then bore to the value of said other lots 3, 4 and 5; that the lien under said trust deed to H. N. Hibbard be limited to the value of the land at the date of appellee's contract; and that said trust deeds be set aside so as
- 12 not to interfere with appellants' lien. Usual prayer for process, &c.
- 13 H. N. Hibbard, defendant, filed his answer Dec. 19, 1857, claiming that

- said trust deed was executed to him by said Brewster to secure a loan of \$15,000 00, made by him for which he executed his three promissory notes signed by himself as principal, and James Mitchell, Chancellor Martin, Henry Strohm, H. H. Penniman, John Black, J. O. Taylor, Jared Sheets, Thompson Wilcoxon, John Coates, Hiram Bright, John Hoebel, G. M. Clayton, Francis Foley, A. W. Rice, A. T. Green, I. C. Stoneman, Thomas Coltman, John P. Byerly, Wm. M. Buckley, John S. Emmert, Holden Putnam, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenstiel, Hollis Jewell, F. P. Kohler, James B. Childs, George Purinton, Thomas J. Turner, M. Hettinger, O. Taylor, E. H. Hyde, J. Reigard, F. W. S. Brawley, and Rudolph Brubacher as sureties, payable to the order of John A. Clark, with interest at ten per cent. per annum, and to become due respectively in the years 1860, 1861, and 1862, and no part of either principal or interest has been paid. Denies that there is due to appellee, on his contract, more than \$1,000 00. Avers that appellee's claim extends to a large part of the building covering ground not included in said trust deed, and also, that Brewster had expended a large amount in the erection of the building prior to appellee's contract; and that the lien of the trust deed attached to the entire value of the property at the date of the contract. Claims that the improvements, &c., on lot 7, not embraced in said trust deed should first be applied to satisfy appellee's claim, and that lots 5 and 6 should be applied to satisfy said trust deed.
19. Joseph B. Smith filed his answer December 19, 1857, stating that J. K. Brewster made his note and trust deed as stated in the petition, to secure the payment of \$5,000 and interest, dated March 22d, 1856, for borrowed money; that there was due on said note \$5,868 03. Denies Brewster's indebtedness to appellee for work and materials exceeding \$1,000. Denies appellee's lien on lots 5 and 6, because the work and materials furnished by him were put into an entire building covering said lots and other ground; also, that a large amount had been expended by Brewster in constructing the building before appellee's claim accrued. Insists that appellee's lien shall be subject to appellants' lien; and also, that it be first satisfied out of that part of the building covering other ground than that contained in said deed of trust.
23. Replication to answer of Smith and Hibbard, filed January 4, 1858. Default of defendants Neely, John K. Brewster, Mitchell, Putnam, D. S. Brewster, and John A. Clark entered.
24. Cause submitted to the court for trial, January 6, 1858. January 12, 1858, Chancellor Martin and 34 others filed their petition and affidavit, to be made parties; the court made an order admitting the petitioners to become parties, and that they file their bill or answer next morning.
26. January 12, 1858, said Chancellor Martin, Henry Strohm, H. H. Penniman, John Black, John O. Taylor, Jared Sheets, Thompson Wilcoxon, Jno. Coats, Hiram Bright, John Hoebel, G. M. Clayton, Asahel W. Rice, Abraham T. Green, Isaac C. Stoneman, Thomas Coltman, John P. Byerly, Wm. M. Buckley, J. S. Emmert, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenstiel, Hollis Jewell, F. P. Kohler, J. B. Childs, Geo. Purinton, T. J. Turner, Matthias Hettinger, Oscar Taylor, E. H. Hyde, J. Reigard, F. W. S. Brawley, and Rudolph Brubacher, filed their petition, setting forth that June 26, 1859, J. K. Brewster made his three promissory notes for \$5,000 each, payable to the order of John A. Clark, one to become due August 1st, 1860, one September 1st, 1861, and the other October 1st,

- 26 1862, at ten per cent. interest, payable semi-annually. To secure the payment of said notes, said Brewster executed to H. N. Hibbard, a trust deed,
- 27 dated July 5, 1856, of said lots 5 and 6, said notes being signed by all the parties except Brewster, as sureties to enable him to raise money to go on in the erection of said hotel. That Mitchell and Putnam were the active agents in getting the notes signed and the notes were delivered to them to negotiate.—Putnam, one of the firm of Mitchell & Co., to induce the parties to sign the notes; that the said lien of Mitchell & Co. should be removed from the lots,
- 28 and that they were or should be free from incumbrance, and that the notes should not be disposed of until the property was thus clear, so as to indemnify them against any loss.
- 29 Mitchell & Co. negotiated the notes in N. England, and the money was all applied in the erection of said hotel.
- November 4, 1857—J. K. Brewster made an assignment, and conveyed said lots 5 and 6, and all his property to John A. Clark and Daniel S. Brewster. Said lots are worth not over \$8,000, and the petitioners have no other security. Twenty-two suits for mechanics' lien are now pending in said Circuit Court against said premises, amounting in the aggregate to about \$16,000.
- 32 Brewster is insolvent, and Mitchell & Co. are seeking to establish a prior lien under said trust deed. The other property covered by said trust deed, is nearly sufficient to satisfy the said claim of \$5,000 of Mitchell & Co.
- Prayer—To be made parties to contest the right of James Mitchell & Co. to have a prior lien.
- 33 Petition sworn to by Thompson Wilcoxon and three others.
- January 12, 1858—John W. Shaffer and Louis F. Burrill filed their petition in the cause and by order of the court, were made parties.
- 34 Their petition set forth that prior to August, 1856, they were partners with J. K. Brewster, and became indebted to James Mitchell & Co. to \$2,400, and to J. C. Howe & Co. to \$2,700, that previous to their dissolution in August, 1856, Brewster agreed to assume and pay said debts.
- 34 In October, 1857, Brewster executed a trust deed in favor of Mitchell &
- 35 Co., to secure said sum of \$2,400; and at that time Brewster had plenty of property to indemnify petitioners, but soon after became insolvent.
- At the September Term of said Circuit Court, judgment was rendered in favor of said Howe, against Brewster and petitioners, for \$2,702 13, on which execution was issued before Brewster executed said trust deed, but at that time he had other real estate in Carroll and Jo Daviess counties, which might have been made subject to the lien of said execution, had not the parties all relied upon the sufficiency of the other liens.
- 36 Petitioners will suffer loss if any part of the claim of Mitchell & Co., secured on said lots 5 and 6, is to be made out of said other lots. Petitioners were not aware of any incumbrances as mechanics' liens.
- Prayer—to be made parties and to make answer.
- 37 January 13, 1858—Thomas J. Turner filed his answer in said cause, claiming that moneys arising from the sale of said hotel, should be first applied to
- 38 satisfy said indebtedness secured by said trust deed to said H. N. Hibbard, for reasons substantially as stated above, in the petition of Chancellor Martin and others. Sworn to.
- 45 January 13, 1858—J. W. Shaffer and L. F. Burrell filed their answer sub-
- 45 stantially as their petition as above. Sworn to.

- 52 January 13, 1858—Thompson Wilcoxon, J. O. Taylor and 21 others above named, filed their answer substantially the same as their petition above.—
- 62 Sworn to.
- 63 January 14, 1858—Holden Putnam filed his answer in the cause, stating that he was a member of the firm of James Mitchell & Co., and that said J. K. Brewster executed his deed of trust to J. B. Smith, March 22, 1856, to secure \$5,000 then due to Mitchell & Co.; that at that time said lots 5 and 6 were considered sufficient security for that sum, and it was understood by
- 64 the parties that the other lots, 3, 4 and 5, were merely nominal. Admits the indebtedness of Brewster to appellee, and that he executed a deed of trust to H. N. Hibbard as stated, but denies making any representation, or doing any
- 65 act to give said incumbrance priority over the lien in favor of Mitchell & Co. Denies having represented said premises as free from incumbrance. Avers that the notes were signed in pursuance of a plan of many citizens of Freeport to assist Brewster to complete said hotel, as a matter of public interest,
- 66 but denies making any agreement or offering any inducement to get any persons to sign said notes: he had no interest or agency in the matter, other than in common with citizens of Freeport. Admits that it was understood
- 67 that Brewster agreed to remove said incumbrance as set forth in his written agreement, Exhibit "A." Does not believe that any of the makers of said notes ever thought of Mitchell & Co. releasing their said security until paid
- 68 by Brewster. Denies that he, or Mitchell & Co. ever promised or agreed to release said security, but admits that he and other signers of the notes expected that Brewster would pay and satisfy the same, as he had agreed. At that time he believed the premises sufficient security to protect the signers of said notes, but of that they could judge as well as appellant. Denies ever having
- 69 agreed to hold said notes until said incumbrance was removed. Admits that said hotel premises are not worth enough to satisfy all the incumbrances; that said lots 3, 4 and 5 may be worth about \$3,000, but that Mitchell & Co. are entitled to the benefit of their lien under the said trust deed to L. W. Guiteau, to secure \$3,500, which said Brewster had owed them for a long time. Answer sworn to.
- 70 EXHIBIT "A."—Agreement of J. K. Brewster with H. Putnam and others, sureties on said notes, that Brewster will expend the \$15,000 in the erection of said hotel; for every \$3,000 of said sum he will advance \$1,000 of other funds of his own, and will pay off all incumbrances on the premises, so as to make the trust deed to Hibbard the first lien; said \$15,000 fund to be deposited with Mitchell & Co., so as to secure the faithful application of it to the erection of the hotel.
- 72 January 14, 1858—James Mitchell filed his answer substantially the same as H. Putnam's.
- 76 January 14, 1858—The counsel for appellee and for plaintiff in all of said suits, except to the decision of the court, in admitting said C. Martin and others to become parties, and also in overruling their motion to suppress the answers of James Mitchell and Holden Putnam.
- 77 January 15, 1858—Appellee filed his replications to all the answers.
- 78 By stipulation, all the issues are submitted to the court.
- 79 On motion of appellant, the court gave him leave to amend his petition so as to make Jabez C. Howe, Geo. O. Hovey, S. K. Payson, J. B. Hutchinson, C. H. Dalton and Jacob Wendell, Jr., parties, and that publication of notice be made.

81 January 26, 1858—Appellee filed his amended petition, setting forth that said Jabez C. Howe and others recovered judgment in said circuit court, September 25, 1857, for \$2,702 13, against said J. K. Brewster, Shaffer and  
 82 Burrell, and that it is unsatisfied. At the same term said Howe obtained judgment in the same court against said Brewster, for \$617 88, the same remaining unsatisfied.

Said judgments were subsequent to the attaching of said appellee's lien, and he believes they have been paid and satisfied, though they are apparently liens on Brewster's property.

83 Prayer—that said Howe and others be made parties to said suits, and that the liens of said judgments be set aside, so as not to interfere with appellee's lien.

84 At the term of April, (April 7, 1858,) appellee filed certificate of publication of notice, as to said Howe and others, and his bill was taken for confessed  
 86 as against them.

87 Decree, finding the amount due to appellee from Brewster to be \$1,206 35, on contract made June 1st, 1857, and that the cause be referred to the master, to take proof of the amount of incumbrance on the premises, the amount of mechanic's liens, the value of the land before the erection of the building,  
 88 the value of the building and the interest of the petitioner in the premises.

89 At December term, 1858, the master filed his report, showing the incumbrances on the land, as follows:

On the trust deed to J. B. Smith, in favor of Mitchell & Co.,	\$6,383 33
“ “ “ “ “ H. N. Hibbard, for C. Martin and 37 others,	22,500 00

The first conveying the one half of lots 5 and 6, block 56; the other the whole of said lots,

90 The whole amount of mechanics' liens on said premises is \$17,206 28; and allowing interest of \$1,235 49, making the total \$18,441 79.

The easterly half of said lots was worth	\$4,500 00
The westerly half of said lots was worth	3,000 00
That part of lot seven covered by said building was worth	750 00

Total value of the ground,	\$8,250 00
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The value of the building covering lots 5 and 6,	36,450 00
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The value of the building covering lot 7,	7,050 00
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Total value of the building,	\$43,500 00
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Amount of Appellee's claim,	\$1,206 35
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Schedule "A" of the master's report contains the testimony of Harvey McLenchan, estimating the cost of the building at \$40,000 to \$45,000.

David Hengst estimates the value of lots 3, 4, 5, in block 51, on the 22d March, 1856, at	\$4,500
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The easterly half of lots 5 and 6, was worth \$150 per foot (30 ft.)	4,500
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The westerly " " " " " 100 " "	3,000
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Total value of said ground,	\$7,500
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Jesse B. Snyder estimates that part of lot 7 covered by part of said building, to have been worth at the time the building was commenced,

\$750 00
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Alexander Smith estimated the cost of the part of the building	
on lots 5 and 6, at	\$35,000
That part on lot 7, at	7,050

Making the total cost, exclusive of the land	\$43,500
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Alexander H. Stone estimates the lots 5 and 6 to have been worth in June, 1856, \$6,000—the half on the street \$4,000, and the other half \$2,000.

95 George Maynard estimates twenty of the signers of said notes to be worth \$476,000.

95 S. D. Clark estimates the lots 5 and 6 to have been worth, at the erection of the hotel, \$9,000—the half adjoining the street was worth \$175 per foot \$5,250.

96 SCHEDULE "B"—The trust deed from J. K. Brewster and wife, to J. B. Smith, dated March 22, 1856, conveying the north-easterly half of lots 5 and 6, in block 56; also, lots 3, 4 and 5, in block 51, in Freeport, to secure to James Mitchell & Co. the payment of \$5,000, and interest at ten per cent. in eight months from the date. Recorded March 26, 1856.

98 SCHEDULE "C"—The trust deed from Brewster and wife, to H. N. Hibbard, dated July 5, 1856, conveying said lots 5 and 6, to secure to John A. Clark the payment of \$15,000 on notes executed by Brewster as principal, and James Mitchell and 37 others as sureties, due August 1st, 1860, September 1st, 1861, and October 1st, 1862, with interest at ten per cent. Recorded September 8, 1856.

100 SCHEDULE "D."—Note to Mitchell & Co. for	\$5,000
Amount due,	6,383 33
Schedule "E"—notes to John A. Clark, for	\$15,000
Amount to be due at maturity,	22,500
Schedule "F"—showing the different suits pending to establish mechanics' liens.	

H. C. Childs, date of contract, July 1, 1856; work completed November 9, 1857. Amount due, \$6,622 64; interest, \$451 43. Total, \$7,073 07.

Thomas Coltman, date of contract July 1, 1856; work completed September 15, 1857; amount due, \$1,882 17; interest, \$145 24. Total, \$2,027 41.

Jay Thomas, date of contract February, 1857; completed November 9, 1857; amount due, \$1,206 35; interest, \$82 03; Total \$1,288 38.

H. H. Upp, date of contract July 1, 1856; completed November 12, 1857; amount due, \$757 93; interest, \$50 78. Total, \$808 71.

101 Dennard Shockley, date of contract July 1, 1856; completed October 15, 1857; amount due, \$585 00; interest, \$40 12. Total, \$625 12.

G. M. Clayton, date of contract February 16, 1857; completed October 16, 1857; amount due, \$1,274 93; interest, \$91 79. Total, \$1,366 72.

J. A. Bigelow, date of contract October 1, 1857; completed November 6, 1857; amount due, \$635 03; interest, \$43 81. Total, \$678 84.

J. B. Hazen, date of contract December, 1856; completed October 7, 1857; amount due, \$128 82; interest, 9 46. Total, \$138 28.

101 J. and R. Clark, date of contract September, 1857; completed November 12, 1857; amount due, \$916 05; interest, \$61 97. Total, \$978 02.

L. Schuerman, date of contract June 1, 1857; completed September 1, 1857; amount due, \$137 50; interest, 10 86. Total, \$148 36.

James Brown, date of contract April 1, 1857; completed September 1, 1857; amount due, \$1,166 62; interest, \$92 16; Total, 1,258 78.

- L. G. Hale, date of contract October 2, 1856; completed August 1, 1857; amount due, \$353 16; interest, \$29 76. Total, \$382 92.
- L. G. Hale, date of contract August 3, 1857; completed October 20, 1857; amount due, \$82 92; interest, 5 88. Total, \$88 80.
- Geo. W. Prickett, date of contract July 23, 1857; completed July 27, 1857; amount due, \$85 00; interest, \$7 22. Total, \$92 22.
- 102 John Schmidt, date of contract June 15, 1857; completed November 15, 1857; amount due, \$120 40; interest, \$8 06. Total, \$128 46.
- Wm. B. Boynton, date of contract May 1, 1856; completed November 15, 1857; amount due, \$400 00; interest, \$32 40. Total, \$432 40.
- S. Anstien, date of contract September 8, 1856; completed September 15, 1857; amount due, \$72 41; interest, \$5 57. Total, \$77 98.
- John Wolfinger, date of contract July 10, 1856; completed June 18, 1857; amount due, \$42 37; interest, \$3 75. Total, \$46 12.
- J. Tippery, date of contract September 15, 1856; completed October 1, 1857; amount due, \$79 80; interest, \$7 28. Total, \$87 08.
- A Frick, date of contract May, 1856; completed July 30, 1857; amount due, \$167 42; interest, \$14 06. Total, \$181 48.
- J. S. Emmert, date of contract May 7, 1857, completed October 8, 1857; amount due, \$273 34; interest, \$19 95. Total, \$293 29.
- Freeport G. L. & C. Co., date of contract June 12, 1857; completed August 28, 1857; amount due, \$216 42; interest, \$17 31. Total, \$233 73.
- 103 January 5th, 1859—Appellants filed their exceptions to the master's report.
- 104 January 10, 1859—Defendants, Wilcoxon and others, filed their exceptions to the master's report.
- 106 January 13—Appellants filed additional exceptions to said report.
- 107 January 14—Appellants filed Putnam's affidavit in relation to the proceedings before the master.
- 109 January 17—Appellee filed the affidavits of the master and D. Shockley, in relation to the same matter.
- 113 January 18—Appellants produce and filed as evidence in the cause, the
- 118 trust deed from Brewster to said J. B. Smith, of said lots 5 and 6; also the trust deed from Brewster to L. W. Guitau, dated October 26, 1857, to secure the payment of \$3,500 to James Mitchell & Co., due on three promissory notes: one for \$1,400, dated August 1st, 1855, and due thirty days after date, one for \$1,000, dated April 8, 1856, due 30 days after date, and one for \$1,100, dated October 26, 1857, and due four months after date; said notes bearing interest at ten per cent., the interest on the first two having been
- 123 paid to February 26, 1858. Also the contract of Brewster in behalf of Holden Putnam and other citizens who had signed said notes as sureties for Brewster, dated July 5, 1856, providing for the appropriation of said \$15,000, and for the indemnity of said sureties.
- 128 The cause was submitted on final hearing upon the petitions, answers and proofs, January 24, 1859, and final decree entered, setting forth that from
- 132 May 1, 1856, to November 15, 1857, said J. K. Brewster was owner of said lots 5 and 6, and part of adjoining lot 7, 20 by 35 feet, in block 56; that the several petitioners contracted with him for work and materials in the construction of a building covering said land, to wit:
- Boynton & Wheelock commenced under their contract May 1, 1856; completed same August 20, 1857; due them January 7, 1858, \$400; previously paid to them \$100.
- 133 Henry C. Childs commenced under his contract July 1, 1856; completed the same November 9, 1857; due him January 7, 1858, \$7,623 64; previously paid to him \$6,094 99

- Frick commenced under his contract May, 1850; completed the same May, 1856; due him January 7, 1858, \$167 42; previously paid to him \$1,263 95.
- Coltman commenced under his contract July 1, 1856; completed the same September 15, 1857; due him January 7, 1858, \$1,882 17; previously paid to him \$2,482 63.
- Upp commenced under his contract July 1, 1856; completed the same November 12, 1857; due him January 7, 1858, \$757 93; previously paid him \$742 07.
- 134 Shockley commenced under his contract July 1, 1856; completed the same October 15, 1857; due him January 7, 1858, \$585 00; previously paid to him \$2,000 00.
- Jay Thomas commenced under his contract February 14, 1857; completed the same November 9, 1857; due him January 7, 1858, \$1,206 35; previously paid to him \$-----
- G. M. Clayton commenced under his contract February 14, 1857; completed the same February 16, 1857; due him January 7, 1858, \$1,274 93; previously paid to him \$969 42.
- 135 Bigelow commenced under his contract October 1, 1857; completed the same November 7, 1857; due him January 7, 1858, \$635 05; previously paid to him \$-----
- Hazen commenced under his contract December, 1856; completed the same October 7, 1857; due him January 7, 1858, \$128 82; previously paid to him \$399 73.
- J. & R. Clark commenced under their contract Sept., 1857; completed the same November 12, 1857; due them January 7, 1858, \$916 00; previously paid to them \$-----
- Scheueman commenced under his contract June 1, 1857; completed the same September 1, 1857; due him January 7, 1858, \$137 50; previously paid to him \$-----
- Brown commenced under his contract April 1, 1857; completed the same September 1, 136 1857; due him January 7, 1858, \$1,166 62; previously paid to him \$1,495 38.
- L. G. Hale commenced under his contract October 2, 1856; completed the same August 1, 1857; due him January 7, 1858, \$353 16; previously paid to him \$117 56.
- Hale & Towslee commenced under their contract August 3, 1857; completed the same October 20, 1857; due them January 7, 1858, \$82 97; previously paid to them \$-----
- 137 Prickett commenced under his contract July 23, 1857; completed the same July 26, 1857; due to him January 7, 1858, \$85 00; previously paid to him \$-----
- Schmidt commenced under his contract June 15, 1857; completed the same November 15, 1857; due him January 7, 1858, \$120 40; previously paid to him \$-----
- Wolfinger commenced under his contract June 12, 1856; completed the same June 18, 138 1857; due him January 7, 1858, \$42 37; previously paid to him \$-----
- Tippery commenced under his contract September 17, 1856; completed the same October 1, 1857; due him January 7, 1858, \$79 80; previously paid to him \$-----
- Emmert & Burrill commenced under their contract May 7, 1857; completed the same October 8, 1857; due them January 7, 1858, \$273 34; previously paid to them \$-----
- F. G. L. & C. Co. commenced under their contract June 12, 1857; completed the same August 28, 1857; due them January 7, 1858, \$216 42; previously paid to them \$-----
- 139 That the above named parties have proceeded to establish mechanics' liens against said premises, and that said amounts were due to them with interest from July 7, 1858.
- That said Brewster executed his trust deed of the north-easterly half of said lots 5 and 6, in block 56, and lots 3, 4 and 5, in block 57, March 22, 1856, to J. B. Smith, to secure to James Mitchell & Co., said firm consisting of James Mitchell, Holden Putnam, and Alexander Neely, the sum of \$5,000, and interest at ten per cent., the same being due and unpaid, and when the 140 erection of said building was commenced said ground was worth \$4,500, and the present value of said lots 3, 4 and 5, is \$2,500. That said Brewster executed his trust deed of the whole of said lots 5 and 6, July 5, 1856, to H. N. Hibbard, to secure payment of notes for \$15,000, signed by Brewster as principal and Chancellor Martin and others as sureties, the same being unpaid, 141 which trust deed was not recorded until September 8, 1856; and said south-westerly half of said lots 5 and 6 was worth \$3,000 at the time Brewster commenced the erection of said building. The entire value of the ground and building, is \$51,750.
- 142 The north easterly half of lots 5 and 6 is worth \$4,500—the south-easterly half of the same is worth \$3,000, the part of the building covering that ground

is worth \$36,450; that part of said lot 7, occupied by said building, is worth \$7,050, and said part of the building is worth \$750—the whole worth \$7,800.

At the September term of the Stephenson Circuit Court, J. C. Howe and others obtained judgment against said Brewster and others to the amount of \$3,320 10, on which there now remains unpaid and unsatisfied \$2,171 11.

That said Brewster paid to the other parties in the course of the erection of said Brewster House, the sum of \$2,464, and said petitioners have received in the aggregate, on their contracts, \$16,438 89; the whole amount now due to the petitioners is \$17,206 20. The actual cost of the building was \$36,-

109 17; of the \$2,464 paid to other persons than the petitioners, \$2,064 60 was expended on that part of the building covering lots 5 and 6, and the whole

cost of that part of said building was \$30,257 41. Decree then provides that in default of the payment by Brewster of said respective sums to said petitioners, the Master in chancery shall sell said premises at auction, giving three months' notice by publication in the newspapers in Freeport, and one in Chicago. The master to execute a deed to the purchaser out of the pro-

ceeds of the sale to pay the costs of the several suits, and divide the remainder into four distinct funds; the 1st to consist of 7800-51750; the 2d, 4500-

51750; the 3d of 3000-51750; and the 4th of 36450-51750, the 1st fund to be paid pro rata to the petitioners; out of the 2d fund, (if so large,) \$4,103 to be paid to J. B. Smith in trust for the holders of Brewster's note of March

22, 1856—the balance of said note to be charged on said lots 3, 4 and 5.

Said Brewster's trust deed to L. W. Guiteau of October 26, 1856, was executed with notice to Mitchell & Co., of said trust deed to Hibbard, and with representations of Putnam to the signers of the \$15,000 notes, that their security was ample. The third fund to be paid to H. N. Hibbard in trust for the holders of said Brewster's notes of June 23, 1856. The \$2,464 paid by Brewster to other parties is to be considered as land; \$2,064 66 of it to be considered as expended on lots 5 and 6, and the balance, \$399 34, on lot 7.

The 206466-3025741 of the 4th fund to be divided equally to Smith & Hibbard, if necessary. The balance of the 4th fund to be distributed pro rata to the several petitioners. If said balance shall be more than sufficient to satisfy their claims, then the remainder to be paid to Hibbard and Smith, so far as be necessary to satisfy said trust. Said Trustees are to have the right to pay the balance due any of the petitioners, and then to receive from said 4th fund such part of it as the whole amount of the work and materials furnished by such petitioner would have drawn pro rata from said fund.

No notice is to be taken of said judgment creditors, for the reason that the proceeds of said sale are presumed to be insufficient to satisfy prior liens.

Order for immediate possession to the purchaser. Appellants except to the decree and pray an appeal. Order for appeal.

The testimony offered by defendants, Thompson Wilcoxon and others. Alexander Smith testified that the building on lots 5 and 6, was up to the second story September 8, 1856, and was worth \$6,000 or \$7,000, and February 1, 1857, it was worth \$14,000 to \$15,000, independent of the land.

On cross-examination he stated that he estimated the value by the cost. A. B. Guiteau estimated the value of lots 5 and 6, on 8th September, 1856, at \$5,000 or \$6,000; the work on the building at the same amount. He insured the building at \$5,000.

J. B. Johnson should have estimated the lots 5 and 6 at \$4,000 or \$5,000, on 8th September, 1856,

R. H. Gettemy testified that the said lots, September 8, 1856, were worth \$120 to 130 per foot; the foundation was up previous to that time and was worth \$2,000 to \$3,000.

D. Shockley testified that the foundation and part of the brick walls were up before September 8, 1856.

156 The trust deed from Brewster to H. N. Hibbard, dated July 5, 1856, was then offered in evidence.

161 The agreement of Brewster with Holden Putnam and others dated July 5, 1856, was then offered in evidence.

162 S. D. Atkins testified that J. K. Brewster is insolvent, having made an assignment in December, 1857.

L. W. Guiteau testified to the same.

163 Testimony offered by appellants:

The agreement executed by Brewster to Putnam.

164 The trust deed executed by Brewster to J. B. Smith.

170 The record of two judgments in favor of J. C. Howe et al., against Brewster.

172 A deed from L. W. Guiteau to H. Putnam, dated March 26, 1858.

171 L. W. Guiteau testified that he sold the premises described in the deed—lots 3, 4, 5, block 51, as trustee, at auction, to H. Putnam, having advertised the sale as required.

The same was sold subject to incumbrances. This evidence was objected to by appellee.

S. D. Atkins testified that said premises would sell now for \$2,500 to \$3,000; would have sold in 1856 for \$3,000 or \$4,000; not acquainted with the property, and his opinion mere guess-work.

T. De Armit testified that the premises would have brought in 1856, about \$3,500; would not now sell for more than \$2,000.

174 J. W. Shaffer testified that the Howe judgments are not satisfied. An arrangement was made between the parties to give Brewster time to redeem other property bid off by plaintiff Howe, by Brewster paying the prior incumbrance and the amount of the judgments; the amount has not been paid and the time has expired. The incumbrance was about \$3,500, and the property worth about \$4,000 to \$6,000.

George Fullerton testified that he was clerk of Mitchell & Co, while the Brewster House was being erected; that a \$15,000 loan was deposited in their bank and paid out on Brewster's checks on the hotel account. The checks

175 produced in evidence were paid on that account. Witness produced forty-two checks, amounting to \$9,211 12, which were filed and offered in evidence.

183 On cross-examination the witness stated that Brewster kept his hotel account separate; frequently had his own notes discounted; can't say as Childs got any of the money. Appellee objected to the evidence of this witness, and excepted to ruling of the court admitting it.

Errors assigned on the record.

The Circuit Court erred;

1st. In allowing C. Martin and others, sureties for Brewster, to be made parties.

2d. In charging the lien of appellants under the trust deed to J. B. Smith, upon lots 3, 4 and 5 to the exclusion of the subsequent of appellants on said lots.

3d. In limiting the amount of appellants' security on lots 5 and 6, to a sum less than the amount actually due to them,

4th. In ordering the master to sell the premises, execute deeds and distribute the funds without making his report to the court.

5th. In the manner of the distribution of the proceeds of the sale of the premises among the respective parties,

6th. In determining the manner of distribution without regard to the actual amount to be distributed, to be ascertained by a sale of the premises.

7th. In ordering a distribution without bringing the money into Court.

8th. In rendering a final decree before a sale of the premises sought to be charged.

9th. In finding and decreeing an amount in favor of the respective petitioners without proof of their respective claims.

10th. In rendering a decree in favor of the several petitioners without proper and sufficient proofs.

11th. In rendering a decree ambiguous in its terms and impracticable.

JASON MARSH,  
Attorney for Appellants.

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22 356 52.

Mitchell vs Thomas

• Abstract

Filed May 3<sup>rd</sup> 1859

L. Leland  
Clerk

# IN SUPREME COURT OF ILLINOIS,

APRIL TERM, . . . . . A. D. 1859,

JAMES MITCHELL and  
HOLDEN PUTNAM,  
Appellants,  
vs.  
JAY THOMAS,  
Appellee.

*Appeal from the Stephenson Circuit Court.*

- 1 On the 12th November, 1857, the appellee, Jay Thomas, filed his petition, in the Stephenson County Circuit Court, to establish a Mechanics' Lien, and summons was issued to John K. Brewster, James Mitchell, Holden Putnam, Alexander Neely, Joseph B. Smith, John A. Clark, Daniel S. Brewster, and Homer N. Hibbard.
- 4 The petition sets forth that appellee made a written contract, dated February 14, 1857, with J. K. Brewster, whereby he agreed to furnish materials and do the work for plastering a hotel building for said Brewster, situated on lots 5, 6 and 7, block 56, in the city of Freeport—Brewster to pay for said work and materials certain prices stipulated in the contract.
- 5 At the date of the contract, said Brewster was the owner in fee of said lots on which he was erecting a brick hotel.
- 6 In pursuance of the contract, appellee proceeded to furnish work and materials as fast as the condition of the building would admit, to the amount of \$5,765 25 by the 9th November, 1857, at which time the work was completed, and the balance unpaid became due to appellee by the terms of the contract.
- 7 March 22d, 1856—Brewster and his wife conveyed said lots 5 and 6 to Joseph B. Smith, in trust to secure to James Mitchell & Co. the sum of \$5000, said trust deed also embracing lots 3, 4 and 5, in block 51, in Freeport, and being dated 11 months before the date of appellee's contract and sometime prior to the commencement of said hotel.
- 8 The deed was recorded March 26, 1856.
- 9 July 5th, 1856—Brewster and his wife executed a deed of trust to H. N. Hibbard, conveying to him said lots 5 and 6, to secure to John A. Clark the sum of \$15,000.00, but the deed was not recorded until September 8, 1856.
- 10 November 4th, 1857—Brewster assigned his property to John A. Clark and Daniel S. Brewster for the benefit of his creditors, but appellee refused to accept the terms of the assignment. The deed of assignment was recorded November 5, 1857.
- 11 Prayer of the petition—That the lien or incumbrance under said trust deed to said J. B. Smith should be limited to the value of said lots 5 and 6 at the date of the deed, and to such proportion of said sum of \$5,000 00 as the value of said lots then bore to the value of said other lots 3, 4 and 5; that the lien under said trust deed to H. N. Hibbard be limited to the value of the land at the date of appellee's contract; and that said trust deeds be set aside so as not to interfere with appellants' lien. Usual prayer for process, &c.
- 12 H. N. Hibbard, defendant, filed his answer Dec. 19, 1857, claiming that
- 13

said trust deed was executed to him by said Brewster to secure a loan of \$10,000 00, made by him for which he executed his three promissory notes signed by himself as principal, and James Mitchell, Chancellor Martin, Henry Strohm, H. H. Penniman, John Black, J. O. Taylor, Jared Sheets, Thompson Wilcoxon, John Coates, Hiram Bright, John Hoebel, G. M. Clayton, Francis Foley, A. W. Rice, A. T. Green, I. C. Stoneman, Thomas Coltman, John P. Byerly, Wm. M. Buckley, John S. Emmert, Holden Putnam, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenstiel, Hollis Jewell, F. P. Kohler, James B. Childs, George Purinton, Thomas J. Turner, M. Hettinger, O. Taylor, E. H. Hyde, J. Reigard, F. W. S. Brawley, and Rudolph Brubacher as sureties, payable to the order of John A. Clark, with interest at ten per cent. per annum, and to become due respectively in the years 1860, 1861, and 1862, and no part of either principal or interest has been paid. Denies that there is due to appellee, on his contract, more than \$1,000 00. Avers that appellee's claim extends to a large part of the building covering ground not included in said trust deed, and also, that Brewster had expended a large amount in the erection of the building prior to appellee's contract; and that the lien of the trust deed attached to the entire value of the property at the date of the contract. Claims that the improvements, &c., on lot 7, not embraced in said trust deed should first be applied to satisfy appellee's claim, and that lots 5 and 6 should be applied to satisfy said trust deed.

19. Joseph B. Smith filed his answer December 19, 1857, stating that J. K. Brewster made his note and trust deed as stated in the petition, to secure the payment of \$5,000 and interest, dated March 22d, 1856, for borrowed money; that there was due on said note \$5,868 03. Denies Brewster's indebtedness to appellee for work and materials exceeding \$1,000. Denies appellee's lien on lots 5 and 6, because the work and materials furnished by him were put into an entire building covering said lots and other ground; also, that a large amount had been expended by Brewster in constructing the building before appellee's claim accrued. Insists that appellee's lien shall be subject to appellants' lien; and also, that it be first satisfied out of that part of the building covering other ground than that contained in said deed of trust.

23. Replication to answer of Smith and Hibbard, filed January 4, 1858. Default of defendants Neely, John K. Brewster, Mitchell, Putnam, D. S. Brewster, and John A. Clark entered.

24. Cause submitted to the court for trial, January 6, 1858. January 12, 1858, Chancellor Martin and 34 others filed their petition and affidavit, to be made parties; the court made an order admitting the petitioners to become parties, and that they file their bill or answer next morning.

26. January 12, 1858, said Chancellor Martin, Henry Strohm, H. H. Penniman, John Black, John O. Taylor, Jared Sheets, Thompson Wilcoxon, Jno. Coats, Hiram Bright, John Hoebel, G. M. Clayton, Asahel W. Rice, Abraham T. Green, Isaac C. Stoneman, Thomas Coltman, John P. Byerly, Wm. M. Buckley, J. S. Emmert, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenstiel, Hollis Jewell, F. P. Kohler, J. B. Childs, Geo. Purinton, T. J. Turner, Matthias Hettinger, Oscar Taylor, E. H. Hyde, J. Reigard, F. W. S. Brawley, and Rudolph Brubacher, filed their petition, setting forth that June 26, 1859, J. K. Brewster made his three promissory notes for \$5,000 each, payable to the order of John A. Clark, one to become due August 1st, 1860, one September 1st, 1861, and the other October 1st,

26 1862, at ten per cent. interest, payable semi-annually. To secure the pay-  
 27 ment of said notes, said Brewster executed to H. N. Hibbard, a trust deed,  
 dated July 5, 1856, of said lots 5 and 6, said notes being signed by all the  
 parties except Brewster, as sureties to enable him to raise money to go on in  
 the erection of said hotel. That Mitchell and Putnam were the active agents in  
 getting the notes signed and the notes were delivered to them to negotiate.—  
 Putnam, one of the firm of Mitchell & Co., to induce the parties to sign the  
 notes represented to them that the lots 5 and 6, were good security for the  
 notes; that the said lien of Mitchell & Co. should be removed from the lots,  
 28 and that they were or should be free from incumbrance, and that the notes  
 should not be disposed of until the property was thus clear, so as to indem-  
 nify them against any loss.

29 Mitchell & Co. negotiated the notes in N. England, and the money was all  
 applied in the erection of said hotel.

November 4, 1857—J. K. Brewster made an assignment, and conveyed  
 said lots 5 and 6 and all his property to John A. Clark and Daniel S. Brewster.  
 Said lots are worth not over \$8,000, and the petitioners have no other security.

20 Twenty-two suits for mechanics' lien are now pending in said Circuit Court  
 against said premises, amounting in the aggregate to about \$16,000.  
 32 Brewster is insolvent, and Mitchell & Co. are seeking to establish a prior  
 lien under said trust deed. The other property covered by said trust deed,  
 is nearly sufficient to satisfy the said claim of \$5,000 of Mitchell & Co.

Prayer—To be made parties to contest the right of James Mitchell & Co.  
 to have a prior lien.

33 Petition sworn to by Thompson Wilcoxon and three others.

January 12, 1858—John W. Shaffer and Louis F. Burrill filed their peti-  
 tion in the cause and by order of the court, were made parties.

34 Their petition set forth that prior to August, 1856, they were partners with  
 J. K. Brewster, and became indebted to James Mitchell & Co. to \$2,400, and  
 to J. C. Howe & Co. to \$2,700, that previous to their dissolution in August,  
 1856, Brewster agreed to assume and pay said debts.

34 In October, 1857, Brewster executed a trust deed in favor of Mitchell &  
 35 Co., to secure said sum of \$2,400; and at that time Brewster had plenty of  
 property to indemnify petitioners, but soon after became insolvent.

At the September Term of said Circuit Court, judgment was rendered in  
 favor of said Howe, against Brewster and petitioners, for \$2,702 13, on which  
 execution was issued before Brewster executed said trust deed, but at that  
 time he had other real estate in Carroll and Jo Daviess counties, which might  
 have been made subject to the lien of said execution, had not the parties all  
 relied upon the sufficiency of the other liens.

36 Petitioners will suffer loss if any part of the claim of Mitchell & Co., se-  
 cured on said lots 5 and 6, is to be made out of said other lots. Petitioners  
 were not aware of any incumbrances as mechanics' liens.

Prayer—to be made parties and to make answer.

37 January 13, 1858—Thomas J. Turner filed his answer in said cause, claim-  
 ing that moneys arising from the sale of said hotel, should be first applied to  
 38 satisfy said indebtedness secured by said trust deed to said H. N. Hibbard,  
 for reasons substantially as stated above, in the petition of Chancellor Martin  
 and others. Sworn to.

45 January 13, 1858—J. W. Shaffer and L. F. Burrell filed their answer sub-  
 45 stantially as their petition as above. Sworn to.

- 52 January 13, 1858—Thompson Wilcoxon, J. O. Taylor and 21 others above named, filed their answer substantially the same as their petition above.—
- 62 Sworn to.
- 63 January 14, 1858—Holden Putnam filed his answer in the cause, stating that he was a member of the firm of James Mitchell & Co., and that said J. K. Brewster executed his deed of trust to J. B. Smith, March 22, 1856, to secure \$5,000 then due to Mitchell & Co.; that at that time said lots 5 and 6 were considered sufficient security for that sum, and it was understood by
- 64 the parties that the other lots, 3, 4 and 5, were merely nominal. Admits the indebtedness of Brewster to appellee, and that he executed a deed of trust to H. N. Hibbard as stated, but denies making any representation, or doing any
- 65 act to give said incumbrance priority over the lien in favor of Mitchell & Co. Denies having represented said premises as free from incumbrance. Avers that the notes were signed in pursuance of a plan of many citizens of Freeport to assist Brewster to complete said hotel, as a matter of public interest,
- 66 but denies making any agreement or offering any inducement to get any persons to sign said notes; he had no interest or agency in the matter, other than in common with citizens of Freeport. Admits that it was understood
- 67 that Brewster agreed to remove said incumbrance as set forth in his written agreement, Exhibit "A." Does not believe that any of the makers of said notes ever thought of Mitchell & Co. releasing their said security until paid
- 68 by Brewster. Denies that he, or Mitchell & Co. ever promised or agreed to release said security, but admits that he and other signers of the notes expected that Brewster would pay and satisfy the same, as he had agreed. At that time he believed the premises sufficient security to protect the signers of said notes, but of that they could judge as well as appellant. Denies ever having
- 69 agreed to hold said notes until said incumbrance was removed. Admits that said hotel premises are not worth enough to satisfy all the incumbrances; that said lots 3, 4 and 5 may be worth about \$3,000, but that Mitchell & Co. are entitled to the benefit of their lien under the said trust deed to L. W. Guiteau, to secure \$3,500, which said Brewster had owed them for a long time. Answer sworn to.
- 70 EXHIBIT "A."—Agreement of J. K. Brewster with H. Putnam and others, sureties on said notes, that Brewster will expend the \$15,000 in the erection of said hotel; for every \$3,000 of said sum he will advance \$1,000 of other funds of his own, and will pay off all incumbrances on the premises, so as to make the trust deed to Hibbard the first lien; said \$15,000 fund to be deposited with Mitchell & Co., so as to secure the faithful application of it to the erection of the hotel.
- 72 January 14, 1858—James Mitchell filed his answer substantially the same as H. Putnam's.
- 76 January 14, 1858—The counsel for appellee and for plaintiff in all of said suits, except to the decision of the court, in admitting said C. Martin and others to become parties, and also in overruling their motion to suppress the answers of James Mitchell and Holden Putnam.
- 77 January 15, 1858—Appellee filed his replications to all the answers.
- 78 By stipulation, all the issues are submitted to the court.
- 79 On motion of appellant, the court gave him leave to amend his petition so as to make Jabez C. Howe, Geo. O. Hovey, S. K. Payson, J. B. Hutchinson, C. H. Dalton and Jacob Wendell, Jr., parties, and that publication of notice be made.

- 81 January 26, 1858—Appellee filed his amended petition, setting forth that said Jabez C. Howe and others recovered judgment in said circuit court, September 25, 1857, for \$2,702 13, against said J. K. Brewster, Shaffer and Burrell, and that it is unsatisfied. At the same term said Howe obtained judgment in the same court against said Brewster, for \$617 88, the same remaining unsatisfied.

Said judgments were subsequent to the attaching of said appellee's lien, and he believes they have been paid and satisfied, though they are apparently liens on Brewster's property.

- 83 Prayer—that said Howe and others be made parties to said suits, and that the liens of said judgments be set aside, so as not to interfere with appellee's lien.

- 84 At the term of April, (April 7, 1858,) appellee filed certificate of publication of notice, as to said Howe and others, and his bill was taken for confessed as against them.

- 87 Decree, finding the amount due to appellee from Brewster to be \$1,206 35, on contract made June 1st, 1857, and that the cause be referred to the master, to take proof of the amount of incumbrance on the premises, the amount of mechanic's liens, the value of the land before the erection of the building, 88 the value of the building and the interest of the petitioner in the premises.

- 89 At December term, 1858, the master filed his report, showing the incumbrances on the land, as follows:

On the trust deed to J. B. Smith, in favor of Mitchell & Co.,	\$6,388 33
“ “ “ “ “ H. N. Hibbard, for C. Martin and 37 others,	22,500 00

The first conveying the one half of lots 5 and 6, block 56; the other the whole of said lots.

- 90 The whole amount of mechanics' liens on said premises is \$17,206 28; and allowing interest of \$1,235 49, making the total \$18,441 79.

The easterly half of said lots was worth	\$4,500 00
The westerly half of said lots was worth	3,000 00
That part of lot seven covered by said building was worth	750 00

Total value of the ground,	\$8,250 00
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The value of the building covering lots 5 and 6,	36,450 00
The value of the building covering lot 7,	7,050 00

Total value of the building,	\$43,500 00
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Amount of Appellee's claim,	\$1,206 35
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Schedule "A" of the master's report contains the testimony of Harvey McLenehan, estimating the cost of the building at \$40,000 to \$45,000.

David Hengst estimates the value of lots 3, 4, 5, in block 51, on the 22d March, 1856, at	\$4,500
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The easterly half of lots 5 and 6, was worth \$150 per foot (30 ft.)	4,500
The westerly " " " " " 100 " "	3,000

Total value of said ground,	\$7,500
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Jesse B. Snyder estimates that part of lot 7 covered by part of said building, to have been worth at the time the building was commenced,

\$750 00

Alexander Smith estimated the cost of the part of the building	
on lots 5 and 6, at	\$35,000
That part on lot 7, at	7,050

Making the total cost, exclusive of the land	\$43,500
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Alexander H. Stone estimates the lots 5 and 6 to have been worth in June, 1856, \$6,000—the half on the street \$4,000, and the other half \$2,000.

95 George Maynard estimates twenty of the signers of said notes to be worth \$476,000.

95 S. D. Clark estimates the lots 5 and 6 to have been worth, at the erection of the hotel, \$9,000—the half adjoining the street was worth \$175 per foot \$5,250.

96 SCHEDULE "B"—The trust deed from J. K. Brewster and wife, to J. B. Smith, dated March 22, 1856, conveying the north-easterly half of lots 5 and 6, in block 56; also, lots 3, 4 and 5, in block 51, in Freeport, to secure to James Mitchell & Co. the payment of \$5,000, and interest at ten per cent. in eight months from the date. Recorded March 26, 1856.

98 SCHEDULE "C."—The trust deed from Brewster and wife, to H. N. Hibbard, dated July 5, 1856, conveying said lots 5 and 6, to secure to John A. Clark the payment of \$15,000 on notes executed by Brewster as principal, and James Mitchell and 37 others as sureties, due August 1st, 1860, September 1st, 1861, and October 1st, 1862, with interest at ten per cent. Recorded September 8, 1856.

100 SCHEDULE "D."—Note to Mitchell & Co. for	\$5,000
Amount due,	6,383 33
Schedule "E"—notes to John A. Clark, for	\$15,000
Amount to be due at maturity,	22,500
Schedule "F"—showing the different suits pending to establish mechanics' liens.	

H. C. Childs, date of contract, July 1, 1856; work completed November 9, 1857. Amount due, \$6,622 64; interest, \$451 43. Total, \$7,073 07.

Thomas Coltman, date of contract July 1, 1856; work completed September 15, 1857; amount due, \$1,882 17; interest, \$145 24. Total, \$2,027 41.

Jay Thomas, date of contract February, 1857; completed November 9, 1857; amount due, \$1,206 35; interest, \$82 03; Total \$1,288 38.

H. H. Upp, date of contract July 1, 1856; completed November 12, 1857; amount due, \$757,93; interest, \$50 78. Total, \$808 71.

101 Dennard Shockley, date of contract July 1, 1856; completed October 15, 1857; amount due, \$585 00; interest, \$40 12. Total, \$625 12.

G. M. Clayton, date of contract February 16, 1857; completed October 16, 1857; amount due, \$1,274 93; interest, \$91 79. Total, \$1,366 72.

J. A. Bigelow, date of contract October 1, 1857; completed November 6, 1857; amount due, \$635 03; interest, \$43 81. Total, \$678 84.

J. B. Hazen, date of contract December, 1856; completed October 7, 1857; amount due, \$128 82; interest, 9 46. Total, \$138 28.

101 J. and R. Clark, date of contract September, 1857; completed November 12, 1857; amount due, \$916 05; interest, \$61 97. Total, \$978 02.

L. Schuerman, date of contract June 1, 1857; completed September 1, 1857; amount due, \$137 50; interest, 10 86. Total, \$148 36.

James Brown, date of contract April 1, 1857; completed September 1, 1857; amount due, \$1,166 62; interest, \$92 16; Total, 1,258 78.

- L. G. Hale, date of contract October 2, 1856; completed August 1, 1857; amount due, \$353 16; interest, \$29 76. Total, \$382 92.
- L. G. Hale, date of contract August 3, 1857; completed October 20, 1857; amount due, \$82 92; interest, 5 88. Total, \$88 80.
- Geo. W. Prickett, date of contract July 23, 1857; completed July 27, 1857; amount due, \$85 00; interest, \$7 22. Total, \$92 22.
- 102 John Schmidt, date of contract June 15, 1857; completed November 15, 1857; amount due, \$120 40; interest, \$8 06. Total, \$128 46.
- Wm. B. Boynton, date of contract May 1, 1856; completed November 15, 1857; amount d.e, \$400 00; interest, \$32 40. Total, \$432 40.
- S. Anstien, date of contract September 8, 1856; completed September 15, 1857; amount due, \$72 41; interest, \$5 57. Total, \$77 98.
- John Wolfinger, date of contract July 10, 1856; completed June 18, 1857; amount due, \$42 37; interest, \$3 75. Total, \$46 12.
- J. Tippery, date of contract September 15, 1856; completed October 1, 1857; amount due, \$79 80; interest, \$7 28. Total, \$87 08.
- A Frick, date of contract May, 1856; completed July 30, 1857; amount due, \$167 42; interest, \$14 06. Total, \$181 48.
- J. S. Emmert, date of contract May 7, 1857, completed October 8, 1857; amount due, \$273 34; interest, \$19 95. Total, \$293 29.
- Freeport G. L. & C. Co., date of contract June 12, 1857; completed August 28, 1857; amount due, \$216 42; interest, \$17 31. Total, \$233 73.
- 103 January 5th, 1859—Appellants filed their exceptions to the master's report.
- 104 January 10, 1859—Defendants, Wilcoxon and others, filed their exceptions to the master's report.
- 106 January 13—Appellants filed additional exceptions to said report.
- 107 January 14—Appellants filed Putnam's affidavit in relation to the proceedings before the master.
- 109 January 17—Appellee filed the affidavits of the master and D. Shockley, in relation to the same matter.
- 113 January 18—Appellants produce and filed as evidence in the cause, the
- 118 trust deed from Brewster to said J. B. Smith, of said lots 5 and 6; also the trust deed from Brewster to L. W. Guiteau, dated October 26, 1857, to secure the payment of \$3,500 to James Mitchell & Co., due on three promissory notes: one for \$1,400, dated August 1st, 1855, and due thirty days after date, one for \$1,000, dated April 8, 1856, due 30 days after date, and one for \$1,100, dated October 26, 1857, and due four months after date; said notes bearing interest at ten per cent., the interest on the first two having been
- 123 paid to February 26, 1858. Also the contract of Brewster in behalf of Holden Putnam and other citizens who had signed said notes as sureties for Brewster, dated July 5, 1856, providing for the appropriation of said \$15,000, and for the indemnity of said sureties.
- 128 The cause was submitted on final hearing upon the petitions, answers and proofs, January 24, 1859, and final decree entered, setting forth that from
- 132 May 1, 1856, to November 15, 1857, said J. K. Brewster was owner of said lots 5 and 6, and part of adjoining lot 7, 20 by 35 feet, in block 56; that the several petitioners contracted with him for work and materials in the construction of a building covering said land, to wit:
- Boynton & Wheelock commenced under their contract May 1, 1856; completed same August 20, 1857; due them January 7, 1858, \$400; previously paid to them \$100.
- 133 Henry C. Childs commenced under his contract July 1, 1856; completed the same November 9, 1857; due him January 7, 1858, \$7,622 64; previously paid to him \$6,094 99

- Frick commenced under his contract May, 1856; completed the same May, 1856; due him January 7, 1858, \$167 42; previously paid to him \$1,263 95.
- Coltman commenced under his contract July 1, 1856; completed the same September 15, 1857; due him January 7, 1858, \$1,882 17; previously paid to him \$2,482 63.
- Upp commenced under his contract July 1, 1856; completed the same November 12, 1857; due him January 7, 1858, \$757 93; previously paid him \$742 07.
- 134 Shockley commenced under his contract July 1, 1856; completed the same October 15, 1857; due him January 7, 1858, \$585 00; previously paid to him \$2,000 00.
- Jay Thomas commenced under his contract February 14, 1857; completed the same November 9, 1857; due him January 7, 1858, \$1,206 35; previously paid to him \$-----
- G. M. Clayton commenced under his contract February 14, 1857; completed the same February 16, 1857; due him January 7, 1858, \$1,274 93; previously paid to him \$969 42.
- 135 Bigelow commenced under his contract October 1, 1857; completed the same November 7, 1857; due him January 7, 1858, \$635 05; previously paid to him \$-----
- Hazen commenced under his contract December, 1856; completed the same October 7, 1857; due him January 7, 1858, \$128 82; previously paid to him \$399 73.
- J. & R. Clark commenced under their contract Sept., 1857; completed the same November 12, 1857; due them January 7, 1858, \$916 00; previously paid to them \$-----
- Scheueman commenced under his contract June 1, 1857; completed the same September 1, 1857; due him January 7, 1858, \$137 50; previously paid to him \$-----
- Brown commenced under his contract April 1, 1857; completed the same September 1, 1857; due him January 7, 1858, \$1,166 62; previously paid to him \$1,495 38.
- 136 L. G. Hale commenced under his contract October 2, 1856; completed the same August 1, 1857; due him January 7, 1858, \$353 16; previously paid to him \$117 56.
- Hale & Towslee commenced under their contract August 3, 1857; completed the same October 20, 1857; due them January 7, 1858, \$82 97; previously paid to them \$-----
- 137 Prickett commenced under his contract July 23, 1857; completed the same July 26, 1857; due to him January 7, 1858, \$85 00; previously paid to him \$-----
- Schmidt commenced under his contract June 15, 1857; completed the same November 15, 1857; due him January 7, 1858, \$120 40; previously paid to him \$-----
- Wolflinger commenced under his contract June 12, 1856; completed the same June 18, 1857; due him January 7, 1858, \$42 37; previously paid to him \$-----
- 138 Tippery commenced under his contract September 17, 1856; completed the same October 1, 1857; due him January 7, 1858, \$79 80; previously paid to him \$-----
- Emmert & Burrill commenced under their contract May 7, 1857; completed the same October 8, 1857; due them January 7, 1858, \$273 34; previously paid to them \$-----
- F. G. L. & C. Co. commenced under their contract June 12, 1857; completed the same August 28, 1857; due them January 7, 1858, \$216 42; previously paid to them \$-----
- 139 That the above named parties have proceeded to establish mechanics' liens against said premises, and that said amounts were due to them with interest from July 7, 1858.
- That said Brewster executed his trust deed of the north-easterly half of said lots 5 and 6, in block 56, and lots 3, 4 and 5, in block 57, March 22, 1856, to J. B. Smith, to secure to James Mitchell & Co., said firm consisting of James Mitchell, Holden Putnam, and Alexander Neely, the sum of \$5,000, and interest at ten per cent, the same being due and unpaid, and when the erection of said building was commenced said ground was worth \$4,500, and the present value of said lots 3, 4 and 5, is \$2,500. That said Brewster executed his trust deed of the whole of said lots 5 and 6, July 5, 1856, to H. N. Hibbard, to secure payment of notes for \$15,000, signed by Brewster as principal and Chancellor Martin and others as sureties, the same being unpaid,
- 141 which trust deed was not recorded until September 8, 1856; and said south-westerly half of said lots 5 and 6 was worth \$3,000 at the time Brewster commenced the erection of said building. The entire value of the ground and building, is \$51,750.
- 142 The north easterly half of lots 5 and 6 is worth \$4,500—the south-easterly half of the same is worth \$3,000, the part of the building covering that ground

is worth \$36,450; that part of said lot 7, occupied by said building, is worth \$7,050, and said part of the building is worth \$750—the whole worth \$7,800.

At the September term of the Stephenson Circuit Court, J. C. Howe and others obtained judgment against said Brewster and others to the amount  
143 of \$3,320 10, on which there now remains unpaid and unsatisfied \$2,171 11.

That said Brewster paid to the other parties in the course of the erection of said Brewster House, the sum of \$2,464, and said petitioners have received in the aggregate, on their contracts, \$16,438 89; the whole amount now due to the petitioners is \$17,206 20. The actual cost of the building was \$36,-  
144 109 17; of the \$2,464 paid to other persons than the petitioners, \$2,064 60 was expended on that part of the building covering lots 5 and 6, and the whole  
145 cost of that part of said building was \$30,257 41. Decree then provides that in default of the payment by Brewster of said respective sums to said petitioners, the Master in chancery shall sell said premises at auction, giving three months' notice by publication in the newspapers in Freeport, and one in Chicago. The master to execute a deed to the purchaser out of the pro-  
146 ceeds of the sale to pay the costs of the several suits, and divide the remainder into four distinct funds: the 1st to consist of 7800-51750; the 2d, 4500-  
146 51750; the 3d of 3000-51750; and the 4th of 36450-51750, the 1st fund to be paid pro rata to the petitioners; out of the 2d fund, (if so large,) \$4,103 to be paid to J. B. Smith in trust for the holders of Brewster's note of March  
147 22, 1856—the balance of said note to be charged on said lots 3, 4 and 5.

Said Brewster's trust deed to L. W. Guiteau of October 26, 1856, was executed with notice to Mitchell & Co., of said trust deed to Hibbard, and with representations of Putnam to the signers of the \$15,000 notes, that their security was ample. The third fund to be paid to H. N. Hibbard in trust for  
148 the holders of said Brewster's notes of June 23, 1856. The \$2,464 paid by Brewster to other parties is to be considered as land; \$2,064 66 of it to be considered as expended on lots 5 and 6, and the balance, \$399 34, on lot 7.  
249 The 206466-3025741 of the 4th fund to be divided equally to Smith & Hibbard, if necessary. The balance of the 4th fund to be distributed pro rata to the several petitioners. If said balance shall be more than sufficient to satisfy their claims, then the remainder to be paid to Hibbard and Smith, so far as be necessary to satisfy said trust. Said Trustees are to have the right  
150 to pay the balance due any of the petitioners, and then to receive from said 4th fund such part of it as the whole amount of the work and materials furnished by such petitioner would have drawn pro rata from said fund.

No notice is to be taken of said judgment creditors, for the reason that the proceeds of said sale are presumed to be insufficient to satisfy prior liens.

151 Order for immediate possession to the purchaser. Appellants except to  
152 the decree and pray an appeal. Order for appeal.

154 The testimony offered by defendants, Thompson Wilcoxon and others.

Alexander Smith testified that the building on lots 5 and 6, was up to the second story September 8, 1856, and was worth \$6,000 or \$7,000, and February 1, 1857, it was worth \$14,000 to \$15,000, independent of the land.

On cross-examination he stated that he estimated the value by the cost.

A. B. Guiteau estimated the value of lots 5 and 6, on 8th September, 1856, at \$5,000 or \$6,000; the work on the building at the same amount. He insured the building at \$5,000.

155 J. B. Johnson should have estimated the lots 5 and 6 at \$4,000 or \$5,000, on 8th September, 1856.

R. H. Gettemy testified that the said lots, September 8, 1856, were worth \$120 to 130 per foot; the foundation was up previous to that time and was worth \$2,000 to \$3,000.

D. Shockley testified that the foundation and part of the brick walls were up before September 8, 1856.

156 The trust deed from Brewster to H. N. Hibbard, dated July 5, 1856, was then offered in evidence,

161 The agreement of Brewster with Holden Putnam and others dated July 5, 1856, was then offered in evidence.

162 S. D. Atkins testified that J. K. Brewster is insolvent, having made an assignment in December, 1857.

L. W. Guiteau testified to the same.

163 Testimony offered by appellants;

The agreement executed by Brewster to Putnam,

164 The trust deed executed by Brewster to J. B. Smith,

170 The record of two judgments in favor of J. C. Howe et al., against Brewster,

172 A deed from L. W. Guiteau to H. Putnam, dated March 26, 1858.

171 L. W. Guiteau testified that he sold the premises described in the deed—lots 3, 4, 5, block 51, as trustee, at auction, to H. Putnam, having advertised the sale as required.

The same was sold subject to incumbrances. This evidence was objected to by appellee.

S. D. Atkins testified that said premises would sell now for \$2,500 to \$3,000; would have sold in 1856 for \$3,000 or \$4,000; not acquainted with the property, and his opinion mere guess-work.

T. De Armit testified that the premises would have brought in 1856, about \$3,500; would not now sell for more than \$2,000.

174 J. W. Shaffer testified that the Howe judgments are not satisfied. An arrangement was made between the parties to give Brewster time to redeem other property bid off by plaintiff Howe, by Brewster paying the prior incumbrance and the amount of the judgments; the amount has not been paid and the time has expired. The incumbrance was about \$3,500, and the property worth about \$4,000 to \$6,000.

George Fullerton testified that he was clerk of Mitchell & Co. while the Brewster House was being erected; that a \$15,000 loan was deposited in their bank and paid out on Brewster's checks on the hotel account. The checks 175 produced in evidence were paid on that account. Witness produced forty-two checks, amounting to \$9,211 12, which were filed and offered in evidence.

183 On cross-examination the witness stated that Brewster kept his hotel account separate; frequently had his own notes discounted; can't say as Childs got any of the money. Appellee objected to the evidence of this witness, and excepted to ruling of the court admitting it.

Errors assigned on the record.

The Circuit Court erred;

1st. In allowing C. Martin and others, sureties for Brewster, to be made parties.

2d. In charging the lien of appellants under the trust deed to J. B. Smith, upon lots 3, 4 and 5 to the exclusion of the subsequent of appellants on said lots.

3d. In limiting the amount of appellants' security on lots 5 and 6, to a sum less than the amount actually due to them.

4th. In ordering the master to sell the premises, execute deeds and distribute the funds without making his report to the court.

5th. In the manner of the distribution of the proceeds of the sale of the premises among the respective parties,

6th. In determining the manner of distribution without regard to the actual amount to be distributed, to be ascertained by a sale of the premises.

7th. In ordering a distribution without bringing the money into Court.

8th. In rendering a final decree before a sale of the premises sought to be charged.

9th. In finding and decreeing an amount in favor of the respective petitioners without proof of their respective claims.

10th. In rendering a decree in favor of the several petitioners without proper and sufficient proofs.

11th. In rendering a decree ambiguous in its terms and impracticable.

JASON MARSH,  
Attorney for Appellants.

In Sup. Court

Ed Mitchell et al.

Jay Thomas

} Error to Stephenson

The said Plaintiffs  
in Error come & move to reinstate  
this cause on the docket, for  
reasons set forth in Affidavit on  
file.

Jason Marsh  
for Plffs—

9  
Mitchell vs  
Thomas

Frid April 27 1862

L. Leland  
Clerk

Motion Overruled



no order was entered in this suit. And this deponent further says that he arrived at Court the present term on Thursday morning of the first week. I found that this suit had been disposed of by dismissing the appeal on the motion of the counsel for the appellee.

This deponent further says that he might have been in attendance at an earlier day but that he was under a misapprehension as to the practice in this Court. He supposed believing that it was not the practice to dismiss cases which were ready for argument during the <sup>first</sup> three ~~first~~ days of the term. And this deponent further says that if he had been so mistaken as to the <sup>said</sup> practice, he would not have supposed it necessary to be particular as to the time of his attendance in respect to this suit, by reason of the said arrangement, & not apprehending that any other disposition would be made of it. This deponent further says that he understands & believes <sup>that</sup> upon the merits in this suit the said Appellants are entitled to have the same reversed, & that the same being dismissed in manner aforesaid is unjust to the rights of said appellants.

Subscribed & sworn to,  
this 29<sup>th</sup> day of April  
A.D. 1862. before  
L. Leland Clark  
J. D. Rice Deputy

Jason Mank

No. 9

Jal. Mitchell et al

vs  
Jas. Thomas

affd

Filed April 29<sup>th</sup> 1862  
L. Leland  
Clerk

State of Missouri }  
La Salle County }

Edward Sidel and being  
duly sworn deposes & says that he <sup>is</sup> ~~was~~  
the attorney of the Appelles attended to  
the case of Mitchell et als vs Joz Thom  
as per the Attorneys who attended to the  
case below. That he knows of no agree-  
ment in this case that the decree appealed  
from should be reversed. The same  
decree has been reversed in the case of  
a writ of error by other parties. This Officer  
confided his views in the case of the writ  
of error, in which case there was a stipu-  
lation that each party ~~shall~~ might appear  
errors, not however by reason of any agree-  
ment to that effect but because the question  
had been decided in other cases by the  
Court. The appeal in this case was  
disrupted when the cause was reached: on  
the first call of the docket, <sup>at this term</sup> by ~~that~~ on a  
motion to that effect made in accordance  
with the intent & spirit of instructions from  
the Court by whom appellants was retained  
& with no knowledge nor belief of any  
agreement or understanding which would have  
<sup>was</sup> been violated by so doing.

Subscribed & sworn before  
me this 27th April 1862

L. Sidel Clerk  
by J. B. Jones

E. Sidel

(over)

The decree in this case having been re-  
versed & the cause remanded in 1860  
as stated in the affidavits in support of the  
motion to set aside the order of dismissal  
the appeal should have been dismissed be-  
cause the decree from which the appeal was  
taken having ceased there was nothing to  
support the appeal & no decree to reverse.  
How can an appeal exist if the decree  
has already been reversed by agreement &  
the cause remanded? If there was any  
stipulation in relation to this case in 1860  
it should have been carried into execution  
in proper time. I fear there is a misappre-  
hension about it on the part of the attorney  
for the appellants. It is only a question of  
costs. & my duty as I understand it requires  
me to issue upon the order of dismissal,  
C. S. Leland  
per Appellee

Mitchell et als  
vs

Thomas

Filed April 29, 1862  
L. Leland  
Clerk

In the Supreme Court

April Term 1839.

James Mitchell &  
Holden Putnam  
Appellants

Jay Thomas.  
Appellee.

Same

as  
Henry C. Childs  
Appellee

Appeal from Stephenson

Same

as  
Thomas Colman

The above entitled causes having been taken by appeal by said Appellants. but being the intention of said appellees to take a writ of Error in said several causes. it is hereby agreed & stipulated between said parties respectively, that the record filed by said Appellants may & shall be taken as for the record in each of the above entitled causes both on the writ of Error & appeal; and it is further stipulated that said Record need not be filed in said Court before the first week in May next. for argument thereof and that the issuing of a writ of Error is hereby waived & said causes may stand for argument on writ of Error in said appellees filing process for such writ; and it is further stipulated that if said appellees prefer they or either of them may file Cross Error on said record. to be argued & considered in said appeal.

April 12. 1859.

General Banks  
Atty for Appellants.  
Sewell + Hubbard  
Atty for Appelles  
Doran Knight  
Atty for Appelles

~~22 55~~  
James Mitchell Esq

"  
Sam Thomas

Stipulators

Filed May 4. 1859  
L. Belmont  
Clerk.

Page

State of Illinois  
Stephenson County

(1)

Pleas before the Hon Benjamin R. Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois at a regular term of the Stephenson County Circuit Court began and held (in pursuance of law) at the Court House in the City of Freeport in the County and Judicial Circuit aforesaid on the first Monday of December in the year of our Lord one thousand eight hundred and fifty seven

10

Present

Hon Benj R. Sheldon Judge  
W. D. Meacham State Atty  
J. Wilson Shaffer Sheriff  
Luther W. Guiteau Clerk

15

Be it Remembered that heretofore to wit: on the 12<sup>th</sup> Day of November A.D. 1854. Jay Thomas by Wmram Bright Esq his attorney comes and files his praecipe as follows to wit:

20

"State of Illinois  
Stephenson County

In the Circuit Court of Stephenson County Illinois of the December Term A.D. 1854.

Jay Thomas

John K. Brewster. James Mitchell.  
Golden Putnam. Alexander Kelly.  
Joseph B. Smith. John A. Clark.  
Daniel S. Brewster. or Homer N. Hibbard

2 Petition for  
2 Mechanic's  
2 Lien

25

The Clerk of the Circuit Clerk will please issue a summons in the above entitled cause for the above named Defendants. Directed to the Sheriff of Stephenson County. and also a summons for Alexander Kelly Directed to the Sheriff of Boone County. returnable according to law

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2

To S. W. Guiteau Clerk (2)  
"Treport Nov 12<sup>th</sup> / 57

W. Bright  
Sol<sup>r</sup> for Compt<sup>t</sup>

35

on the back of which appears the following endorsement to wit: Filed Nov. 12. 1857 S. W. Guiteau Clerk  
Summons

40

"State of Illinois }  
Stephenson County }

The People of the State of Illinois to the Sheriff of said

County - Saying: We command you to summon on John K. Brewster, James Mitchell, Golden Putnam, Alexander Avelly, Joseph B. Smith, John A. Clark, Daniel S. Brewster, & Homer N. Hibbard, if they be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at the Court <sup>House</sup> in the City of Treport in said County on the first Monday in the month of December next to answer unto Jay Thomas in a petition for a mechanic's Lien filed in said Court, and have of on them and there this writ with an endorsement there on in what manner you shall have executed the same

45

50

55

Witness our hand S. W. Guiteau Clerk of our said Circuit Court and the Seal of said Court at Treport in said County this 12<sup>th</sup> day of November A. D. 1857  
S. W. Guiteau Clerk

On the back of which appears the following endorsement to wit: "Served the within Summons, by reading same to & leaving a true copy of it with the within named John K. Brewster, Joseph B. Smith, James Mitchell, Golden Putnam, Homer N. Hibbard, John A. Clark & Daniel S. Brewster, this 25<sup>th</sup> Day of November A. D. 1857, the within named Alexander Avelly not found in my County. J. W. Shaffer Sheriff of Services. 3.50 mileage 1.25 Return. 10. 7 copies. 350 = 8.35.

60

65

3

Sent to Boone  
State of Illinois  
Stephenson County

The People of the State of Illinois  
to the Sheriff of Boone County

70. Greeting: We command you to summon John H. Brewster, James Mitchell, Holden Putnam, Alexander Neely, Joseph P. Smith, John A. Clark, Daniel S. Brown or Homer A. Hibbard if they be found in your county personally to be and appear before the Circuit Court of said Stephenson County on the first day of the next

75. term thereof to be holden at the Court House in the City of Freeport in said County on the first Monday in the month of December next to answer unto Jay Thomas in a petition filed in said Court for a Mechanic's Lien, and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

80. witness Luther W. Guitman Clerk of our said Circuit Court, and the seal of said Court at Freeport in said County this 12<sup>th</sup> Day of November A. D. 1857

85. "Guitman" Attest L. W. Guitman Clerk

On the back of which appears the following endorsement to wit:

"I have served the within summons by reading the same to the within named Alexander Neely also by delivering a copy of the within summons to him this 12<sup>th</sup> Day of November 1857. Fee - Service 50. Copy 50. Mileage 25. Return 10. = \$ 1.35. All of the other Defendants not found in my County. Elias S. Fisdell, Sheriff of Boone County Illinois

95. Cost paid by H. Bright"

And also on said 12<sup>th</sup> Day of November of said Term of said Court comes said Jay Thomas by his said Attorney and files his Petition for a mechanic's Lien in said Court as follows to wit:

100 State of Illinois } In the Circuit Court of Stephen  
Stephenson County } son County of the December  
Term A.D. 1854

To the Honorable Benjamin R. Sheldon Pre-  
siding Judge of the Fourteenth Judicial Circuit  
in the State of Illinois—:

105 The Petition of Jay Thomas  
a Resident of the City of Freeport in the County of  
Stephenson and State of Illinois, respectfully show-  
eth unto your Honor that on the fourteenth day of  
February A.D. 1854 your Petitioner entered into a  
written contract with one John K. Brewster, then  
110 a resident of the same place, a copy of which said  
contract reads as follows—:

Memorandum of agreement made and entered into  
this 14<sup>th</sup> Day of February 1854 by and between Jay  
Thomas and J. K. Brewster both of the City of Free-  
115 port and State of Illinois. Witnesseth: That the said  
Thomas hereby agrees for and in consideration  
of the sum of money hereinafter mentioned to be kept  
and performed by the said Brewster, to furnish  
all and every material such as lime, sand, hair,  
120 laths, nails, and plaster of Paris, and to lath and  
plaster the Hotel Building belonging to said Brewster  
now in process of completion, situated on lots five  
six and seven (5, 6, & 7) in Block fifty six (56) in  
125 the said City of Freeport. The material used to be of  
the best quality which can be procured in this vicin-  
ity, and the work to be done by good and compe-  
tent workmen, with two coats of plaster as usu-  
ally put on, and finished with a third coat

130

D.

containing plaster of paris. constituting what is known as hard finish. The laths to be used on such walls and partitions only as the said Brewster may direct. The said Thomas is to construct and put up of the best materials and in

135

the best manner all stucco or plaster cornices and center pieces, and in such places in said building as the said Brewster may direct. The whole work to be finished by the first day of July next but no plastering is to be done when the weather is so cold as to be unsuitable for making good work-

140

The said Brewster on his part agrees in consideration of the material to be furnished and labor to be done by the said Thomas as herein mentioned to pay the said Thomas for each and every

145

yard square of such plastering done on lath the sum of twenty five cents, and for each and every yard square when done on the brick or stone wall the sum of twenty cents, and for all cornices and center pieces the said Brewster shall pay

150

the usual price paid for like work when done in connection with the other work mentioned in this article. Payment to be made to the said Thomas as the work progresses

Witness. Notarius Doro

Jay Thomas  
John H. Brewster

155

Your Petitioner further sheweth unto your Honor that on the 14<sup>th</sup> day of February A.D. 1854 it being the date of the said written contract between your petitioner and the said Brewster, the said John H. Brewster was the owner in fee of the following described property, to wit: Lot number five six and seven (5.6.7) in Block Number fifty six (56) in the City of Freeport in the County of Stephenson and State of Illinois:-

160

And your Petitioner further sheweth unto your Honor, That at the time of

No the making of the written contract as aforesaid. it  
 165 was by the terms of said contract agreed between  
 your Petitioner and the said John K. Brewster  
 that the materials contracted to be furnished and  
 the labor contracted to be done should be furnished  
 and done in and upon a Brick Stable then and  
 170 at that time. the time of the making of the said  
 contract. under process of completion and erection  
 upon the land described as follows:— Lots five and  
 six (5+6) and twenty (20) feet of lot seven (7) more  
 particularly described as follows: Commencing at  
 175 the North Easterly corner of said lot Number seven  
 (7) and running thence Westward on the Northwardly  
 line of said lot seven. and on Bridge Street twenty  
 (20) feet. thence in a Southeastly direction and  
 parallel with the Easterly line of said lot seven (7)  
 180 thirty five (35) feet. thence Easterly parallel with the  
 Northwardly line of said lot seven (7) twenty (20) feet:  
 thence Northwardly on and along the Easterly line  
 of said lot seven (7) thirty five (35) feet to the place  
 of beginning. all of said lots and land. being  
 185 and lying in the city of Freeport in the County  
 of Stephenson and State of Illinois: it being a  
 part of the same property described in said  
 written contract. And your Petitioner further  
 sheweth unto your Honor that in pursuance  
 190 of the said written contract as aforesaid.  
 and of said understanding as herein before  
 set forth. Your Petitioner proceeded to furnish  
 the materials and to do the work and labor in  
 said contract named on the foregoing land  
 195 in this your Petitioner's Petition described as  
 belonging to the said John K. Brewster as aforesaid.  
 and in accordance with the terms of said  
 contract and understanding. and at the special  
 instance and request of the said John  
 200 K. Brewster

(7)

7

205

That your Petitioner furnished and delivered on said land for the purpose of fulfilling and complying with the said contract on his part, the necessary lime sand, hair, laths, Nails, plaster of paris, and labor in said Hotel Building erected on said land as fast as the said Brewster was willing and ready to receive the work and labor materials of your Petitioner as aforesaid

210

Your Petitioner further sheweth unto your Honor, That in the month of February A. D. 1887 your Petitioner commenced to furnish the materials, and to do the labor and work in said Building on said land in pursuance of the terms of said contract and continued

215

to furnish the materials and to do the work and labor as fast as the said Brewster could get said Hotel Building in a condition to receive the materials and labor furnished by your Petitioner as aforesaid, and as fast as

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the said Brewster was ready and willing to receive the materials and labor of your Petitioner as aforesaid

225

Your Petitioner further sheweth unto your Honor, That in pursuance of the terms of said contract, your Petitioner proceeded as aforesaid, to furnish and did furnish all the necessary materials, such as lime, sand, hair, laths, nails, plaster of paris, and labor, and completed the work as follows to wit:

230

14600 yards square of plastering on lath work at the rate of twenty five cents per yard \$3650.00  
1845 yards square of plastering on brick and stone at the rate of twenty cents per yard

309.00

J

- 235 A small cornice consisting of four hundred and fifty seven feet at the rate of one Dollar per foot ~~~~~ \$457.00
- 917 feet of large cornice at the rate of one Dollar and twenty five cents per foot ~~~~~ \$1146.25
- 240 Two large centers with a wreath at Thirty Dollars a piece ~~~~~ \$ 60.00
- Four center pieces with wreaths at the rate of ten Dollars a piece ~~~~~ \$ 40.00
- Three center pieces without wreaths at the rate of six Dollars a piece ~~~~~ \$ 18.00
- 245 Seven Round center circles with a bead in the center at six Dollars a piece ~~~~~ \$ 42.00
- One Arch fifteen Dollars ~~~~~ \$ 15.00.
- Two Bracketts to support arch at the rate of eight Dollars a piece ~~~~~ \$ 16.00
- 250 Four panels worth three Dollars a piece ~~~~~ \$ 12.00

Your Petitioner further sheweth unto your Honor, That the materials and the work and labor in the foregoing Bill were furnished and done by your Petitioner to and for the said John H. Brewster upon said Hotel Building situated as aforesaid on said Land, in pursuance of the terms of the said written contract herein before set forth, and that the same amount in the aggregate to the sum of five Thousand Seven hundred and sixty five Dollars and twenty five cents and that said sum of money was due and owing to your Petitioner from the said Brewster on the Ninth day of November A. D. 1857, and that the same remains <sup>now</sup> due and unpaid

265 Your Petitioner further sheweth unto your Honor, That your <sup>Petitioner</sup> was to furnish said materials, and to do said labor by the first day

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 of July if practicable, or before the weather became so cold as to interfere with plastering work, and that said materials were furnished and said work completed on or before the 26<sup>th</sup> day of August A. D. 1854, with the exception of about one half days work which was done on the 9<sup>th</sup> November A. D. 1854.

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Your Petitioner further sheweth unto your Honor, that the said John K. Brewster was the owner of said land at the time of the commencement of the performance of said contract and at the time of the making of said contract and at the time of <sup>the</sup> furnishing of the materials and the completing of the work by your Petitioner as aforesaid—

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Your Petitioner further sheweth unto your Honor, that on the 22<sup>nd</sup> day of March A. D. 1856 the said John K. Brewster (to whom with Joseph B. Smith, James Mitchell, Holden Putnam, and Alexander Neely your Petitioner prays to be

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made Defendant to this his Petition) and Emily L. Brewster his wife executed and delivered to Joseph B. Smith as Trustee for James Mitchell also a Deed of Trust to secure the sum of five

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Thousand Dollars upon said Lots five and six (5 & 6) in Block fifty six (56) as <sup>in</sup> the said Deed described reference thereto had, a part of the foregoing described tract of land in this your Petitioner's

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Petition mentioned and described, and upon lots three four and five (3, 4 & 5) in Block fifty one (51) in said City County and State aforesaid, and that the said Brewster had not at that time commenced the erection of the said Hotel Building upon said Land as aforesaid, and that said Deed bears date at a time prior to any improvements that have been made upon said Land

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and about eleven months prior to the making of

100 the contract between the said John K. Brewster and your Petitioner, and that said Deed was filed for Record in the Office of the Clerk of the Circuit Court of Stephenson County Illinois, on  
 305 the 26<sup>th</sup> Day of March A.D. 1856. and to which Record your Petitioner begs leave to refer and to make proof thereof as this Honorable Court shall direct

310 Your Petitioner further sheweth unto your Honor. That on the 5<sup>th</sup> day of July A.D. 1856 the said John K. Brewster and Emily S. Brewster his wife made, executed and delivered to Homer N. Hibbard as Trustee for John A. Black  
 315 cestui que trust. whom your Petitioner prays to be also made Defendants to this his petition, a Trust Deed on Lots five & six (5 & 6) in Block  
 Fifty six (56) a part of said Land upon which said Hotel Building is erected & to secure the  
 320 payment of fifteen Thousand Dollars. and that said Deed was filed for Record in the Office of the Clerk of the Circuit Court of Stephenson  
 County Illinois September 8<sup>th</sup> A.D. 1856. and to which Record your Petitioner begs leave to refer and to  
 make such proof thereof as this Honorable Court shall direct-

325 Your Petitioner further sheweth unto your Honor, that the said John K. Brewster and Emily S. Brewster his wife, did on the fourth day of November A.D. 1854. make  
 execute acknowledge and deliver to John A. Black and Daniel S. Brewster, whom your Pe-  
 330 titioner also prays to be made Defendants to this his petition- a Deed of assignment for the benefit of the creditors of the said John K. Brewster, and assigned the Land described  
 335 in the contract in writing made with your Petitioner as aforesaid and also described

in this your Petitioners petition, and which terms of said assignment. Your petitioner absolutely refuses to accept or become liable to or a party thereto.

Your Petitioner further sheweth unto your Honor, That said Deed of assignment was filed for Record on the 5<sup>th</sup> day of November A.D. 1854 in the office of the Clerk of the Circuit Court of Stephenson County Illinois, and to which your Petitioner begs leave to refer and make such proof thereof as your Honor shall direct.

Your Petitioner further sheweth unto your Honor, That the said sum of money to wit: the sum of five Thousand seven hundred and sixty five dollars and twenty five cents was due to your Petitioner on the Ninth day of November A.D. 1854, and that the same is now due and unpaid -

Your Petitioner, therefore prays that the Trust Deed from John K. Brewster, and Emily L. Brewster, his wife to Joseph B. Smith, Trustee for James Mitchell & Co to secure the said sum of five Thousand Dollars as aforesaid, shall only extend to such an interest in the said which is described in said Deed and upon which said Hotel Building is erected as was the value of the said Land at the time of the making of the contract by the said John K. Brewster with your Petitioner, and also in proportion to the interest which the said Deed of Trust covers in other Lands, taking the valuation at the time of the making of the said contract as aforesaid, of all the said Land described in said Deed of Trust, and upon which said Lands the said Trust Deed is a lien or incumbrance -

Your Petitioner also prays, That

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the Trust Deed. from John K. Brewster and Emily  
D. Brewster his wife to Homer A. Hibbard Trust-  
ee. and for John A. Clark cestui que Trust

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to secure the sum of fifteen Thousand Dollars  
as aforesaid shall only extend to such an inter-  
est in the Land in said Trust Deed described  
and upon which said Hotel Building is erected.

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to wit: Lots five and six (5 & 6) in Block Number  
fifty six (56) in the City of Aledo, Stephenson  
County Illinois, as was the value of the said Land  
at the time of the making of the contract between  
your Petitioner and the said John K. Brewster  
as aforesaid, & that both of the said Trust Deeds

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be so far set aside as not to interfere with the  
lien of your Petitioner upon said Hotel Build-  
ing as aforesaid, and that your petitioner may  
have a full entire and perfect lien upon said  
Land & Hotel Building in preference to said  
Trust Deeds and to the extent of your Petition-  
er's claim, and that your Petitioner may have a

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Special Execution awarded for the sale of <sup>the</sup> said  
Hotel Building, and for the Land upon which  
it is erected, and that your petitioner may have  
such further or such other relief, as the nature  
of his case shall require, and as shall be agree-

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able to Equity

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may it please your Honor to  
grant unto your Petitioner a writ of Summons  
issuing out of, and under the seal of this Hon-  
orable Court, directed to the said John K. Brewster  
Joseph B. Smith, James Mitchell, Holden Putnam,  
Alexander Kelly, Homer A. Hibbard, John A. Clark  
and Daniel S. Brewster, commanding them and  
each of them by a certain day and under a  
certain penalty, to be therein inserted, to be and

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appear before your Honor, <sup>and then</sup> and there to answer

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the premises. and further to stand to and abide such order and Decree herein as shall be agreeable to Equity and good conscience. And your Petitioner will ever pray &c

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"W. Bright. Sol for Compt & Jay Thomas"

On the Back of which Petition appears the following endorsement to wit: "Filed November 12. 1857. S. W. Brittan. Clk."

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And afterwards to wit: on the 19th day of December <sup>A. D. 1857</sup> next of said December Term of said Court the following entry appears of Record in this cause to wit:

Jay Thomas

vs  
John H. Brewster et al

} Petition for Mechanic's Lien "

And now came the said

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Defendants by their Attorney and file the answers "of Honor A. Hibbard and Joseph B. Smith herein."

Answer of Hibbard

In Steph Leo kin Court - The separate answer of Honor A. Hibbard Defendant to the petition of Jay Thomas against this Defendant & John H. Brewster. James Mitchell. Holden Peterman. Alexander Kelly. Joseph B. Smith. John A. Clark. and Daniel S. Brewster.

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This Defendant saving and reserving to himself all & all manner of benefit & advantage by reason of the imperfection or insufficiency of the petition of the said Plaintiffs. for answer therunto or to so much thereof as is material for him to make answer unto says

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That on the said fifth day of July A. D. 1856. the said John H. Brewster was answer in fee simple as this

- 335 Defendant is informed & believes of the said premises mentioned in said Petition & being desirous then & there to make a loan of money to the amount of fifteen Thousand Dollars. the said John K. Brewster then made & extended his Deed of Trust or mortgage to this Defendant as set forth in
- 340 said petition for the purpose of securing the payment of the aforesaid sum thus loaned by him as aforesaid. together with the interest thereof at the rate of ten per cent per annum. And this Defendant further answering says that at the time of executing said Deed of Trust as aforesaid the said John K. Brewster executed his three promissory Notes as principal, with James Mitchell, Chancellor Martin, Henry Strohm, W. H. Penniman, John Black, J. O. Taylor, Jared Shutz, Thompson
- 345 Nicolson, John Coates, Hiram Bright, John Hobel, S. M. Clayton, Francis Foley, A. W. Rice, A. T. Green, J. C. Stoneman, Thomas Colton, John P. Byrly, Wm M. Buckley, John S. Emmert, Helder Putnam, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle,
- 350 A. B. Hunt, Charles Rosenstil, Hollis Jewell, G. P. Köhler, James B. Childs, Geo Purinton, Geo J. Turner, M. Hettinger, O. Taylor, E. H. Hyde, J. Reizard, F. W. S. Brawley, and Rudolph Brubaker, as sureties, for the aforesaid sum of fifteen thousand
- 360 dollars payable to the order of John A. Clark to wit: one Note for five thousand dollars dated June 2<sup>nd</sup> A. D. 1856. due on August 1<sup>st</sup> A. D. 1860 with interest at the rate of ten per cent per annum on and after August 1<sup>st</sup> A. D. 1856. & one Note for
- 365 five thousand dollars dated on the said 2<sup>nd</sup> day of June A. D. 1856. due on September 1<sup>st</sup> A. D. 1861 with interest at the rate of ten per cent per annum on and after September 1<sup>st</sup> A. D. 1856. And also one Note for five thousand dollars dated on the
- 370 said 2<sup>nd</sup> June A. D. 1856 due on October 1<sup>st</sup> A. D.

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1862 with interest at the rate of ten per cent per annum. on and after October 1<sup>st</sup> A. D. 1856 - interest payable semi annually on all of said Notes which said Notes were executed upon the terms and conditions and for the purposes as set forth in said petition - And this Defendant avers and claims as he is informed and believes, that the said several Notes remain unpaid, and that there is still a valid and subsisting indebtedness upon said Notes, secured by said Deed of Trust or mortgages to the amount of fifteen Thousand six hundred and eighty seven dollars and forty eight cents for which sum he claims the benefit of said Deed of Trust or Mortgages as a prior Lien and incumbrance upon said premises specified in said Deed in advance & preference to any claim right or interest of said Plaintiff by reason of anything set forth in said petition -

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And this Defendant further answering denies according to the best of his information & belief that there remains due to said Plaintiff from said John K. Brewster, more than about one Thousand Dollars & because of the uncertainty of his information & belief, the said Defendant submits the matter to proof to be made by said Plaintiff -

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And this Defendant further answering denies that whatever amount shall be found to be due from said John K. Brewster to said Plaintiff ought to become a Lien upon that part of the premises mentioned in said petition which is contained in said Defendants said Deed of Trust, because the said work & materials were done & furnished in the course of the construction of the entire Building called the Brewster House, which is one entire structure

incapable of division or separation into parts  
 & which from the commencement of the erection  
 thereof and as it now remains, covers & occupies  
 the whole of the ground mentioned in said peti-  
 tion

And this Defendant further answering  
 avers & insists that according to his information  
 & belief at the time said plaintiff & said John K.  
 Brewster made said contract in said Petition  
 set forth, the said premises described in & conveyed  
 by said Deed of Trust were occupied by the founda-  
 tion basement & superstructure walls of said  
 Brewster House for the construction of which  
 a large sum of money had been expended by said  
 J. K. Brewster, whereby said premises so included  
 in said Deed of Trust were & still are of sufficient  
 value over & above the increased value thereof by  
 reason of any improvements made thereon by  
 said Plaintiff for which he may be entitled to have  
 lien as aforesaid, & over & above a prior incum-  
 brance upon a part of said premises in favor of  
 Joseph B. Smith under & by virtue of said Deed  
 of Trust mentioned in said Plaintiff's said Petition,  
 to pay and satisfy the said indebtedness, claim &  
 incumbrance of this Defendant against & upon said  
 premises under & by virtue of this Defendant's said  
 Deed of Trust. And this Defendant claims & insists that  
 if any sum shall be <sup>found</sup> due to said plaintiff as aforesaid  
 & that the same shall be decreed to be & become a  
 Lien on any part of said premises.

And then such Lien shall be made sub-  
 ject to the rights & interest of this Defendant & to  
 the full payment and satisfaction of the said  
 sums specified in said several promissory notes  
 and so secured by said deed of Trust from and  
 out of the said premises, described and included in

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Said Deed of Trust, and that this Defendant shall be Decreed to have the entire benefit of the value of said premises up to and at the time of said plaintiffs said contract, so far as the same may be necessary to pay and satisfy said claim.

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And for a further answer this Defendant avers and insists that his said incumbrance under and by virtue of his said Deed of Trust is a just and lawful Lien upon said premises described therein to the full extent of the value thereof at the time of the making of the said contract in the said petition mentioned, and also to the full extent of the value of the appurtenances and improvements

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thereunto pertaining at the time of the accruing of any indebtedness claimed in and by said Petition, and this Defendant denies that said Plaintiff is entitled to the benefit of a Lien upon said premises as claimed in said Petition to the injury or hindrance of this Defendants said claim, other than so far as the said materials or labor furnished or done by said Plaintiff may have increased the value of said premises.

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And this Defendant further answering avers and insists that a large part of the said Brewster House has been erected upon, and now occupies other ground than that named and described in said Deed of Trust, to wit: all that part of the premises described in said Petition as being a part of

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Lot No seven, and said House was so constructed as to be one entire structure as aforesaid, and the labor and materials so done and furnished by said Plaintiff is aforesaid, were equally used and appropriated to the construction of said part of said Building so situated upon Lot seven as aforesaid.

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And this Defendant avers and insists that whatever Lien shall be Decreed in favor of said Plaintiff, shall first be paid and satisfied from and out of that part of said premises designated as part of Lot seven as aforesaid, and

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that this Defendant may be Decreed to make and satisfy his said claim from and out of all the remaining part of said premises described as being Lots five and six

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All of which this Defendant is ready to aver and prove as this Court shall direct  
Jason Marsh Sol<sup>r</sup> H. N. Hibbard

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Homer A. Hibbard the above named Defendant personally appeared before me this 19<sup>th</sup> day of December A. D. 1854. and made oath that he had read the foregoing answer by him subscribed and that the same is true except such part as is stated upon his information and belief and as to that part he believes it to be true  
L. W. Guiteau Clerk H. N. Hibbard

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On the back of which answer appears the following endorsement. To wit: "Filed Dec<sup>r</sup> 19. 1854. L. W. Guiteau Clerk"

Steph Cir Court of Dyer Term 1857

Jay Thomas

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Mech Sien

Jos P. Smith & Co.

It is hereby stipulated that the answers of Joseph P. Smith & Homer A. Hibbard filed in this suit shall be taken & considered as being in each of the suits against the same parties for Mech Sien so far as to present in each case the questions embodied in said answers Dated Dyer 17. 1857. — Jason Marsh

Atty for Defts  
Provided however that said Plaintiff's by this stipulation make no admission of the sufficiency or correctness of said answers. It being intended only to allow said answers to be used in each case to save the labor of writing similar ones in each suit.

Jan 5<sup>th</sup> 1854

Jason Marsh  
Jay Thomas  
Johnathan Tippery by  
W. Bright their Atty  
M. P. Sweet  
Chas. Letts  
C. Bright Smith  
Atty for Christian & Wolfinger  
S. D. Atkins

It is hereby stipulated and agreed by and between the attorneys in this and the other causes pending in the Circuit Court of Stephenson County for a Mechanics Lien against John K. Brewster and others that the Replication in the within named cause shall stand and be taken as a replication to all the other causes.

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M. P. Sweet, Hiram Bright  
Jason Marsh, Atty for Smith & Hibbard  
C. Bright Smith Atty for Wolfinger & Christian  
On the back of which appears the following endorsement to wit:  
"Filed December 9. 1857 - S. M. Linton clk"

In the Court of  
 In the County of Cook

The separate answer of Joseph B. Smith Defendant to the Petition of Jay Thomas against this Defendant & John H. Brewster, James Mitchell, William Putnam, Alexander Neely, Homer A. Hibbard, John A. Clark & Daniel C. Brewster—

This Defendant saving and reserving to himself all and all manner of benefit and advantage by reason of the imperfection or insufficiency of the petition of the said Plaintiff for answer thereto, or to so much thereof as is material for him to make answer unto says,

That on the <sup>said</sup> twenty second day of March A. D. 1856, the said John H. Brewster was accused in fee simple of the said premises mentioned in said Petition and being desirous then and there to make a loan of money to the amount of five Thousand Dollars, the said John H. Brewster then made and executed his Deed of Trust or Mortgage to this Defendant as set forth in said Petition for the purpose of securing the payment of the aforesaid sum thus loaned by him as aforesaid together with the interest thereof at the rate of ten per cent per annum. And this Defendant further answering says that at the time of executing said Deed of Trust as aforesaid, the said John H. Brewster executed his promissory Note for the aforesaid sum of five Thousand Dollars upon the terms and conditions and for the purposes as set forth in said petition

And this Defendant avers and claims as he is informed and believes, that the said Note remains unpaid, and that there is now due

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on said note the sum of Five Thousand Eight Hundred and Sixty Eight <sup>03</sup>/<sub>100</sub> Dollars. for which sum this Defendant claims the benefit of said Mortgage or Deed of Trust as a prior lien and in embrace upon said premises specified in said Deed in advance and preference to any claim right or interest of said plaintiff by reason of any thing set forth in said petition.

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And this Defendant further answering denies according to the best of his information and belief that there remains due to said Plaintiff from said John H. Brewster more than about one Thousand Dollars. and because of the uncertainty of his information and belief the said Defendant submits the matter to proof to be made by said Plaintiff

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And this Defendant further answering denies that whatever amount shall be proved to be due from said John H. Brewster to said Plaintiff ought to become a lien upon that part of the premises mentioned in said petition which is contained in said Defendant's said Deed of Trust. because the said work and materials were done and furnished in the course of the construction of the entire Building called the Brewster House. which is one entire structure incapable of division or separation into parts and which from the commencement of the erection thereof and as it now remains covers and occupies the whole of the ground mentioned in said petition

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And this Defendant further answering avers and insists that according to his information and belief at the time said Plaintiff and said John H. Brewster made said contract in said petition set forth. the said premises des-

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cribed in and conveyed by said Deed of Trust were occupied by the foundation basement and superstructure walls of said Brewster house for the construction of which a large sum of money had been expended by said John K. Brewster, whereby said premises were and still are of sufficient value over and above the increased value thereof by reason of any improvements made thereon by said plaintiff to pay and satisfy the said claim of this Defendant

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And this Defendant claims and insists that if any sum shall be found due to said Plaintiff as aforesaid, and that the same shall be decreed to be and become a lien on any part of said premises, that then such lien shall be made subject to the rights and interest of this Defendant and to the full payment and satisfaction of the said sum so secured by said Deed of Trust as aforesaid from and out of that part of said premises specified in said Deed of Trust

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And for further answer this Defendant says and insists that if any sum shall be found due as aforesaid, then said Plaintiff shall be decreed to have his lien if any upon that part of said premises covered and occupied by said Brewster house which is not embraced in said Defendant said Deed of Trust—

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All of which this Defendant is ready to avow and prove as this Court shall direct &c

Jason Marsh Sol<sup>r</sup>? Joseph B. Smith

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Joseph B. Smith the above named Defendant personally appeared before me this 17<sup>th</sup> Day of Decr A.D. 1857 and made oath that he had read the foregoing answer by him subscribed and that the same is true, except such part as is

stated upon his knowledge and belief and as to that part he believes it to be true sworn to and subscribed Joseph B. Smith before me this 17<sup>th</sup> December

595 "1854. John A. Clark Notary Public"

On the Book of which answer is the following endorsement writ: "Filed Dec 19. 1854. S. W. Whitman clk"

600 And afterwards writ: on the 4<sup>th</sup> day of January A. D. 1858. as yet of said December Term of said Court the following entry appears of Record in this cause writ:

"Jay Thomas  
John K. Brewster  
Joseph B. Smith & others  
3 1st for mech<sup>l</sup> Lien"

605 And now came the said Petitioner by his Attorney and files his Replication to the answers of <sup>Defendants</sup> "Hobner N. Hibbard and Joseph B. Smith"

Jay Thomas  
John K. Brewster Et al  
2 In the Circuit Court of  
2 Stephenson County Illinois  
3 of the December term A. D. 1854.  
In Chancery. No 179

610 The Replication of Jay Thomas complainant to the answers of Hobner N. Hibbard and Joseph B. Smith. Defendants

615 This Repliant saving and reserving to himself now and at all times here after. all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers for Replication thereunto - says

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that he will now maintain and prove his Bill of complaint to be true. certain and sufficient in the law to be answered unto, and that the said answers of the said Defendants are uncertain, untrue and insufficient to be replied unto by this Repliant without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided transcended or denied, is true. all which matters and things this Repliant is and will be ready to aver maintain and prove, as this honorable Court shall direct, and humbly prays as in and by his said Bill he has already prayed.

" 16. Bright Sol. for Compt "

On the back of which appears the following endorsement to wit: "Filed Jan 14. 1858. L. W. Brittan Clerk"

And on the same day of said December term of said Court the following entry appears of Record in this cause to wit:

Jay Thomas  
vs  
John H. Brewster Et al } Petition for Wreck Lien

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And now at this day came the said Petitioner by his Attorney and moves the Court for Judgment by Default against Defendants Alex and/or Arley, John H. Brewster, James Mitchell, Holden Putnam Daniel S. Brewster, and John A. Clark, and it appearing to the Court that the said Defendants have been duly served with process

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and the said Defendants having been each severally three times solemnly called, came not but made default. It is considered and ordered by the Court that the said petition be "taken as confessed," <sup>as</sup> against them."

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And afterwards to wit: on the 6<sup>th</sup> day of January A. D. 1858 as yet of said December term of said Court the following entry appears of Record in this cause to wit:

"Jay Thomas

vs

John K. Brewster Et. al

} Petition for Mech<sup>o</sup> Lien"

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And now at this day came the said parties with their attorneys and waive the intervention of a jury and for trial submit to the judgment of the Court and the said Defendant John K. Brewster by Jason Marsh Esq. his Attorney comes and submits to the Court to assess the amount due "to said plaintiff"

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And afterwards to wit: on the 12<sup>th</sup> day of January A. D. 1858 as yet of said December term of said Court. the following entry appears of Record in this cause to wit:

Jay Thomas

vs

John K. Brewster Et. al

} Pet for Mech<sup>o</sup> Lien

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On the petition on file verified by affidavit of Chancellor Martin Henry Stohm. Henry B. Penniman, John Black, John C. Taylor, Jared Schutz, Thompson Wilcoxon, John Coates, William Bright, John Hoable, J. M.

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Clayton. Asahel W. Rice. Abraham P. Green.

James C. Sturmon. Thomas Colterman. John P.

Dyckly. William M. Buckley. John S. Emmert.

Silas D. Clark. John Wade. Jesse B. Snyder.

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Tobias Engle. A. Cameron Hunt. Charles Ro-  
amott. Hollis Jewell. Frederick P. Köhler.

James B. Childs. George Parmiton. Thomas J.

Turner. Matthias Hettinger. Oscar Taylor. E.

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Howard Hyde. J. Reigart. Francis W. S. Braswell,  
and Rudolph Boediker. It is considered andordered by the court. That said Petitioners  
be admitted as parties to this suit. and also  
that they be admitted as parties in all other  
suits now pending in this court upon petitions

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for mechanics liens. wherein John C. Brewster.

Joseph B. Smith. Homer N. Hibbard. James Mitch-  
ell. Holden Putnam. Alexander Peily. John A.Clark. and Daniel S. Brewster are parties Depen-  
dants. And it is further ordered that said Peti-

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tioners file their Bills or answers by to-morrow af-  
ternoon.

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(26)  
 For The Stephenson County Circuit  
 Court of the December term A.D. 1857.

The petition of Chancellors Martin, Henry Strohm,  
 Henry H. Penniman, John Bloep, John C. Taylor, Jurisd.  
 Shultz, Thompson Nicosen, John Coates, Wiram Bright,  
 700 John Koebel, J. M. Clayton, Asahel W. Rice, Abraham  
 F. Green, Isaac C. Stoneman, Thomas Beltman, John  
 P. Ryerly, William M. Buckley, John S. Emert, Silas D.  
 Clark, John Wade, Jesse B. Snyder, Tobias Eagle,  
 A. Cameron Hunt, Charles Rosenstiel, Hollis Jewell,  
 705 Friedrich P. Köhler, James B. Childs, George Purington,  
 Thomas J. Turner, Matthias Bettinger, Caesar Taylor,  
 S. Howard Hyde, J. Reigart, Francis M. S. Bradley,  
 and Rudolph Baediker, respectfully sheweth  
 That heretofore to-wit: on the Twenty Third day  
 710 of June in the year of our Lord One Thousand  
 Eight hundred and Fifty six at Stephenson  
 County, John K. Brewster made his three certain  
 promissory Notes in writing for five Thousand  
 Dollars each payable to the order of John A. Clark  
 715 One of said Notes payable on the first day of  
 August A. D. 1860 with interest at the rate of  
 ten per cent payable semi-annually from and  
 after the first day of August A. D. 1856.  
 Another of said Notes payable on the first day  
 720 of September A. D. 1861, with interest at the rate of  
 ten per cent semi-annually from and after the  
 first day of September A. D. 1856. And one of  
 said Notes payable on the first day of October  
 A. D. 1862, with interest at the rate of ten per cent  
 725 payable semi-annually from and after the first  
 day of October A. D. 1856. That to secure the payment  
 of said three promissory, with the interest which  
 might accrue thereon at the times and in the  
 manner aforesaid, the said John K. Brewster,  
 730 and Emily S. his wife, executed on the fifth day

of July A.D. 1856. and delivered to one Homer  
 A. Bibbald a Deed of Trust on Lots Number five  
 and six (5 & 6) in Block Number Fifty Six (56) in  
 the City of Newport. conditioned that if default  
 735 should be made in the payment of said promiss-  
 ory Notes or any or either of them or any part  
 thereof that said Trustee should sell said Lots  
 or so much or such part thereof as might be  
 740 necessary to pay said Notes and interest or any  
 balances thereof which might remain unpaid.  
 That at the time of the Execution of said Notes  
 and Deed of Trust. said John K. Brewster was  
 engaged in building a Hotel on said. or said  
 745 Lots. and was in need of money to carry on the  
 building thereof. That said Notes and Deed of  
 Trust were executed in pursuance of an agreement  
 before that time made with your petitioners and  
 others as herein after mentioned. for the purpose  
 of raising funds in the East. to enable said John  
 750 K. Brewster to build the Hotel aforesaid. That in  
 order to make said Notes negotiable in the East.  
 and in pursuance of the agreement aforesaid.  
 your Petitioners together with James Mitchell and  
 Holden Putnam. who are now parties to the suits  
 755 herein after mentioned. and Francis Foley since  
 deceased signed said Three promissory Notes  
 as security for John K. Brewster. and to enable  
 him to get money to carry on the Building of said  
 Hotel. That James Mitchell & Co were the agents through  
 760 whom it was agreed the money should be raised  
 on said promissory Notes. That said James  
 Mitchell & Co agreed to raise the money on said  
 Notes and for that purpose the Notes were deliv-  
 ered to them. That Holden Putnam one of the part-  
 765 ners in the firm of James Mitchell and Com-  
 pany was the active agent in procuring the  
 signatures of your Petitioners to said Three

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(28)  
promissory Notes. That in order to get your Petitioners to sign said Notes he stated to some of your Petitioners, that said Lots five and six in Block Fifty six were clear of all incumbrance and to others of your Petitioners. That James Mitchell has held a Deed of Trust (the Deed of Trust mentioned in the suit hereinafter mentioned on part of said Lots but that it should be released before said Notes should be negotiated and no part of their claim made from the sale of said Lots or any part thereof. That your Petitioners were induced to sign said Notes mainly upon the declaration of said Holden Putnam that said Lots were clear of incumbrances, and that James Mitchell also would release their claim to said Lots under their Deed of Trust before said Notes should pass out of their hands, and that they would not make any part of their Debt out of said Lots or any part thereof.

And your Petitioners further show. That before they would sign said Notes the said Holden Putnam assured your Petitioners that the Notes should not be negotiated or pass out of his hands until the Lots aforesaid were clear of all incumbrance. That he would not let the Notes go out of his hands till he knew the property to be clear of all incumbrance, and that there should be forty Names on said Notes, and it was upon these assurances alone and the confidence they reposed in the declaration of said Holden Putnam that your Petitioners were induced to sign said Notes. That the Deed of Trust made by John K. Brewster to Thomas A. Hibbard was made for the purpose of securing and indemnifying the securities on said Notes against ultimate loss by reason of their signing said Notes

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Your Petitioners further show that after said Notes had been executed and delivered to James Mitchell & Co said James Mitchell & Co caused the same to be discounted somewhere in New England, and that the money arising from the proceeds of said Notes was all applied in the creation of the Brewster House, the Hotel aforesaid, on said Lots and a part of Lot seven in said Block. That about the time said Hotel was completed said John K. Brewster and Emily his wife, trust: on the 14<sup>th</sup> Day of November 1854, <sup>said</sup> assigned and conveyed said Lots and Hotel to said John A. Clark and, one Daniel S. Brewster.

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And your Petitioners further show that said Lots five and six in Block number Fifty six are not of the value of fifteen Thousand Dollars, but are worth in your Petitioners believe Eight Thousand Dollars and no more, and that your Petitioners have no other security to indemnify them against loss from their liability on said Notes.

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And your petitioners further show that there are depending in this Court twenty two suits or petitions for mechanics Liens upon said Lots and Hotel amounting in the aggregate in your petitioners believe to the sum of sixteen Thousand Dollars. That said suits are entitled as follows

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244 Dupont Gas Light & Coke Company  
against

John K. Brewster, John A. Clark, Daniel S. Brewster,  
Wm. A. Hibbard, Joseph B. Smith, Holden Putnam,  
James Mitchell and Alexander Neely

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(835) 248 John S. Emert and John Durill

(3)

John K. Brewster. John A. Clark. Daniel S. Brewster.  
Charles A. Hibbard. Joseph B. Smith. Wolder  
Putnam. James Mitchell. & Alexander Neely.

245. Lois Trick-

Against the same Defendants

242 Johathan Tiffin-

Against the same Defendants.

(840)

238 John Wolfinger-

Against the same Defendants

232 Simon Austin

Against the same Defendants

234 Wm B. Pointon & Otis L. Phulock

Against the same Defendants

227 John Schmidt

Against the same Defendants

221 George W. Pickett

Against the same Defendants

(845)

220 Luther G. Hale and George W. Forsley for the use  
of George N. Forsley &c

Against the same Defendants

219 Luther G. Hale for the use of C. Corning

Against the same Defendants

214 James Brown

Against the same Defendants

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(31)

(850)

213 Leonard Schureman, Jacob Schureman and Abram Melick  
Against the same Defendants

208 John Clark and Robert Clark.  
Against the same Defendants

194 Jerome B. Hazen  
Against the same Defendants

191 John A. Bigelow  
Against same parties

190 Gilbert M. Clayton & Oliver S. Clayton  
Against same parties

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189 Edward Shockley  
Against the same Defendants

188 Henry W. Alpp.  
Against the same Defendants

179 Jay Thomas  
Against same Defendants

178 Thomas Cottman  
Against the same parties

177 Henry B. Childs  
Against the same parties

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Your petitioners further show, that in none of said suits are your petitioners or the holders and assignees of said promissory Notes made parties to the said suits your petitioners further show that John K. Brewster is insolvent and unable to pay the interest on said Notes and the

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principal when it becomes due. That your Petition-  
ers have been informed and believe that James  
Mitchell & Co have not released the Lots aforesaid  
from their Trust deed, but on the contrary  
870 have by their counsel sought to have their Trust  
Deed made a prior Lien on said Lots to all  
Mechanics Liens, and also to the prejudice of the  
of the Lien of your Petitioners and others who sign-  
ed the promissory Notes aforesaid

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Your Petitioners are further in-  
formed and believe that the Deed of Trust held  
by James Mitchell & Co to secure the Five Thousand  
Dollars wherein Joseph B. Smith is Trustee, cover  
other valuable property besides the Lots in  
880 question to the amount as your Petitioners believe  
of nearly or quite sufficient to pay said sum  
of Five Thousand Dollars

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Your Petitioners therefore pray  
That they may be made parties to all the suits  
aforesaid, that they may be enabled to come into  
885 court and defend their equitable and legal rights  
therein, and contest the right of James Mitchell  
& Co to make their Lien of Five Thousand Dollars  
upon the land a prior Lien to the Lien of the Me-  
chanics, and the Lien of Fifteen Thousand Dollars  
secured by the Trust deed from John K. Brewster  
and wife to Homer N. Hibbard. Your Petitioners  
890 further pray that the holders and assignees of  
said Notes may be made parties to these suits  
so that their rights may be defended and your  
895 "Petitioners will ever pray &c"

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"Thos J. Turner for himself  
"and in behalf of the Petitioners."  
"Thompson Wilcox, Chancellor Martin, Jared  
"Shultz, J. P. Byerly, A. J. Green."

"State of Illinois  
Stephenson County" Thompson Wilson v. C. Martin  
A. J. Green and Jared Shutz.

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jurors of the above named Petitioners being sworn  
depose and say that the foregoing petition is  
true in substance and in fact according to their  
best information and belief

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Subscribed and sworn to } Thompson Wilson  
this 8<sup>th</sup> day of Jan 1854 } A. J. Green  
" Luther N. Guiteau clk } C. Martin  
" } Jared Shutz "

On the Back of which appears the following  
endorsement. to wit: "Filed Jan 9<sup>th</sup> 1854. L. N. Guiteau, clk."

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And on the same day to wit: the 12<sup>th</sup> day of Janu-  
ary A. D. 1854 as yet of said December term of said  
Court the following entry appears of Record in this  
cause. to wit:

"Jury Thomas

John K. Brewster  
Joseph B. Smith & others

} Pet for Mech Lien

Saris F. Parrill. It is considered and ordered by  
the Court that said Petitioners be made parties to  
this suit, and also to all other suits upon Petitions  
for Mechanics Liens, now pending in this Court -  
wherein John K. Brewster, Joseph B. Smith, Homer A.  
Whitard, James Mitchell, Holden Putnam, Alexander  
Nely, John A. Clark, and Daniel S. Brewster, are parties

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Defendants - And it is further ordered by the Court,  
that said Petitioners file their Bills or answers by  
"tomorrow afternoon"

34 "The Hon. Benj. R. Sheldon Judge of the Stephenson"  
County Circuit Court

The Petition of John M. Shaffer  
and Lewis S. Burrill, of said County of Stephenson  
respectfully sheweth.

925 That your petitioners are  
interested in the subject matter of the suit now  
pending in this Court in favor of Jay Thomas  
against John K. Brewster and others for a Me-  
930 chanics Lien, and also of the several other suits  
now pending in this Court for the same purpose  
in favor of other persons against the same  
parties Defendants, in this that for some time pre-  
935 vious to August A.D. 1856 your petitioners were  
partners in business with the said John K. Brewster,  
and that your petitioner Lewis S. Burrill dissolved  
said copartnership in March 1856, and your peti-  
940 tioner John M. Shaffer dissolved said copartner-  
ship in August 1856: that during said copartner-  
ship which was carried on in the name or the  
firm of J. K. Brewster & Co. the said firm became in-  
debted to James Mitchell & Co. in about the sum of  
945 Twenty four hundred Dollars, for which the said  
James Mitchell & Co. held the Notes of said firm  
that said firm also became indebted to Jacob C.  
Hoove and others in about the sum of Twenty seven  
950 hundred Dollars. That at the time of such dissolu-  
tion said John K. Brewster agreed with your peti-  
tioners to assume and pay the above mentioned  
indebtedness, and to save them harmless from the  
same. That on or about the month of October  
last said J. K. Brewster executed the said mort-  
955 gage or deed of trust given in evidence in said  
suit, as having been executed for the said sum  
of Thirty Five hundred Dollars for the purpose  
of securing the said copartnership indebtedness  
of Twenty four hundred Dollars to said James

960 Mitchell & Co. that at or about the time said mortgage was executed said James Mitchell & Co assured your petitioners that said mortgage or Deed of Trust would abundantly secure said indebtedness. and at the same time said J. K. Brewster had an abundance of other property with which he might and would have secured said indebtedness. Except for the aforesaid assurance. and soon after the execution of said mortgage or Deed of Trust, the said J. K. Brewster became insolvent & assigned all of his property—

970 And your Petitioners further show that at the September Term of this Court A. D. 1854. a judgment was rendered in said Court in favor of said Jubez C. Howe against said J. K. Brewster and your Petitioners on account of said indebtedness for the sum of \$2402.<sup>13</sup>/<sub>100</sub>. that soon after and before executing said mortgage or Deed of Trust execution was issued on said judgment, <sup>and</sup> became a lien on the said premises contained in said mortgage: that at the time of issuing said execution before such assignment. said J. K. Brewster had sufficient other Real Estate in the Counties of Carroll and Jo Daviess out of which the amount due on said judgment or very near the same might have been satisfied and at that time executing said Deed of Trust to said Jno A. Clark it was expressly understood by and between your petitioners and said J. K. Brewster and said James Mitchell & Co that said security was entirely sufficient on said premises. for the reason that said mortgage or Deed of Trust executed by said J. K. Brewster to said Jas B. Smith set forth in said Petition of Jay Thomas was a sufficient security for said sum of \$5000 expressed therein upon the said part of Lot 576 described therein.

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And your Petitioners further show that if by any order or decree of this Court, the said James Mitchell & Co shall be made to appropriate any part of said Lots or premises described and contained in said Mortgage or Deed of Trust executed by said J. K. Brewster to said John A. Clark to pay or satisfy said sum secured by said Mortgage or Deed of Trust in behalf of said James Mitchell & Co mentioned in said petition or any part thereof, your petitioners will suffer just so much loss by reason of the insolvency of said J. K. Brewster -

15<sup>a</sup>

10<sup>a</sup>

And your Petitioners further show that at the time of issuing said Execution and the Execution of said Mortgage or Deed of Trust of Oct 1857 they were not aware of any incumbrance or Lien upon said Brewster House premises, that could in any manner affect or interfere with the said Deed of Trust executed to said J. B. Smith as aforesaid -

15<sup>a</sup>

Your Petitioners therefore pray that they may make parties Defendants in said suit with leave to make their answers therein according to the practice of this Court -

Subscribed and sworn to this } John W. Shaffer  
 12<sup>th</sup> Day of Jan 1858 before me } Louis F. Purwill  
 " " } S. W. Guiteau clerk }

On the back of which appears the following endorsement must transit: "Filed Jan 12<sup>th</sup> 1858. S. W. Guiteau clk"

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And afterwards to wit: on the 17<sup>th</sup> day of January A. D. 1858. as yet of said December Term of said Court, the following entry appears of Record in this cause to wit:

"Jay Thomas  
vs  
John K. Brewster Et. al } Petition for Mech<sup>s</sup> Lien "

And now at this day came Thomas J. Turner in person and files his answer "herin"

25<sup>a</sup>

"State of Illinois } In the Stephenson County Circuit Court  
Stephenson County } December Term A. D. 1854

Jay Thomas  
vs  
John K. Brewster, Joseph B. Smith, James Mitchell, Holden Putnam  
Et. al } Petition for Mech<sup>s</sup> Lien

30<sup>a</sup>

Thomas J. Turner by order of this Honorable Court made a party to this suit comes and by leave of the Court contests the right of James Mitchell and Company to have their Trust deed to Joseph B. Smith dated Twenty second day of March in the year of Our Lord One Thousand Eight hundred and

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Fifty six made a prior Lien upon the northeastety half of Lot Five and six in Block Fifty six referred to in the petition of the said Jay Thomas the Plaintiff in this suit. But the said Thomas J. Turner insists that the deed of Trust executed by

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John K. Brewster and Emily A. his wife to Hon<sup>ble</sup> N. Hibbard dated July 5<sup>th</sup> A. D. 1856 to secure the payment of three Promissory Notes signed by John K. Brewster and others, and payable to the order of John A. Clark for Five thousand dollars

- 45<sup>a</sup> each, and dated July 5<sup>th</sup> 1854. one of said Notes for Five Thousand Dollars payable on the first day of August A. D. 1860. with interest at the rate of ten per cent per annum payable semi-annually from and after the first day of August A. D. 1856.
- 50<sup>a</sup> Another of said notes payable on the first day of September A. D. 1861. for Five Thousand Dollars. and interest <sup>at</sup> at the rate of ten per cent per annum. payable semi-annually from and after the first day of September A. D. 1856 - and one of said Notes
- 55<sup>a</sup> for five Thousand Dollars payable on the first day of October A. D. 1862 with interest at the rate of ten per cent per annum payable semi-annually from and after the first day of October A. D. 1856. should by decree and order of this court take precedence of
- 60<sup>a</sup> the said Trust first above mentioned in the distribution of the moneys arising from the sale of said Lot and the Brewster House thereon erected. because the said Thomas J. Turner says that on or about the first day of July in the year of our
- 65<sup>a</sup> Lord One Thousand Eight Hundred and fifty six John K. Brewster one of the Defendants in this suit was engaged in the erection of a Hotel on said Lot above described which Hotel was afterwards finished or nearly finished and now stands
- 70<sup>a</sup> upon said Lot five and six and a part of Lot seven in the same Block. And the said Thomas J. Turner further shows that he was informed and then believed and still believes that said John K. Brewster had not sufficient means
- 75<sup>a</sup> under his control to build and finish said Hotel that in order to raise the necessary means he proposed to James Mitchell and Company and perhaps to some others. that he would make his
- 80<sup>a</sup> Notes of the description and denomination above described to John A. Clark. and of the Defendants in this suit that said James Mitchell & Co. should

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(39)

85<sup>a</sup>

90<sup>a</sup>

procure the signatures of as many of the business men and wealthy men in Newport upon said notes as could be procured - That forty names should be procured to said notes and more if possible. That the whole control of said business was placed in the hands of James Mitchell who to procure the signatures to said notes to negotiate them when signed and to receive the money arising from said notes for the use of John C. Brewster to enable him to carry forward and complete said Hotel

95<sup>a</sup>

100<sup>a</sup>

105<sup>a</sup>

110<sup>a</sup>

115<sup>a</sup>

And said Thomas J. Turner has been further informed, and from the character of his informants, believes it to be true, that Holden Putnam one of the partners in the firm of James Mitchell and Company, with the knowledge, consent and approval of the other members of said firm took upon himself and became the actual agent in procuring signatures to said notes - That in order to induce those whose names are signed to said notes to sign the same, the said Holden Putnam stated to a portion of the signers of said notes, that the payment of the notes should be secured by Trust Deed upon Lots Five and Six aforesaid. That said Lots were clear of all incumbrances - That Brewster would appropriate a large amount of his own money in the erection of said Hotel. That the money arising from the proceeds of the notes aforesaid should be applied in the erection of said Hotel - That to another portion of the signers of said notes the said Holden Putnam said that James Mitchell also had a Trust Deed on said Lots, but that it should be discharged before the notes aforesaid should be negotiated or passed out of his hands

Said Thomas J. Turner

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120<sup>a</sup>

125<sup>a</sup>

130<sup>a</sup>

135<sup>a</sup>

140<sup>a</sup>

145<sup>a</sup>

150<sup>a</sup>

further says. That he signed said Notes under the full conviction that the lots aforesaid upon which said Hotel was being erected were entirely clear of incumbrance. That he does not now remember whether said Holden Putnam told him they were clear or not. but said Putnam presented the Notes to said Turner for his signature and said Turner would not have signed said Notes if he had been told or if he had suspected that there was a Deed of Trust on said Lots to secure Five Thousand Dollars or any other sum. That it was well understood at the time he signed said Notes that the lots were clear of incumbrance and that John K. Brewster and wife could execute a Deed of Trust upon said lots to secure the payment of said Notes from ultimate loss. and that said Deed of Trust should be a just Lien upon said Lots - Said Thomas J. Turner has been informed by many of the signers of said Notes that they now would have signed said Notes if they had known or suspected that there was a Trust Deed upon said Lots which would be a prior Lien to the Trust Deed which was to secure the payment of the Three Notes aforesaid. and he believes that not one of those whose names are upon said Notes under the name of John K. Brewster. Excepting perhaps James Mitchell and Holden Putnam. would have signed said Notes if he had known or suspected that there was a Deed of Trust on said Lots to secure the payment of Five Thousand Dollars. or if he had not been assured by Mr Putnam or one who could speak by authority that said Lots should be cleared of all incumbrance before said Notes should be negotiated except the Deed of Trust to secure the payment

of said Show Notes.

155<sup>a</sup>

Said Thomas J. Turner further says that John K. Brewster was the sole pro-  
prietor of said Loh and the Hotel thereon erected

160<sup>a</sup>

That the only consideration which induced  
said Thomas J. Turner and all other persons  
(as said Turner believes) whose names are  
upon said Note under that of John K. Brew-  
ster to sign said Note was the wish to aid  
said Brewster in procuring funds to carry on  
the Building of <sup>the</sup> said Hotel. That all the names

165<sup>a</sup>

on the face of said Note after that of said  
John K. Brewster were placed there only as  
security for said Brewster, and that they were  
induced to sign said Note only because of the  
understanding and assurance that they  
were amply secured by a first Lien on said  
Loh

170<sup>a</sup>

Said Thomas J. Turner further shows that  
that he never knew or heard that James  
Mitchell also held a Deed of Trust on any  
part of said Loh until after said John K.  
Brewster had failed in business and made

175<sup>a</sup>

an assignment—Said Thomas J. Turner further  
shows that he has been informed and  
believes that after <sup>said</sup> Golden Putnam had pro-  
cured the signatures to said three notes and  
a Deed of Trust from John K. Brewster and

180<sup>a</sup>

wife to Homer A. Hubbard to secure the pay-  
ment of said Notes which Notes and  
Deed of Trust bear date as said Turner  
believes on the fifth day of July A.D. 1856

185<sup>a</sup>

said James Mitchell and Company retained  
said Deed of Trust in their possession till  
sometime in the month of September following  
before they had it filed for Record

Said Thomas J. Turner has been

190<sup>a</sup>

informed and believes. That previous to the negotiation of said notes by James Mitchell & Co. said James Mitchell & Co. advanced a large amount of money to said John K. Brewster on the strength of said notes, and with the intention of reimbursing themselves when the said notes should be discounted—

195<sup>a</sup>

Said Thomas J. Turner has also been informed and believes. That sometime in the Fall of A. D. 1856. said James Mitchell & Co. caused said notes to be discounted somewhere in New England. but where or by whom said notes were discounted said Thomas J. Turner has not been informed. and does not know— That the money arising from the proceeds of said notes was applied by said James Mitchell & Co. in the erection of said Hotel and in reimbursing the advances made by said James Mitchell & Co. to said John K. Brewster

200<sup>a</sup>

205<sup>a</sup>

Said Thomas J. Turner has also been informed and believes. That the Deed of Trust executed by John K. Brewster and wife to Joseph B. Smith and which is mentioned in the petition of the Plaintiffs in this suit. and which was designed to secure the payment to James Mitchell & Co. of five thousand dollars covers a large amount of property other than that embraced in Lots five and six aforesaid. And the said Thomas J. Turner insists that in Equity said James Mitchell & Co. should make the sum of five thousand dollars or as much thereof as by a sale of said other property can be made before making payment from the sale of that portion of Lots five and six which is covered by said Deed of Trust. and that the Deed of Trust made to Homer A. Hibbard to secure the payment of the three promissory

210<sup>a</sup>

215<sup>a</sup>

220<sup>a</sup>

225<sup>a</sup>

States of the date of July 5<sup>th</sup> 1856 should be made a prior Lien upon said Lots five and six aforesaid—

230<sup>a</sup> Said Thomas J. Turner further states. That about the time the Hotel on said Lot was completed said John K. Brewster failed in business and made an assignment of all his property including said Lot and Hotel to John A. Clark and Daniel S. Brewster assignees. That said Brewster is entirely insolvent

235<sup>a</sup> that said Thomas J. Turner and others who signed said three Notes as security for said Brewster have no other fund or property or means of securing themselves against ultimate loss by reason of having signed said Notes

240<sup>a</sup> other than the security they have upon said Lot by reason of the Deed of Trust to Homer N. Hibbard aforesaid— That said Deed of Trust was executed and delivered for the sole and

245<sup>a</sup> only purpose of indemnifying the sureties on said Notes from loss by reason of signing said Notes— That it was distinctly understood and agreed between the sureties on said Notes and Holden Putnam, who was the active agent in procuring the signatures to said Note, that

250<sup>a</sup> the Deed of Trust to Homer N. Hibbard should be a first and prior Lien on said Lot over all and every other Lien and incumbrance

Said Thomas J. Turner has also been informed and believes. That James Mitchell & Co. are now suing in this Court to have their Deed of Trust to Joseph B. Smith to secure the sum of Five Thousand dollars made a prior Lien to said Deed of Trust to Homer N. Hibbard. When in justice and Equity the Deed of Trust to Homer N. Hibbard given to secure said three Notes should have precedence of

255<sup>a</sup>

260<sup>a</sup>

of said Deed of Trust to said Joseph B. Smith

265<sup>a</sup> Said Thomas J. Turner further shows that Lots one two three four & five in Block fifty one mentioned in the Deed of Trust to Joseph B. Smith were at the time of <sup>value</sup> nearly or quite sufficient to satisfy said Debt of five Thousand Dollars. and that said property ought to be first appropriated to the payment of said Five Thousand Dollars

270<sup>a</sup> Said Thomas J. Turner therefore in behalf of himself and of the other sureties on said Notes prays this Honorable Court to enquire into the Equities involved in this case. and that such order and decree may be made in this case as will secure said Thomas J. Turner and the other sureties on said Notes against loss, that the Deed of Trust to Homer A. Hibbard be declared a provoidem to said Deed of Trust to Joseph B. Smith. that the moneys arising from the sale of said Lots and premises be so distributed. that the three promissory Notes aforesaid be paid before the Note of Five Thousand Dollars to Jas Mitcell & Co. and that such other and further relief may be granted as to this Honorable Court shall appear to be agreeable to Equity and good conscience

280<sup>a</sup> Said Thomas J. Turner further prays that said James Mitcell & Co be required to Exhaust their other security and apply the the whole proceeds thereof in satisfaction of their indebtedness secured by said Deed of Trust to Joseph B. Smith before claiming any of the proceeds from the sale of Lot six in Block fifty six - Tho J. Turner

45  
State of Illinois  
Stephenson County

(15)

On This 13<sup>th</sup> day of January A.D. 1858 Personally appeared before me the above named Defendant Thomas J. Turner. and being by me duly sworn says that he has read the foregoing subscribed by him. and that the same is true except as to the matters therein stated on information and belief. and as to those matters he believes them to be true

"L. N. Guiteau Clerk"

On the back of which appears the following endorsement to wit: "Filed Jan 13. 1858. L. N. Guiteau clk"

And on the same day to wit: on the 13<sup>th</sup> day of January A.D. 1858 as yet of said December Term of said Court. the following entry appears of record in this cause to wit:

Jay Thomas  
vs  
John K. Brewster et al  
Petition for Mech<sup>l</sup> Lien

And now at this day came J. Wilson Shaffer and Lewis S. Burrill by Jason Marsh Esq their Attorney and file their answers herein

In Stephenson County Court

The joint and separate answer of John W. Shaffer and Lewis S. Burrill to the Petition of Jay Thomas. Thomas J. Turner Chancellor Martin. and others. against John K. Brewster and others these Defendants being made parties Defendants by leave of the Court

These Defendants saying

325<sup>a</sup>

and Reserving to themselves all and all manner of benefit and advantage by reason of the imperfections or insufficiencies of the petition of the said plaintiffs and of the proceedings in said suit for answer therunto or to so much as is material for them to make answer unto say

330<sup>a</sup>

That they admit that said John K. Brewster was on the 5<sup>th</sup> day of July A.D. 1856 the owner in Tor of the premises as set forth and described in said petition and that at or near said time, said petition<sup>d</sup> and said John K. Brewster made and entered into a contract as set forth in said petition, and that said John K. Brewster became indebted

335<sup>a</sup>

to said Plaintiff to the amount as determined by the said Court in this cause - and that said Plaintiff is entitled to a Lien on said premises for said amount. and that said John K. Brewster on the said 5<sup>th</sup> day of July A.D. 1856 made and executed a Deed of Trust or Mortgage to said Hooper N. Hibbard to secure the said sum of \$15000.<sup>00</sup> as set forth in said petition -

340<sup>a</sup>

These Defendants

345<sup>a</sup>

further answering aver that previous to August 1856 they had been engaged in business in said County as copartners with said John K. Brewster under the Name and Style of J. K. Brewster & Co - and while thus connected in such copartnership the said Firm became indebted to said James Mitchell & Co in the sum of \$2400. and to Jacob C. Howe

350<sup>a</sup>

in about the sum of \$2700. That this Defendant Louis F. Purill dissolved said copartnership in the month of March 1856. and the said John N. Shepper dissolved said copartnership in the month of August 1856 at which times said indebtedness was outstanding against said Firm and for which these Defendants were and still

355<sup>a</sup>

360 remain liable. But at the time of such dissolution it was arranged and agreed by and between these Defendants and said John K. Brewster that he would pay and discharge such indebtedness, and would save these Defendants harmless from the same -

365 These Defendants further answering over and insist that at the September Term 1857 of this Court the said Judge C. Hoage rendered judgment against said John K. Brewster and these Defendants on said In-  
 370 debtedness for the sum of \$2402.<sup>50</sup>00 which said judgment became a Lien upon <sup>the</sup> said premises mentioned and described in said Deed of Trust or Mortgage executed by said J. K. Brewster to S. W. Guilan for the benefit of said James Mitchell & Co dated Oct 1857 and which has been given in evidence in this cause -

375 These Defendants further answering over and insist that said John K. Brewster did on the said day of Oct 1857 make and execute said last mentioned Deed of Trust or Mortgage for the purpose of securing to said James Mitchell & Co the aforesaid sum of \$2400. together with other indebtedness due from  
 380 him to said James Mitchell & Co and at that time it was understood by all the parties that said Mortgage would abundantly secure the payment of said sum of \$2400. and at that time said James Mitchell & Co assured these Defendants and it was  
 385 then understood by and between all the parties that said James Mitchell & Co would make and satisfy said amount due on the said Trust Deed or Mortgage executed by said J. K. Brewster to said J. B. Smith and mentioned in said Plaintiff's pe-  
 390 tition out of the premises mentioned in said last

aforesaid Deed of Trust and not otherwise -

395<sup>a</sup>

These Defendants further answering say and aver. That at the time of Executing of said Deed of Trust to said S. W. Guiton. and at the time said Lien of said judgment attached as aforesaid. said John K. Brewster had other Real Estate in the Counties of Carroll and Joe Davis sufficient or nearly so to have secured said indebtedness. and which might and would have been as these Defendants are informed and believe

400<sup>a</sup>

turned out and appropriated by said John K. Brewster to secure <sup>or</sup> satisfy either of the aforesaid claims in which these Defendants are interested. but from the fact that said first mentioned premises were at the time free from all incumbrance except as herein above stated. and were considered sufficient security as aforesaid

405<sup>a</sup>

410<sup>a</sup>

These Defendants further answering say and insist that at the time of executing said last mentioned Deed of Trust. said John K. Brewster was reputed to be wealthy. and these Defendants had no knowledge of any proceedings to enforce a Mechanics Lien upon the said Brewster House property. nor had they any reason to suppose there was or would be any occasion to enforce such Liens. nor had these Defendants the least reason to suppose that there were or could be any incumbrances upon said Brewster House property. beyond its real value. or beyond the ability of said John K. Brewster to pay or satisfy

415<sup>a</sup>

420<sup>a</sup>

These Defendants further answering say and aver that said John K. Brewster on or about the 4<sup>th</sup> day of

425<sup>a</sup>

49

(49)

430<sup>a</sup> I remember last made an assignment of all his property and he came as they are informed and believe entirely insolvent. and that they are informed and believe he had no other Real Estate in said County of Stephenson than above stated from the time of the rendition of said judgment to the making of said assignment - and that

435<sup>a</sup> after said assignment said J. K. Brewster had no property out of either of said claims could be satisfied or secured.

These Defendants

440<sup>a</sup> further answering aver and insist that they are interested to have the incumbrances upon said premises specified in said Trust Deed to said John A. Leback satisfied out of said premises. that at the time of said incumbrances were made said premises were not subject to any other incumbrance except as herein above stated

445<sup>a</sup> and these Defendants suppose and still suppose that said J. K. Brewster had at that time a good legal and equitable right to appropriate said premises in such a manner as to pay or secure the said indebtedness for which these Defendants are still liable. and which will

450<sup>a</sup> remain in full force against these Defendants unless satisfied out of said premises by reason of the insolvency of said John K. Brewster as aforesaid

455<sup>a</sup> These Defendants further answering aver and insist that at the time of executing said last mentioned Deed of Trust. these Defendants were informed and believed that said premises mentioned in said Deed of Trust to said J. B. Smith are abundantly sufficient to satisfy the entire amount secured thereby. and these Defendants had no reason to suppose that any

460<sup>a</sup>

incumbrance upon said premises could be made to interfere with or diminish the said security or lien as existing for their benefit as aforesaid-

465<sup>a</sup>

And these Defendants further answering said and insist that said James Mitchell all the cannot by an Order or Decree of this Court or otherwise make any part of the sum secured by their said first Deed of Trust or aforesaid part of <sup>the</sup> premises specified in their said second

470<sup>a</sup>

mortgage or Deed of Trust as aforesaid without a loss to these Defendants to the full extent of whatever amount shall be thus made from said last named premises-

Louis F. Burrill  
J. W. Shaffer

475<sup>a</sup>

State of Illinois )  
Stephens county ) On this 13<sup>th</sup> day of January  
A. D. 1858 personally appeared

480<sup>a</sup>

before me Louis F. Burrill the above named Defendant and made oath that he had heard read the above answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge except so far as is stated to be on information and belief and as to that he believes it to be true-

John A. Black Notary Public

485<sup>a</sup>

State of Illinois )  
Stephens county ) On this 14<sup>th</sup> day of January  
A. D. 1858 personally appeared

490<sup>a</sup>

before me J. W. Shaffer the above named Defendant and made oath that he had heard read the above answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge except so far as is stated to be on information and belief and as to that he believes it to be true-

S. M. Guitman, Clerk. By Wm. H. Barry Depy

51

(51)

On the back of which appear the following two  
documents to wit: "Filed Jan 13<sup>th</sup> 1858. S. W. Guitan  
clerk". Answer of Shaffer filed Jan 14, 1858. S. W.  
Guitan clerk".

495 a

And on the same day to-wit: on the 13<sup>th</sup> day of January A. D. 1858 in yet of said December Term of said Court the following entry appears of Record in this cause to-wit:

Jay Thomas

Petition for Mch<sup>o</sup> Lien

500<sup>a</sup> John K. Brewster Et. al

And now at this day came Thompson Wilcoxen, J. O. Taylor, John Black, J. B. Childs, A. J. Green, J. P. Byrly, Tobias Engle, E. Howard Hyde, Henry Strohm, Wm Wm Buckley, A. W. Rice, Rudolph K. Brubaker, J. B. Snyder, J. C. Stoneman, John Hoebel, John Wade, Chancellor Martin, S. P. Kohler, John Coates, Hollis Jewell, Jared Shutz, Charles W. Rosensteel, by J. G. Turner, their Attorney and file their answer herein.

510<sup>a</sup> State of Illinois In The Stephenson County Circuit Court. December Term A. D. 1857.

Jay Thomas

Petition for

John K. Brewster, Joseph B. Smith, Mch<sup>o</sup> Lien  
James Mitchell, Holders Petition  
Et. al

515<sup>a</sup> The joint and several answer of Thompson Wilcoxen, J. O. Taylor, John Black, J. B. Childs, A. J. Green, J. P. Byrly, Tobias Engle, E. Howard Hyde, Henry Strohm, Wm Wm Buckley, A. W. Rice, Rudolph K. Brubaker, Jesse B. Snyder, J. C. Stoneman, John Hoebel, John Wade, Chancellor Martin, S. P. Kohler, John Coates, Hollis Jewell, Jared Shutz, Charles W. Rosensteel.

53

Defendants to the Petition of Jay Thomas  
Petitioner—

525<sup>a</sup>

530<sup>a</sup>

535<sup>a</sup>

540<sup>a</sup>

545<sup>a</sup>

550<sup>a</sup>

555<sup>a</sup>

24

These Defendants Reserving to themselves all right of exception to said Petition. for answer thereto say— That. they admit it to be true as stated in said Petition. that John K. Brewster. was the owner. of the Lands described in said Petition at the time in said Petition alleged. and that a Building known as the Brewster House was erected thereon as stated in said Petition. and they admit it to be true that work was done and materials furnished for said Building by said Petitioner. But these Defendants are not informed whether he entered into a contract with said John K. Brewster at the time alleged in said Petition nor whether he commenced work on said Building at the time in said Petition stated. nor whether he performed labor and furnished materials to the amount set forth in said Petition. and they leave the Petitioner to prove the same on trial of this cause.

And further answering. these Defendants admit it to be true as stated in said Petition that John K. Brewster and Emily L. his wife. made and Executed a Deed of Trust to Homer N. Hibbard as Trustee. that said Deed of Trust was made and Executed on the fifth day of July A. D. 1856. and that the same was Executed to secure the payment of the several Promissory Notes of Five Thousand Dollars each bearing date June 28<sup>th</sup> A. D. 1856. payable to John A. Clark. and drawn by said John K. Brewster as principal. and signed by James Mitchell. Chancellor Martin. Henry Strohm. W. H. Penniman. John Black. J. O. Taylor. Jared Shutz. Thompson Wilcove. John Coates. Herman Bright. John Hoebel. G. M. Clayton. Francis Foley. A. W. Rice. H. J. Green. J. C. Stoneman. Thomas Coltrane. John

- 560<sup>a</sup> P. Byrly. Mrs M. Buckley John D. Emmert. Holden Putnam. S. D. Clark. John Wade. J. B. Snyder. Tobias Engle. A. C. Hunt. Charles Rosenstiel. Hollis Jewell. H. P. Kohler. James B. Childs. George Purinton. Thomas J. Turner. M. Hittinger. E. Taylor. E. H. Hyde. J. Reigard. E. W. D. Brawley. Rudolph Brubaker.
- 565<sup>a</sup> no duties to wit: One Note for Five Thousand Dollars due on the first day of August A. D. 1860. One Note for Five Thousand Dollars due September 1<sup>st</sup> A. D. 1861. And One Note for Five Thousand Dollars due on the first day of October A. D. 1862. with interest on all of said Notes at the rate of ten per cent per annum for money loaned.
- 570<sup>a</sup> Interest from August 1<sup>st</sup> 1856 on first - from September 1<sup>st</sup> 1856 on second - and from October 1<sup>st</sup> 1856 on third and last of said Notes. and payable semi annually. with current Rate of Exchange on New York - That said Deed of Trust conveyed to said Hibbard as Trustee the following described Land and premises. Situate lying and being in the City of Freeport in the County of Stephenson in the State of Illinois to wit:
- 575<sup>a</sup> Lots Numbered five (5) and six (6) in Block Number fifty six (56) in the Original Town of Freeport. fronting sixty feet and four inches on Stephenson Street. and extending to Bridge Street - That said Deed of Trust as alleged in said Petition was filed for Record in the Office of the Clerk of the Circuit Court of Stephenson County. on the eighth day of September A. D. 1856 -

590<sup>a</sup> And further answering, these Defendants say that they are informed and <sup>they</sup> truly believe that when said Petition entered into said contract with said John C. Brewster. and commenced work on said Building. he had full knowledge

59.5<sup>a</sup> that said John K. Brewster and wife had made and executed the Deed of Trust aforesaid, and had full knowledge that the land on which said Hotel Building was erected had been conveyed to said Homer N. Hibbard to secure the payment of said Promissory Note, and these Defendants claim that whatever claim said Petitioner may prove himself entitled to, shall be deferred to said Deed of Trust to the extent of the value of said land therein mentioned

60.0<sup>a</sup> further And, answering, these Defendants say that they admit, as alleged in said Petition that there appears of Record in the office of the Clerk of said Circuit Court, a Deed of Trust, bearing date March 22<sup>nd</sup> 1856. Recorded in said office March 26<sup>th</sup> 1856, made and executed by said John K. Brewster and wife to one Joseph P. Smith as Trustee, that said Deed of Trust purports to have been given to secure the payment of a Promissory Note bearing date March 22<sup>nd</sup> A.D. 1856, drawn by said John K. Brewster, payable to the firm of James Mitchell and Company for the sum of Five Thousand Dollars, due eighth month after date, with interest at the rate of ten per cent per annum.

61.0<sup>a</sup> that said last mentioned Deed of Trust purports to convey to said Joseph P. Smith as Trustee, the following described pieces and parcels of land, lying and situate in said City of Freeport, County of Stephenson State of Illinois - to wit: The North

62.0<sup>a</sup> Easterly half of lots number five and six (5 & 6) in Block number fifty six (56) said lots being divided by a line drawn through the center of said lots parallel with Mechanics Street and fronting thirty feet and two inches on Stephenson Street in the original Town of Freeport (now City of Freeport) also lots numbered three four and

62.5<sup>a</sup>

five in Block Number Fifty-one (51) in said original Town of Freeport (now City of Freeport) as alleged in said Petition—

- And further answering, these Defendants say that they signed said first mentioned promissory Notes <sup>or</sup> <sup>as</sup> <sup>certificates</sup> under the following circumstances. At the time said John R. Brewster had determined to construct said Hotel Building on said lots number five and six, in Block number fifty six, and on part of lot seven in said Block, the said James Mitchell and Company were the Bankers of said John R. Brewster, so these Defendants were informed and believe, and with them he kept his bank account, and to them applied for loans and discounts: That said Brewster at the time he was planning the construction of said Hotel Building, had not sufficient money to complete the same, and said Brewster and James Mitchell & Co. his Bankers so these Defendants are informed and believe devised a plan to raise the money in the Eastern States, where it could be obtained at lower rates of interest and on longer time than in this vicinity, as follows, viz: That said John R. Brewster should make his Notes payable in years, and that a large number, at least forty of the principal business men of the City of Freeport and vicinity should sign said Notes— That said Notes should be negotiated, and the avails thereof placed in the Banking house of said James Mitchell & Co and drawn to apply in the construction of said Hotel Building, that those who should sign <sup>said</sup> Notes with said Brewster should be secured by the first lien on said premises and perfectly indemnified against any possibility

665<sup>a</sup> of loss. That said Hotel Building should cost the sum of Twenty Thousand Dollars: exclusive of the Value of the land, and that said John K. Brewster should of his own means furnish Five Thousand Dollars of said sum.

670<sup>a</sup> That in furtherance of said plan said Holden Putnam one of the managing partners of said Firm of James Mitchell and Co. and one of the Defendants to said Petition undertook to procure the said signatures to said Promissory Notes, and did procure the same, that said Holden Putnam brought each

675<sup>a</sup> of said Notes to each of these Defendants and stated the purpose for which said Brewster required said signatures, and the use to be made of the money which should be realized by negotiation of the same. That to induce

680<sup>a</sup> these Defendants to sign said Notes said Holden Putnam stated that said John K. Brewster and his wife would execute a Deed of Trust on the land upon which said Hotel building was to be created, to secure the payment

685<sup>a</sup> of said three Promissory Notes. And said Putnam caused it to be generally understood and reported, and he expressly assured some of <sup>said</sup> the signers of said Notes, and others whom he endeavored to induce to sign said Notes, as these

690<sup>a</sup> Defendants are informed and verily believe that said Deed of Trust would be the first lien on said premises, and would be ample and perfect security to each signer against any liability on their part by reason of lending their

695<sup>a</sup> names and credit to add to the negotiability of said Notes, that the said Firm of James Mitchell & Co would retain said Notes until negotiated, and that the said premises should then be clear of all incumbrances, besides said last

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(58)

700<sup>a</sup>

mentioned Deed of Trust to be made to secure said signers, and should so remain, and that they the said James Mitchell & Co. could retain and control the proceeds realized from the negotiation of said Notes, and that

705<sup>a</sup>

the same should be applied so as to effect and secure the speedy construction of said Hotel, and protect signers of said Notes.

And the said Defendants John C. Taylor, William M. Buckley, Henry Strohm, Fred R. P. Koshler, John Hoebel.

710<sup>a</sup>

Answering severally each for himself, says that said Holden Putnam assured him, at the time said Putnam induced him to sign said Notes, that said promises were <sup>free</sup> from incumbrance -

715<sup>a</sup>

And the said Thompson Nicopen, Chancellor Martin, A. W. Rice, John Coates, S. B. Stoneman, J. P. Pyrrly, John Black, Jared Shultz, Charles H. Rosmottel

720<sup>a</sup>

Each answering severally for himself, says that at the time he signed said Notes, he understood from the statements of said Holden Putnam, that said Deed of Trust to secure said signers, should be the first lien on said premises, on which said Hotel was to be created and that the same should be clear of any prior

725<sup>a</sup>

incumbrance when said Notes should be negotiated -

And the other Defendants herein answering say that they are informed and believe that such assurances and statements were so made -

730<sup>a</sup>

And further answering these Defendants say that induced by these statements and Representations, and relying on these assurances, they signed said Notes, and had it not been for such statements, Representations, and assurances, they would not have signed said Notes

And these Defendants

735<sup>a</sup>

further answering say That said Lots number 5 & 6, in said Block number 56 aside from the value of the said Hotel Building are not of the value of fifteen Thousand Dollars, but are worth about eight Thousand Dollars, and that these

740<sup>a</sup>

Defendants have no other security to indemnify them against loss from their liability on said notes. And that said Lots and the <sup>said</sup> Hotel Building will not sell, as these Defendants believe for a sufficient sum to satisfy the liens of the mechanics

745<sup>a</sup>

filed at this term of court, and that these said Promissory Notes signed by these Defendants as aforesaid

750<sup>a</sup>

And further answering these Defendants say that at the time said Deed of Trust to said Homer N. Hibbard was executed, and said Notes were made, the value of said Lots Number three, four and five in Block Number Fifty One, was sufficient or nearly so to fully secure the amount owing said James Mitchell and Company on the indebtedness secured by

755<sup>a</sup>

said Deed of Trust to said Joseph P. Smith, and those of said signers who knew of the existence of said Deed of Trust to said Joseph P. Smith supposed and understood, as these Defendants were informed and believe, that said James Mitchell and Company could release the said Hotel premises

760<sup>a</sup>

from said Deed, and hold said Lots number three, four and five in Block number Fifty One

as sole security for said indebtedness to them.

765<sup>a</sup> And further answering these Defendants show that said John R. Brewster is insolvent and unable to pay the interest on said Note, and the principal when it becomes due.

770<sup>a</sup> That these Defendants have been informed and believe that said James Mitchell & Co have not released the Lots in Block number fifty six aforesaid from their said Deed of Trust, but on the contrary have by their counsel sought & have the said Trust Deed to said Joseph P. Smith, made a prior Lien on said Lots to all the Mechanics Liens, and also to the prejudice of the Lien of these

775<sup>a</sup> Defendants, and others who signed the promissory Note aforesaid—

And further answering these Defendants show that at the time said Deed of Trust to said Hibbard was made, and at the time said

780<sup>a</sup> Deed was filed for Record on the said eighth day of September A. D. 1856, said lots number five and six, in Block Number fifty six were owned by said Brewster, and were clear of all <sup>other</sup> encumbrances except said Trust Deed to said Joseph P. Smith

785<sup>a</sup> and these Defendants say that even if the said Holder Putnam a member of said Firm as aforesaid had not made said statements, Representations and assurances, yet they claim a vested right to require the said James Mitchell and Company to apply the value of said Lots number

790<sup>a</sup> three four and five in said Block Number fifty six towards the satisfaction of said Indebtedness to them secured by said Deed of Trust to said Joseph P. Smith before making any claim to satisfy any

795<sup>a</sup> part of the demand secured by said Deed of Trust to said Joseph P. Smith out of said Lots number five and six in said Block Number fifty six

800<sup>a</sup> And further aversing these Defendants say that they are informed and believe that said Firm of James Mitchell and Company negotiated said three Promissory Notes. And had the proceeds thereof in their own hands - and had thereby the means of satisfying any claim they held against said Probster - secured by

805<sup>a</sup> said Dec of Trust on said Lots number five and six in said Block number fifty six -

810<sup>a</sup> And these Defendants say that they are informed and believe that said James Mitchell and Company held said Dec of Trust given to said Hibbard in their possession. until the same was filed for Record, and until they had negotiated said Notes -

815<sup>a</sup> And these Defendants therefore pray this Honorable Court will inquire into the Equities involved in this case and that such

820<sup>a</sup> Decree be made as will secure these Defendants against loss - That the said Dec of Trust to said Homer A. Hibbard be declared a prior Lien to said Dec of Trust to said Joseph B. Smith, and that the moneys arising from the sale of said

825<sup>a</sup> Lots number five and six (5 & 6) in said Block number fifty six (56) be so distributed that the said three promissory Notes be paid before the said indebtedness of five thousand dollars to said James Mitchell and Company. and that they have such further and other relief as is agreeable to Equity

- |                  |                    |                     |
|------------------|--------------------|---------------------|
| 830 <sup>a</sup> | Thompson Miles and | Tobias Engle        |
|                  | J. C. Taylor       | E. Howard Hyde      |
|                  | John Black         | Henry Strohm        |
|                  | J. B. Childs       | Wm. M. Buckley      |
|                  | A. J. Green        | A. W. Rice          |
|                  | J. P. Gyuly        | Rudolph K. Prubaker |

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(63)

855<sup>a</sup>

And afterwards to wit: on the 14<sup>th</sup> day of January A. D. 1858 as yet of said December Term of said court. the following entry appears of Record in this cause to wit:

Jay Thomas  
vs  
John R. Brewster et al

Petition for Marsh Lien

860<sup>a</sup>

And now at this date came Jason Marsh Esq. counsel and files the answers of Holden Putnam, and James Mitchell here in

In Stephenson to be in court.

865<sup>a</sup>

The separate answer of Holden Putnam defendant to the Petition of Jay Thomas, and also of Thomas J. Turner Chancellor Martin and others, against this Defendant and John R. Brewster, James Mitchell, Alexander Arly, Joseph B. Smith, John A. Clark, and Daniel S. Brewster.

870<sup>a</sup>

This Defendant saving and Reserving to himself all and all manner of benefit and advantage by reason of the imperfection and insufficiency of the Petition of the said Plaintiff, and the proceedings in this cause, for answer thereto, or to so much thereof as is material for him to make answer in to day

875<sup>a</sup>

It is true that he is a member of the firm of James Mitchell & Co. and that said John R. Brewster being indebted to said firm, on the said 22<sup>nd</sup> day of March 1856 created his said debt of Trust to said J. B. Smith, to secure the payment of the said sum of \$5000. & and interest at ten per cent per annum, upon the Eastern leg of said Deb 56 in Book 56, and Deb 3, 2, 5.

880<sup>a</sup>

in Block 51 as stated in said Petition. And this Defendant avers and insists, that at the time said Trust deed was executed as aforesaid said premises described as Lots 5 & 6, Block 56 were considered and regarded by the parties as of sufficient value or nearly so to secure the aforesaid sum of \$5000 - and said Lots 3, 4, & 5, Block 51, were included for greater precaution. but it was particularly regarded by the said parties, that the said Lots 5 & 6, constituted the main security out of which the said amount would be made at first.

And this Defendant further avers and insists, that at that time it was not contemplated to build a Hotel on said premises, and said security was given for no other purpose and without reference to any rights or interests except to secure the payment of the said indebtedness of said John K. Brewster to said James Mitchell & Co

This Defendant further answering admits that said John K. Brewster was owner in fee of said premises as set forth in said petition, that said Plaintiff contracted with said John K. Brewster, and performed labor and furnished materials for the erection of said Brewster House as set forth in said Petition, and that said John K. Brewster became indebted to said Plaintiff in the amount as ascertained and determined by the Court, and that said Plaintiff is entitled to the benefit of a Mechanic's Lien for said amount upon said Brewster House properly subject to the rights of said James Mitchell & Co

This Defendant further answering admits that on or about the 5<sup>th</sup> day of July A. D. 1856, the said John K. Brewster executed a Deed of Trust to said Homer A. Hibbard for the amount and for the purposes as stated and set forth in

65.

in said Petition. But this Defendant positively denies that he has at any time made any Representation or statement, or done any act whatsoever for the purpose or expectation or with or to cause the understanding that said last mentioned Trust Deed was to have any priority or preference of claim upon said premises over the said Trust Deed executed to said J. R. Brewster as aforesaid.

This Defendant further answering averts and insists that it is positively untrue that he did at any time under any circumstances represent or state to any of the persons who signed said Notes with said J. R. Brewster, as aforesaid for the purpose of inducing them to sign said Notes, or for any other purpose, that said premises were free from encumbrance, or that this Defendant would remove any, or whatever encumbrance might be on said premises -

This Defendant further answering averts and insists that sometime in the summer or Spring of 1856 before said J. R. Brewster had commenced the erection of said Hotel, it became necessary for him to raise a large amount of money in order to carry on said project efficiently, and he being generally reputed and considered a wealthy man by the citizens of Triport, and many of said citizens feeling a deep interest in the erection of such a Hotel as was then talked of, were willing to take some measures to assist said Brewster to raise said money. Accordingly in the course of various plans and suggestions of different persons, a meeting of several of said citizens was held at the office of John A. Clark and at that time after considerable consultation it was arranged to adopt the plan of making such a Note or Notes as are

described in said Petition. But this Defendant absolutely and positively denies that he at any time in his own behalf or as a member of said firm of James Mitchell & Co made or entered into any contract or agreement whatsoever with any of said persons who signed said Notes. in relation to the character or condition of any security which said J. K. Brewster had or might make upon said premises. and this Defendant further denies that either he or said James Mitchell & Co ever undertook or agreed to procure said Notes. or had anything to do with obtaining or inducing said persons to sign said Notes. otherwise than that this Defendant had and felt an interest in common with other citizens of Newport. to assist in the erection of said Hotel. And this Defendant admits. that he and other citizens of Newport did circulate said Notes as aforesaid and not otherwise -

This Defendant further mentioning admits that said James Mitchell & Co were the Bankers to some extent of said J. K. Brewster before and at the commencement of the erection of said Hotel. but he avers and insists that it is unequivocally untrue that said James Mitchell & Co devised any plan to raise money for said John K. Brewster for the purposes of building said Hotel. but that said plan was devised by consultation of several citizens as aforesaid - and that whatever was talked or understood about this Defendant or said James Mitchell & Co negotiating said Notes was mere incidental conversation arising from the fact that this Defendant had considerable acquaintance with men at the East having money to loan. this Defendant however admits that in the

67. <sup>various</sup> consultations that were had from time to time and in which different persons participated it was distinctly understood that said James Mitchell & Co. had a prior claim on said premises, and that said John R. Brewster agreed to remove the same, and this Defendant has no doubt but that he and other persons while circulating said notes for signing told the said signers, or some of them that said Brewster had agreed to remove said prior incumbrance, and as evidence of just what the general understanding with all of said signers was, this Defendant refers to and makes part of this <sup>his</sup> answer a certain agreement executed by said J. R. Brewster, a copy of which is hereto attached as Exhibit A, which said agreement was drawn by said John A. Black for the purpose of defining or expressing just the understanding relating to the transaction.

This Defendant further answering avers and insists that the plan of getting said said notes executed was urged and approved by many if not all of said signers as cordially as by this Defendant with the only difference that perhaps he spent more time and took more pains than any other one person. But this Defendant does not believe that one of said persons was induced to sign said notes by any representations, statements or assurances made by this Defendant or concerning any matter other than relating to said Brewster's agreement as set forth in said copy hereto annexed - And this Defendant does not believe that any one of said signers ever understood or supposed, or ever had any reason by any act word or deed of this Defendant or said James Mitchell & Co. to understand

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or suppose that said James Mitchell also would release said premises from their said deed of trust to said J. B. Smith until paid or otherwise secured by said J. B. Brewster -

This Defendant further answering denies that James Mitchell also by any act or statement of this Defendant have ever promised or proposed to release or remove their said prior lien for the purpose of making a better security to said parties to said notes, or for any purpose whatever: this Defendant however admits that at the time said notes were executed as aforesaid he believed and expected as he presumed other parties to said notes did, that said J. B. Brewster would pay off and remove said incumbrance as he had agreed as aforesaid -

This Defendant further answering admits that he may have expressed the opinion that the security proposed by said J. B. Brewster to said signers would be ample for the reason that he then entertained such an opinion. But that was a matter upon which said signers had the same opportunities and interest to judge as had this Defendant -

This Defendant further answering does and says that so far from it being true that he agreed or undertook to control the negotiation of said notes, the said J. B. Brewster himself had them or some of them in his possession for sometime in the Eastern States for the purpose of negotiating them. And if there ever was any understanding that said Defendant was to hold on to said notes, until said incumbrance was removed, this Defendant cannot account for his not knowing <sup>such</sup> the fact. And this Defendant does not believe that he could

69.

(69)

have forgotten such fact if it ever existed for the reason that it would have essentially promoted the interest of said Jas Mitchell & Co to appropriate sufficient of the proceeds of such Notes to satisfy their said incumbrance but this Defendant denies that he ever presumed he had any control over said Notes -

This Defendant further answering admits that said Brewster House property may not be of quite sufficient value to satisfy all the liens and incumbrances now pending against it. and that said Lots 7, 4, & 5. Block 51. may be worth about \$3000. But this Defendant avers that said James Mitchell & Co now hold the said Deed of Trust executed by said J. L. Brewster to S. W. Smitman to secure the said sum of \$3000. that said sum had been due or nearly all of it to them for a long time from said Brewster. that at the time of executing said Deed of Trust, the said Jas Mitchell & Co had a right in law and Equity to take such security. and this Defendant protests against being deprived of the benefit of said priority for the benefit of said Plaintiff or any of the defendants in this suit -  
 Holden Putnam.

State of Illinois  
 Stephenson County  
 Personally appeared before me this 14th day of January A. D. 1858. Holden Putnam and made oath that he had read the aforesaid answer by him subscribed, and knows its contents, and that the same is true of his own knowledge except as to those things stated therein. He of his information and belief, and as to those things, he believes it to be true. Witness my hand & seal this 14th day of January 1858.

70.

(40)

Whereas Holden Putnam and others, citizens of Freeport Illinois have signed as sureties with John K. Brewster as principal, three Notes for Five Thousand Dollars each, payable to the order of John A. Clark, and due respectively August 1<sup>st</sup> 1860, September 1<sup>st</sup> 1861, and October 1, 1862, with 10 per cent interest, and whereas the said Notes were executed for the purpose of raising funds wherewith to erect a Hotel on Lots 6 & 8 in Block 36, in the original Town of Freeport to be not less than 56 feet front on Stephenson Street by 150 feet deep and four stories high above the cellar or Basement, and whereas said Brewster has agreed to furnish in addition to the said sum of Fifteen Thousand Dollars, the sum of at least five Thousand Dollars, so that said Hotel-Building when completed, <sup>shall cost</sup> at least twenty thousand dollars—

Now Therefore it is agreed by said John K. Brewster, and the said John K. Brewster, hereby binds himself, and co-equally with said Holden Putnam, and with each of the signers of said Notes, and the endorsers thereof, that he will expend the proceeds of said notes, as fast as the same shall be drawn in building said Hotel, and that he will furnish of his means in addition to the money to be drawn as aforesaid, to every three thousand dollars <sup>of the money</sup> to be drawn, the sum of one thousand dollars, that he will pay off or remove all liens or incumbrances of whatever character now against said premises so that the Debt of Trust given to secure the said Notes, shall be the first Lien upon the same, and it is <sup>is</sup> further <sup>agreed</sup> by said Brewster that the said sum of Fifteen Thousand Dollars, the proceeds of said Notes shall be

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(21)  
deposited with Messrs James Mitchell & Co  
and drawn by said Brewster as the same shall  
be required in the construction of said Building  
in the proportion as aforesaid - he furnish-  
ing said James Mitchell & Co satisfactory  
evidence that he has expended of his other  
means in the proportion as above -

In witness whereof the said John C.  
Brewster has hereunto set his hand and  
seal at Newport this 5<sup>th</sup> day of July 1856

(Signed) John C. Brewster

Exhibit A

On the Back of which appears the follow-  
ing endorsement to wit: "Filed Jan'y 14. 1838  
S. W. Guiteau cl'k. By Wm. B. Parry Dep"

my 2

(72)  
In Stephens on behalf of Plaintiff -

The separate answer  
of James Mitchell Defendant to the petition  
of Jay Thomas and Thomas J. Turner and  
Chancellor Martin and others. against this De-  
fendant and John B. Brewster. Holden Put-  
nam. Alex under Noy. Joseph B. Smith. John  
A. Clark and Daniel S. Brewster -

This Defendant  
saying and reserving to himself all and all manner  
of benefit and advantage by reason of the imper-  
fection and insubstantiality of the petition  
of the said plaintiffs and the proceedings in this  
cause for answer thereto. or so much thereof  
as is material for him to make answer unto  
says -

It is true that he is a member of the  
Firm of James Mitchell and Co. engaged in  
the Business of Bankers in Newport. And this  
Defendant is one of the makers of said Prom-  
issory Notes. mentioned in said petition. and  
presumes that he had some knowledge of the  
circumstances under which said Notes were Ex-  
ecuted - This Defendant however either in  
his own behalf or for said James Mitchell does  
had no agency in inducing others to sign  
said Notes. and therefore he cannot say  
what particular statements were or were not  
made by said Holden Putnam. But he avers  
and insists that the plan of raising said sum  
of \$15000. for the purpose aforesaid was a matter  
of Public interest in Newport. that it was a subject  
of much discussion among many of the  
citizens. but this Defendant never heard it stated  
nor intimated. nor expected. nor understood  
by said Holden Putnam. or any other person  
that said Brewster House Note were free from

incumbrance. or that said James Mitchell also would or were expected to release their said Trust And for the purpose of making said other Trust And a prior incumbrance. or for any other purpose. until the present Term of this Court— And this Defendant does not believe that any of the signers of said Notes ever understood or expected any such thing—

This defendant denies that said Firm of James Mitchell also as such had any thing <sup>whenever</sup> to do with making said Notes. except to hold the proceeds thereof on deposit for said J. R. Brewster. and to disburse the same as provided in the said written agreement of said Brewster. that no consultation was had with said Firm. nor did said Firm have anything to do directly or indirectly with negotiating said Notes. nor with procuring signers thereto. nor did said Firm in any way connect itself with said transaction.

This Defendant however admits that said Holden Putnam interested himself to procure the money on said Notes. and he has no doubt that by reason of his acquaintance with money men at the East. and by his influence and energy which were voluntarily used in behalf of said enterprise. but not as a member of said Firm. he did materially and perhaps mainly aid in effecting said Negotiation.

This Defendant further answering admits that at the time of signing said Notes. said Brewster did agree to serve said signers. by a Deed of Trust on said Note s. & c. and to pay off the said incumbrance of James Mitchell & Co. as provided in his said written agreement. and that said Brewster

7A

failure to perform said agreement has been without the consent and greatly to the detriment of said J<sup>r</sup> Mitchell also, and this Defendant, because this Defendant being one of said signers was equally with others interested in the value of said security, and also because said Firm were specially interested in the speedy payment of their said incumbrance.

This Defendant further answering expressly denies that said James Mitchell also have ever in any manner done any act, or made any promise, statement or assurance whatsoever, indicating any purpose or obligation to release, or remove their said incumbrance for the benefit of the said parties to said Note, or for any other purpose— And he further denies that he ever heard said Holden Putnam make any such statement, and this Defendant does not believe that said Putnam ever did, make any such statement—

This Defendant further answering expressly avers and declares, that said Firm of J<sup>r</sup> Mitchell also, were never directly or indirectly, immediately or remotely connected with said Hotel Enterprise, further than above stated. That said Holden Putnam never had any authority to act or speak for said Firm in respect to their said security, and this Defendant protests against the loose strung statements or indistinct and doubtful recollections of persons, being taken to invalidate the said Trust Deed, or in any manner to diminish or interfere with the legal or equitable rights of said James Mitchell also—

James Mitchell

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(45)

"State of Illinois  
 Stephenson County" on this 14<sup>th</sup> day of Janu-  
 ary A.D. 1858. personally  
 appeared before me James Mitchell. and made  
 oath. that he had read the answer by him  
 above subscribed and knows the contents  
 thereof. and that the same is true of his own  
 knowledge. except as to those matters stated  
 to be on his information and belief. and that  
 as to those matters he believes it to be true.  
 " S. W. Guitman Clerk "

On the back of which appears the follow-  
 ing endorsement to wit: "Filed Jan 14<sup>th</sup> 1858."  
 S. W. Guitman Clerk

(76)

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And on the same day to wit: on the 14<sup>th</sup> day of January A. D. 1858. the following entry appears of Record in this cause to wit:

Jay Thomas  
vs  
John R. Brewster et al

} Petition for Mech<sup>n</sup> Sien  
}

And now at this day came Martin P. Sweet and Hiram Bright Esq Attorneys for the said Plaintiff, and also in behalf of all the Petitioners in said now pending and undetermined in this Court in Petitions for Mechanic Sien wherein John R. Brewster, Joseph B. Smith, James Mitchell, Holden Putnam, Alexander Neely, Homer S. Hibbard, John A. Clark, and Daniel S. Brewster, are parties Defendants, and enter their Exceptions to the ruling of the Court, admitting as parties to this suit, and the other suits as aforesaid, Thompson Wilcoxen, Chancellor Martin, and the others named in said Petitioners Petition, as parties in this and the other of said suits, and also to the ruling of the Court in admitting J. Wilson Shaffer and Louis F. Burrill as parties in this and the other of said suits, and the said Petitioners also except to the ruling of the Court, in overruling his motion to suppress the answers of James Mitchell and Holden Putnam, so far as they are responsive to the Petition of Jay Thomas—

And afterwards to wit: on the 18<sup>th</sup> day of January A. D. 1858. as yet of said December Term of said Court the following entry appears of Record in this cause

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Jay Thomas (77)  
vs  
John K. Brewster et al  
Joseph B. Smith and others  
Plt for mesd Lien

And now at this day  
came the said Plaintiff by his attorney and  
filed his Replication to the separate answers  
of John W. Shaffer, Louis S. Burrill, James Mitch-  
ell, Holden Putnam, and also to the answers of  
Thomas J. Turner, and Chancellor Martin, and  
the other parties who have filed answers herein,  
and are named in the Petition of said Martin  
and others, and have been admitted as parties  
in this suit and all other suits now pending  
in this court, wherein John K. Brewster and others  
are parties Defendants in the original suit-

State of Illinois In the Circuit Court of Steph-  
Stephenson County son County of the December  
Term A.D. 1857-

Jay Thomas  
vs  
John K. Brewster, Et. al  
No 179

The Replication of Jay  
Thomas Petitioner to the separate answers of  
John W. Shaffer, Louis S. Burrill, James Mitchell  
Holden Putnam, and also the answer of Thom-  
as J. Turner, and Chancellor Martin and others.

This Repliert saving and Reserving unto him-  
self, all and all manner of advantage of Ex-  
ception to the manifold insufficiencies of the said  
answers for Replication thereunto with, that  
he will aver and prove his said Bill to be true  
certain and insufficient in the law, to be an-  
swered unto, and that the said answers are

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(78)

uncertain untrue and insufficient to be replied  
 unto by this Repliant. without this that any  
 other matter ~~to~~ thing whatsoever in the said  
 answers contained material or effectual in  
 the law to be replied unto. compassed or avoid-  
 ed, traversed or denied is true all which  
 matters and things this Repliant is and will  
 be ready to aver and prove as this Honorable  
 Court shall direct. and humbly prays as in and  
 by his said Petition he hath already prayed -

W. Pugh  
 Petitioner's Atty

On the back of which appears the following  
 endorsement to wit: "Filed Jan 15<sup>th</sup> 1858."  
 L. W. Guitouan clk

And on the same day to wit: on the 15<sup>th</sup> day of  
 January A. D. 1858 at yet of said December Term of  
 said Court. the following entry appears of Record  
 in this cause to wit:

Jay Thomas  
 vs  
 John R. Brewster  
 Joseph B. Smith and others

3 Petition for Mech<sup>cs</sup> Lien  
 3 And now at this day  
 again came the said  
 Plaintiff by his Attorney. and also came the said  
 Defendants by their Attorney. and also the parties  
 by their Attorneys who have been admitted as par-  
 ties to this and all other suits now pending in  
 this Court upon Petition for Mechanic's Lien  
 wherein the Original Defendants in this suit are  
 Defendants - and submit to the Court for trial all  
 the issues now joined between all of said parties  
 and after hearing the evidence adduced the  
 hour of adjournment having arrived. the further  
 hearing is postponed until tomorrow morning.

(79)  
at the incoming of Court.

And afterwards to wit: on the 18<sup>th</sup> day of January A.D. 1858. as yet of said December Term of said Court the following entry appears of Record in this cause to wit:

Jay Thomas  
vs  
John K. Brewster Et. al } Petition for Med<sup>l</sup> Lien

And now again came the said parties by their Attornies, and after hearing arguments of Counsel the Court takes time—

And on the same day of said Term of said Court the following entry appears of Record in this cause to wit:

Jay Thomas  
vs  
John K. Brewster. Et. al } Petition for Med<sup>l</sup> Lien

On motion of said Petitioner by his Attorney. It is ordered by the Court that he have leave to amend his Petition so as to make parties to this suit Jacob C. Howe, George O. Hovey, Samuel K. Payson, John B. Hulstinson, Charles H. Dalton, Jacob Wendell Junr. and also any other parties who may be discovered as parties in interest in this suit, and if they are Non-residents. It is further ordered that publication of Notice be made, to said Defendants in a public Newspaper as in ordinary cases in Chancery—

And afterwards to wit: on the 26<sup>th</sup> day January A.D. 1858. Vivian Bright the Attorney of said Plaintiffs comes and files his process for summons in the above entitled cause, in the words and figures to wit:

following tenet:

80. State of Illinois } In the Circuit Court of Ste-  
Stephenson County } phenson County of the April  
Term A.D. 1858.

Jay Thomas

vs  
John K. Brewster et al

Upon filing the amended  
Petition in this cause the clerk of the Court will  
please issue a summons in the above cause  
for James B. Howe, George O. Hovey, Samuel K. Pay-  
son, John P. Hutchinson, Charles W. Dalton, and  
Jacob Wendell Jr. returnable according to law.  
J. S. W. Gilman clerk &c } 16. Bright  
Jan 26<sup>th</sup> 1858. } P. J. Atty

On the Back of which appears the following  
endorsement tenet: "Filed Jan 26, 1858."  
"J. W. Gilman clk"

State of Illinois }  
Stephenson County } The people of the State of  
County greeting: We command you to Summon on  
James B. Howe, George O. Hovey, Samuel K. Payson,  
John P. Hutchinson, Charles W. Dalton, Jacob Wendell  
Jr. & impleaded with John K. Brewster, Joseph  
B. Smith, Homer A. Hibbard, John A. Clark, Dan-  
iel S. Brewster, James Mitchell, Holden Putnam,  
and Alexander Arly, if he be found in your  
County, personally to be and appear before the Cir-  
cuit Court of said County of Stephenson, on the first day  
of the next term thereof, to be holden at the Court  
House in the City of Freeport in said County, on  
the first Monday in the month of April next  
to answer unto Jay Thomas in a Petition for

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Mechanics Lien filed in said Court. and have you then and there this writ. with an endorsement thereon in what manner you shall have executed the same - witness Suther W. Guiteau clerk of our said Circuit Court. and the seal of said Court. at Freeport. in said County this 26<sup>th</sup> day of January A. D. 1858.

*[Handwritten initials]*

Attest Suther W. Guiteau clerk

On the back of which appears the following endorsement to wit: "The within Deed does not pass in my County March 25<sup>th</sup> 1858"

"J. W. Shaffer. Sheriff"

And on the same day. the Plaintiff by his Attorney Hiram Bright Esq. comes and files his amended Petition in the words and figures following to wit:

State of Illinois } In the Circuit Court of  
Stephenson County } Stephenson County of the  
April Term A. D. 1858

Jay Thomas

vs  
John K. Brewster Et. al

Amendments to the original Petition in this cause made pursuant to an order of the Court. made at the December Term A. D. 1854.

After the words, "as your Honor shall direct" on the Eleventh page of the original Petition filed by Jay Thomas in the above cause read as follows:

And your Petitioner further sheweth unto your Honor. That on the 23<sup>rd</sup> day of September A. D. 1854. To wit. George O. Hovey. Samuel K. Payson. John B. Hutchinson. Charles K. Dalton, and Jacob

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Wendell Jr. Copartners recovered a judgment in the Circuit Court of Stephenson County Illinois, for the sum of Twenty seven hundred and two dollars and thirteen cents against John K. Brewster, John W. Shaffer and Louis S. Burrill, and that said judgment still remains of Record in the office of the Clerk of the Circuit Court of Stephenson County Illinois in full force, and unsatisfied and apparently a Lien upon the property Real of the said John K. Brewster.

And your Petitioner further sheweth unto your Honor, that on the 15<sup>th</sup> day of September A. D. 1857, James C. Howe, George O. Hoovey, Samuel B. Payson, John B. Hutchinson, Charles B. Dalton, and Jacob Wendell Jr. Copartners, recovered a judgment in the Circuit Court of Stephenson County, Illinois for the sum of six hundred and seventeen dollars and eighty eight cents, against the said John K. Brewster, and that said judgment still remains of Record in the office of the Clerk of the Circuit Court of Stephenson County Illinois in full force and unsatisfied and apparently a Lien upon the property Real of the said John K. Brewster—

And your Petitioner further sheweth unto your Honor, that the said judgments was rendered as aforesaid, and a long time subsequent to the attaching of the Lien of your Petitioner to the Land, and Hotel Building in the original Petition of your Petitioner described, and that your Petitioner is informed and believes that the said judgments have been nearly all in amount paid and satisfied

Your Petitioner therefore prays, that the said Jabez C. Howe, George O. Hoovey, Samuel K. Payson, John B. Hutchinson, Charles H. Dalton, and Jacob Wendell Jr. be made parties Defendants to his Petition, and that they may be summoned to answer according to law—

Your Petitioner therefore prays, that the Judgments aforesaid against the said John K. Brewster as aforesaid may both and each of them be so far set aside so as not in any manner to interfere with the Lien of your Petitioner upon said land and Hotel Building described in said Original Petition, and that your Petitioner may have a full entire and perfect Lien upon said Land and Hotel Building in preference to each or both of said Judgments, and to the full extent of your Petitioner's claim and his costs in his proceedings, and that your Petitioner may have such further and other relief as the nature of his case shall require and as shall be agreeable to equity and "good conscience"

Herbert Bright  
Atty for Petitioner

On the Back of which appears the following endorsement to wit: "Filed Jan 26<sup>th</sup> 1858"

J. N. Guiteau clerk"

(85)

John Black. J. B. Childs. A. J. Green. J. P. Buckley.  
 Tobias Egle. E. Howard Hyde. Henry Stephens.  
 Wm. W. Buckley. A. W. Rice. Rudolph K. Zumbaker.  
 Jesse B. Snyder. J. C. Stoneman. John Haebel.  
 John Malt. Chancellor Martin. J. P. Kaehler. John  
 Coates. Hollis Jewell. Jared Shultz. Charles W.  
 Rosenstiel. Thomas J. Turner. Jacob C. Howe.  
 George O. Hovey. Samuel K. Payson. John B. Hutch-  
 inson. Charles W. Dalton. and Jacob Wendell Jr.:-  
 Affidavit of the Nonresidence of the above named  
 Jacob C. Howe. George O. Hovey. Samuel K. Payson.  
 John B. Hutchinson. Charles W. Dalton. and Jacob  
 Wendell Jr. Defendants: having been filed in the  
 office of the clerk of said Stephenson County Cir-  
 cuit Court. notice is hereby given to them that  
 Jay Thomas filed his Petition for a Mechanic's  
 Lien in said Court on the 12<sup>th</sup> day of November  
 A. D. 1857. and that afterwards by the order of said  
 Court they were made parties Defendants to said  
 Petition. and that afterwards to wit: on the 26<sup>th</sup>  
 day of January A. D. 1858 - the said Plaintiff  
 filed his amended Petition against them. and  
 that a summons thereupon issued out of said  
 Court against them. returnable on the first  
 Monday of April next A. D. 1858. as by law re-  
 quired - Now unless you. the said Jacob C. Howe  
 George O. Hovey. Samuel K. Payson. John B. Hutch-  
 inson. Charles W. Dalton. and Jacob Wendell Jr.  
 shall personally be and appear before the said  
 Stephenson County Circuit Court. on the first day  
 of the next Term thereof to be holden at the Court  
 house in Newport. in said County on the first  
 Monday of April A. D. 1858. and plead answer  
 or demurr to the said Petition. the same and  
 the matters and things therein charged and  
 stated will be taken as confessed. and a decree  
 entered against you according to the prayer

86.

of said Petition — — — — — N. W. Guiteau Clerk  
 Wiram Bright Atty's for Petitioner —  
 January 20th 1858.

J. R. Scroggs. one of the Publishers of  
 the "Trenton Weekly Bulletin", a Newspaper  
 published in the City of Trenton Stephenson  
 County Illinois. do hereby certify that the af-  
 fixed Notice has been published for four suc-  
 cessive weeks in said Trenton Weekly Bulletin  
 the first insertion being on the fourth day  
 of February A. D. 1858. and the last on the 25<sup>th</sup>  
 day of February A. D. 1858 for which we  
 charge five Dollars

J. R. Scroggs

Received Trenton April 5<sup>th</sup> 1858 of W. Bright  
 Plaintiff's Attorney five dollars in full for ad-  
 vertising above Notice —

Giles & Scroggs

On the back of which appears the following  
 endorsement to wit — "Filed April 7<sup>th</sup> 1858"  
 N. W. Guiteau Clerk

87.

And afterwards to wit: on the 24<sup>th</sup> day of April A. D. 1858 at the Regular April Term of said Court the following entry appears of Record in said cause to wit: -

Jay Thomas	} Petition for Mech Lien
John K. Brewster. James Mitchell.	
Holden Putnam. Alexander Wiley.	}
Joseph B. Smith. John A. Clark.	
Daniel S. Brewster. Homer S. Hibbard	}
Jabez C. Howe. George O. Howe.	
Samuel K. Payson. John B. Hutchinson	}
Charles H. Dalton. Jacob Wendell Jr.	

It appearing to the Court from proofs upon the submission of this cause to the Court for that purpose by the parties. That the Defendant John K. Brewster was then indebted to said Petitioner as set forth in said Petitioner's Bill in the sum of twelve hundred and six Dollars and thirty five cents. and that the contract by virtue of which said indebtedness accrued was made by and between the said Petitioner and the said Defendant John K. Brewster on the first day of June A. D. 1854. It is ordered by the Court that this cause be referred to the Master of this Court to Report to the Court the entire amount of incumbrance on the Land in said Petition named. and the entire amount of Mechanic's Lien upon said premises - also the value of said Land before the erection of the Building. and the entire value of the Building erected on said Land. and also all the facts in relation to each incumbrance's incumbrance on said Land. and each of the Mechanic's and material man's Lien on the same. and the Building on the same.

and also Report the interest of the said Petitioner in said Land and Building

And afterwards to wit: on the 4<sup>th</sup> day of January A.D. 1859. at the Regular December Term of said Court the following Entry appears of Record in said cause to wit:

Jay Thomas

vs  
John K. Brewster Et al

3 Petition for Mch<sup>ts</sup> Lien

Now comes the Master in Chancery and files his Report in this cause—

and also Report the interest of the said Petitioners in said Land and Building

And afterwards to wit: on the 4<sup>th</sup> day of January A. D. 1859. at the Regular December Term of said Court the following entry appears of Record in said cause to wit:

Jay Thomas

vs  
John B. Brewster et al

3 Petition for next kin

3  
Nay comes the Master in chancery and files his Report in this cause

189  
IN THE STEPHENSON COUNTY CIRCUIT COURT,  
OF THE DECEMBER TERM, A. D. 1858.

IN CHANCERY.

89  
Jay Thomas  
vs.  
JOHN K. BREWSTER, ET AL. } ON REFERENCE.

To the Hon. Benj. R. Sheldon, Judge of the Fourteenth Judicial Circuit, Illinois.

In pursuance and by virtue of an order of this Court, made in the above cause, and dated the 24th day of April, A. D. 1858, by which it was referred to the undersigned, Master in Chancery of this Court, "To enquire and report to the court the entire amount of encumbrances on the land in said petition named, and the entire amount of mechanics liens upon said premises, also the value of the said land before the erection of the building, and the entire value of the building erected on said land, and also all the facts in relation to each incumbrancer's encumbrance on said land and each of the mechanic's and material-men's lien on the same, and the building on the same, and also to Report the interest of the said petitioner in the said land and building."

I, J. A. CRAIN, Master in Chancery of this Court, residing in the county of Stephenson, Illinois, to whom the execution of said order was confided, do hereby certify and report,

That upon the day fixed for the enquiry of the matters contained in said order of reference, to-wit: On Wednesday, the first day of December, A. D. 1858, after having given due notice of the time and place of the same, and thereafter from day to day until the same was concluded, I was attended by the Attorneys on behalf of the petitioner, who produced the several witnesses, whose names precede their respective testimony, and who were sworn and examined before me, and also such documentary evidence as is hereunto attached and made a part of this report; that after the conclusion of the examination on the behalf of the petitioner, one Silas D. Clark was produced and examined on the part of the defendants, whose testimony was objected to on the ground of his being a party to this suit, and which testimony is excluded in the making up of this report, but which testimony is hereunto annexed for the consideration of this honorable court.

I also report that the entire amount of incumbrances on said land, in said petition named, exclusive of the mechanic's liens upon the premises, is as follows:—A trust deed, dated 22d March, 1856, on a part of said premises, made to Joseph B. Smith, to secure the payment of a note for the sum of five thousand dollars, made by said John K. Brewster to James Mitchell & Co., of even date with said deed, and payable eight months after date, with ten per cent. interest, which note, for principal and interest, amounts, at the date of this report, to the sum of six thousand three hundred *Eighty three* dollars 33 cents; said deed of trust charges the sum secured by said note, upon the north easterly half only of Lots five and six, Block fifty-six, lying next to and parallel with Mechanic street, (upon which a part of said building is situated) as will be seen by reference to a copy of said deed hereunto appended. Said deed of trust also conveys and charges upon other property than the said north easterly half of lots five and six, the security and payment of said sum of five thousand dollars and interest, to-wit: On all of lots three, four and five, in Block fifty-one, of said original town of Freeport, as will be seen by reference to a copy of said deed, hereunto appended and made a part of this report.

I also further find, as an encumbrance on a part of said premises, a trust deed, dated July 5th, A.D. 1856, made to one Homer N. Hibbard, to secure three several promissory notes, of an even date with said deed, made payable by the said John K. Brewster, as principal, to John A. Clark, in the sum of five thousand dollars each, the first of said notes to be due on the first day of August, 1860, with interest, at the rate of ten per cent per annum, from the first day of August, 1856; the second of said notes to be due on the first day of September, 1861, with like interest, at the rate of ten per cent. from the first day of September, 1856; the third of said notes to be due on the first day of October, 1862, with like interest, at the rate of ten per cent, from the first day of October, 1856; the interest on all of said notes to be payable semi-annually, with current rates of exchange on New York. I also find said notes to be signed by the following named persons as sureties, to-wit: James Mitchell, Chancellor Martin, Henry Strohm, Henry H. Penniman, John Black, John O. Taylor, Jared Sheets, Thompson Wilcoxon, John Coates, Hiram Bright, John Hoebel, G. M. Clayton, Francis Foley,

(90)

90.

A. W. Rice, A. T. Green, I. C. Stoneman, Thomas Coltman, John P. Byerly, William M. Buckley, John S. Emmert, Holden Putnam, Silas D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenstiel, Hollis Jewell, F. P. Koehler, Joseph B. Childs, George Purinton, Thomas J. Turner, M. Hettinger, Oscar Taylor, E. H. Hyde, Jacob Reigard, Francis W. S. Brawley and Rudolph Brubaker, as sureties. I also find that the principal and interest on said notes will, at the times and periods at which the same shall respectively fall due, amount to the sum of twenty-two thousand five hundred dollars; all of which will more fully appear by a reference to a copy of said deed of trust hereunto appended, marked "C," and made a part of this report.

I also further find that the entire amount of mechanics' liens upon the premises in the several petitions described, is the sum of seventeen thousand two hundred and six dollars and twenty-eight cents: and that allowing interest at the rate of six per cent. on the same from the respective dates when the respective contracts for labor and material were executed and completed on the part of the petitioners, up to and including the date of this report, amounts to the sum of twelve hundred and thirty-five dollars and forty-nine cents.

I also further find the value of the land upon which said building is situated before the erection of the same, to be as follows: The easterly half of said lots five and six, block fifty-six, lying next to Mechanic street and abutting on Stephenson and Bridge streets, at the sum of four thousand five hundred dollars; the westerly half of said lots five and six in said block fifty-six abutting on Stephenson and Bridge streets, at the sum of three thousand dollars; and that part of lot seven in said block fifty-six on which a part of said building is situated, at the sum of seven hundred and fifty dollars. The aggregate value of which said several parcels of land upon which the whole of said building is situated, amounting to the sum of eight thousand two hundred dollars.

I also find the entire value of the building, exclusive of the value of the land upon which said building is situated, as follows: That part of said building situated on said lots five and six, in block fifty-six, at the sum of thirty-six thousand four hundred and fifty dollars, and the value of that part of the building situated on a part of said lot seven block fifty-six, at the sum of seven thousand and fifty dollars, and that the entire value of the whole building, exclusive of the value of the land, as aforesaid, to be the sum of forty-three thousand five hundred dollars.

I further find the value of lots three, four and five, in block fifty-one, in said original town, now city of Freeport, upon which together with the said north easterly half of lots five and six, block fifty-six, the said sum of five thousand dollars, and interest secured by the said note, payable to James Mitchell & Co., is charged, to be, at and from the 22d day of March A. D. 1856, and for some nine months thereafter, worth the sum of four thousand five hundred dollars.

I also find that the persons whose names are heretofore set forth, as signing the aforesaid notes as sureties, of five thousand dollars, each made payable to the order of John A. Clark, were in the aggregate, at the time of making said notes—are at the present—and will be to all present appearances when the said notes respectively fall due, fully able to pay and satisfy the same, should it be necessary for them to do so; that in the aggregate, said persons are at present, worth at least the sum of four hundred and seventy-six thousand dollars.

I also find that on the 11th day of February A. D. 1857 said petitioner commenced furnishing the labor and material under his said contract, with the said John K. Brewster; and that said petitioner so continued to furnish labor and material, in pursuance of said contract, up to, and until the 9th day of November A. D. 1857 when said contract, on the part of said petitioner, was fully completed and performed, and the sum

*Twenty Two Hundred Sixty Five*

Dollars, became due and payable to said petitioner; the interest upon which said sum at the rate of six per cent. per annum, from the day when the same became due as aforesaid, up to, and including the date of this report, amounts to the sum of

*Eighty Two*

Dollars.

And I do, therefore, upon the above state of facts, certify and report, that I am of the opinion that the said James Mitchell & Co., have the first lien to secure their

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said Note for the sum of five Thousand Dollars and interest on the value of the said northwesterly half of lots five and six Block fifty six exclusive of the value of any part of the Building situated thereon - but that said Lien should only extend to the amount which may remain unpaid on said Note and interest after exhausting the proceeds of said lots three four and five. upon which said Trust Deed to secure said Note, is also charged, in payment of said Note and interest.

I am further of opinion, that the lien next in order is in favor of the holder or holders of the said Promissory Notes for the sum of five Thousand dollars Cash, and interest, made payable to the order of said Goshw A. Clark, which Lien should extend <sup>to the</sup> ~~to the~~ value of the South westerly half of said lots five and six exclusive of the value of any part of the building situated thereon and also to the remainder of the value of the said north westerly half of said lots five and six, exclusive of the value of any part of said building situated thereon, after payment as aforesaid, of what may remain due on <sup>the</sup> said Note in favor of James Mitchell & Co -

I am further of opinion that the lien next in order is that of the petitioner in this cause, together with and in the same order and class as the liens of the other Petitioners in the several cases in this Court brought, for the enforcement of their respective claims on and against the premises aforesaid; and that the interest or lien of this Petitioner and said other Petitioners extends to the whole value of that part of said Building, situated on a part of said lot seven, Block fifty-six, and to the whole value

of the land upon which the same is situated and that said lien also further extends to the <sup>that part of said building, situated on</sup> whole value of said lot five and six and to so much of the value of said lot five and six, exclusive of the value of said building situated thereon as shall remain after payment to said James Mitchell & Co of their note and interest as aforesaid, and the payment to the holder or holders of said Notes, made payable to the order of John A Clark as aforesaid.

And I am further of opinion that the fund which may remain after marshalling the liens as aforesaid, should be shared and distributed among the petitioners in this suit and the other petitioners in the several other suits in this Court, brought as aforesaid, in a ratio and proportion to the amounts which are respectively due them.

I also further certify that the schedule marked "A" herunto annexed, contains the depositions of the several witnesses whose names precede their respective testimony -

That the schedule marked "B" is a true copy of the said Trust Deed made by said John K. Brewster and wife to Joseph B. Smith to secure the payment of the Note made to James Mitchell & Co

That Schedule marked "C" is a true copy of the said Trust Deed made by said John K. Brewster and wife to Homer A. Hibbard to secure the payment of the said three promissory Notes of five thousand dollars each and interest made payable to the order of John A Clark as aforesaid -

That schedule marked "D" contains a statement and account of the principal and interest moneys due the said

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James Mitchell & Co. the period of the computation and its rate.

That schedule marked "E" contains a statement and account of the principal and interest money due the holder or holders of the said three several promissory Notes for the sum of five Thousand dollars each and interest the period of its computation and its rate -

And lastly, that schedule marked "F" contains a statement of the respective dates at which the Petitioner in this suit and the other Petitioners in the said several other suits in this Court brought. Commenced the performance of their respective contracts, the date at which they completed the same, the amount found to be due thereon and the period of the computation of the interest on the same, and its rate - To all of which schedules Turby made a part of my Report for greater certainty I refer -

All of which is most respectfully submitted to this honorable Court -

J. A. Crain  
Master in Chancery  
St. Louis, Mo. Illinois -

Dated 28 Dec 1858  
Master's fees \$10 -

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Jay Thomas

(94)  
"A"

vs.  
JOHN K. BREWSTER, ET. AL.

Depositions of witnesses produced, sworn and examined in a certain cause, depending and at issue in the Circuit Court of the county of Stephenson, on the Chancery side thereof, wherein

*Jay Thomas et*  
Complainant, and John K. Brewster and others, Defendants, before J. A. Crain, Master in Chancery of said Court, on the first, second and third days of December, A. D. 1858, at the City of Freeport, in said County of Stephenson, taken under an order of reference of said Court, bearing date the 24th day of November, A. D. 1858, on the part of Complainant and Defendants.

HARVEY McCLENEHAN, sworn, on part of petitioner.—Age forty-one years; resides in Freeport, Stephenson County, Illinois; has resided here nine years; occupation, carpenter and joiner; knows a building in the city of Freeport called the Brewster House; was erected in 1856-7; was erected by John K. Brewster; was built in city of Freeport, Stephenson county, Illinois; witness worked on said building as a carpenter and joiner; worked from latter part of September, 1856, until sometime in October, 1857; supposes that it was worth from forty to forty-five thousand dollars to build said house; makes the basis of his estimate of the cost from his knowledge and the prices of material.

DAVID HENGST, sworn on part of petitioner.—Is fifty years of age; resides in Freeport, Stephenson Co., Illinois; knows the house and lots formerly occupied by John K. Brewster, in the City of Freeport, Illinois; knows that said house is situated on lots three, four and five, Block fifty-one, in original town of Freeport, Illinois; should say that such property at the buying rates was worth, on the 22d day of March, A. D. 1856, \$4500, and continued to be worth the above sum for nine months thereafter; estimates the value of the naked lots five and six, Block fifty-six, as follows:—The easterly half of said lots lying on Mechanic street, at \$150 per foot, fronting on Stephenson street; and the westerly half of said lots at \$100 per foot, fronting on said Stephenson street, amounting in the whole to the sum of \$7,500.

JESSE B. SNYDER, sworn on part of petitioner.—Age forty-two; resides in Freeport, Illinois; knows the lots on which the Brewster House is built, in the city of Freeport; is built on lots five and six and part of lot seven, Block fifty-six, in said city of Freeport; 35x20 feet of said building is on the north-easterly corner of lot seven in said Block; said part of lot seven was worth \$750 at the time of the commencement of the erection of said building; witness sold it for that sum, to John K. Brewster, immediately before the commencement of said house.

ALEXANDER SMITH, sworn on the part of petitioner.—Age forty-eight to-day; occupation, carpenter and joiner; builder and architect by profession; is acquainted with the building, in Freeport, called the Brewster House; paid particular attention to the style and construction of the house, and at that time I made a careful estimate of the cost of that part which was built on lots five and six, Block fifty-six; I estimated the cost at \$35,000 of that part of the building; I have carefully examined that part of the building which is situated on a part of lot seven, in said Block, 35x20 feet; I estimate the cost of that part to be, as it now stands, \$7,050, calculating within bounds; but would not contract to complete it, as it now stands, for less than that sum; I estimate the cost of the entire building at \$43,500; all my estimates are made exclusive of the value of the land on which the building is erected.

ALEXANDER H. STONE, sworn on part of petitioner.—Age thirty-eight; resides in Freeport, Illinois; has resided here six years in August; occupation for two years previous to last fall, land broker and agent for sale of real estate; knew, in June and July, 1856, lots five and six, on which most of the Brewster House is built; knows what the value of real estate, in Freeport, at that time was; the naked lots five and six, Block fifty-six, were, in my estimation, worth \$6,000; I estimate the thirty feet fronting on Stephenson street, running through both lots to Bridge street, and lying on Mechanic street, at \$4,000; and I estimate the remaining half of both lots at \$2000.

GEORGE MAYNARD, sworn on part of petitioner.—Age thirty-six; occupation, merchant; residence, Freeport, Illinois; I am acquainted with John K. Brewster, Chancellor Martin, James Mitchell, Henry Strohm, Henry H. Penniman, John Black, John O. Taylor, Jared Sheets, Thompson Wilcoxen, John Coates, Hiram Bright, John Hoebel, Gilbert M. Clayton, Francis Foley, Asahel W. Rice, Abraham

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T. Green, Thomas Coltman, John P. Byerly, William M. Buckley, John S. Emmert, Holden Putnam, Silas D. Clark, John Wade, J. B. Snyder, Tobias Engle, Alexander C. Hunt, Charles Rosenstiel, Hollis Jewell, Frederick P. Koehler, James B. Childs, George Purinton, Thomas J. Turner, Mathias Hettinger, Oscar Taylor, Ebenezer H. Hyde, Jacob Reigard, Francis W. S. Brawley, and Rudolph Brubaker; I was acquainted with them in July, 1856; I am acquainted with them all now, except Francis Foley, who is dead; in July, 1856, the pecuniary ability of the before mentioned persons, taking them in the aggregate was perfectly good to pay \$15,000. Their present ability in the aggregate to pay that amount is also perfectly good, and from my personal knowledge of their ability in the aggregate, they will be perfectly able to pay that amount in one, two, three, four or five years from this time.

I consider	Chancellor Martin	worth	\$60,000
do	James Mitchell	do	45,000
do	Jared Sheetz	do	15,000
do	Thompson Wilcoxon	do	25,000
do	John Coates	do	15,000
do	Hiram Bright	do	10,000
do	John Hoebel	do	6,000
do	Estate Francis Foley	do	25,000
do	A. T. Green	do	25,000
do	Thomas Coltman	do	20,000
do	Wm. M. Buckley	do	15,000
do	John S. Emmert	do	25,000
do	Holden Putnam	do	40,000
do	Chas. Rosenstiel	do	25,000
do	Hollis Jewell	do	20,000
do	James B. Childs	do	20,000
do	George Purinton	do	20,000
do	Mathias Hettinger	do	40,000
do	E. H. Hyde	do	10,000
do	Rudolph Brubaker	do	15,000
			<hr/>
			\$476,000

I estimate the worth of the above named individuals according to the value of property at this time.

SILAS D. CLARK, sworn on part of defendants.—States that the naked lots five and six, Block fifty-six, in the original town, now city, of Freeport, were worth, at the time of the erection of the Brewster House on the same, the sum of nine thousand dollars; considers that the thirty feet, by a line drawn through the centre of said lots, abutting on Stephenson and Bridge street, and lying next to Mechanic street, worth one hundred and seventy-five dollars per foot.

Examination of Clark objected to on the ground of his being a party to the suit, and on the ground of evidence being closed; ~~first~~ objection withdrawn and left on ground of being a party. *Second*



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second part, his heirs or assigns, or by his attorney duly constituted as aforesaid. And the said John K. Brewster, for him and his heirs, executors and administrators, hereby covenant to and with the party of the second part, their heirs and assigns, that he is seized of a fee in said premises. That the same are free from all incumbrances, and that he will warrant and defend said premises against all lawful claims—and that he will pay all taxes levied on said premises, during the continuance of these presents.

*In Witness Whereof*, the said party of the first part, hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered, in } JOHN K. BREWSTER, [SEAL.]  
presence of JOHN A. CLARK. } EMILY L. BREWSTER. [SEAL.]

STATE OF ILLINOIS, }  
COUNTY OF STEPHENSON. } ss.

I, John A. Clark, a Notary Public for Freeport, in said county, do hereby certify, that John K. Brewster and Emily L. Brewster, personally known to me to be the persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person, and acknowledged, that they signed, sealed and delivered the same as their free and voluntary act and deed—for the uses and purposes therein set forth—and the said Emily L. Brewster, personally known to me to be the wife of the said John K. Brewster, and as the person who subscribed said deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate from her husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion from her husband, and that she does not wish to retract the same.

Given under my hand and Notarial Seal at Freeport, this 22nd day of March, A. D., 1856.

[SEAL.] JOHN A. CLARK, *Notary Public.*

Recorded March 26, 1856, at 9 1-2 o'clock, A. M.

JOSEPH B. SMITH, *Clerk.*

By N. R. ORDWAY, *Dept.*

STATE OF ILLINOIS, }  
STEPHENSON COUNTY. } ss.

I, Luther W. Guiteau, Clerk of the Circuit Court, in and for said county, do hereby certify that the foregoing is a true and correct copy, as appears of record in my office, book (J of mortgages,) pages 217, 218, and 219.

Witness my hand and the seal of my office, this  
1st day of December, A. D., 1858.

L. W. Guiteau, *Clerk.*  
By J. B. Bowler *Deputy*



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overplus of the proceeds of such sale, (if any there should be,) unto the said party of the first part, or his heirs, executors, administrators or assigns. In case no default is made in the payment of the aforesaid promissory notes, or either of them, or the semi-annually interest; as aforesaid, then this deed shall be null and void, and the manner of cancelling the same and releasing said trust, shall be the same as is prescribed by law, for the release of mortgages, which releasing and cancelling, shall be sufficient, whether given by the party secured, or by the said trustee, or by his executors or administrators, or by the attorney constituted, as aforesaid of said trustee. In case the aforesaid promissory notes, and interest, and all costs of the execution of said trust, and all taxes levied on said premises, be satisfied by the sale of part of the premises aforesaid, then such part of said premises as may remain undisposed of and as are not required for the purposes of this trust, (if any so remain,) shall be duly reconveyed to said party of the first part, his heirs or assigns by *Quit Claim Deed or Release*, signed, sealed and acknowledged by said party of the second part his executors, administrators, or by his attorney, duly constituted as aforesaid—and the said John K. Brewster, for himself and his heirs, executors and administrators, hereby covenant to and with the party of the second part, his executors, administrators and assigns, that he is seized a fee simple title to said premises, and that he will and his heirs, executors and administrators, shall warrant and defend said premises against all lawful claims, and that he will pay all taxes levied on said premises, during the continuance of these presents.—And Emily Brewster, wife of the said John K. Brewster, in consideration of the premises, and of the payment made as aforesaid, doth hereby release to said party of the second part, his executors, administrators and assigns forever, all her right of dower in the above described premises. In testimony whereof, said grantors have hereunto subscribed their hands and seals at Freeport, this fifth day of July, A. D., 1856.

JOHN K. BREWSTER, [SEAL.]  
 EMILY L. BREWSTER. [SEAL.]

STATE OF ILLINOIS, }  
 COUNTY STEPHENSON. } ss.  
 CITY OF FREEPORT, }

I, Luther W. Guiteau, Police Magistrate in and for said City, in the County and State aforesaid, do hereby certify, that John K. Brewster, personally known to me to be the person whose name is subscribed to the foregoing deed, as having executed the same, appeared before me this day in person, and acknowledged, that he signed, sealed and delivered the same as his free and voluntary act, for the uses and purposes therein expressed.—And the said Emily L. Brewster, personally known to me to be the wife of the said John K., and as the person who subscribed said deed, and as such, having been by me made acquainted with its contents and meaning, separate and apart from her husband acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily and freely, and without compulsion of her said husband, and does not wish to retract the same.

Given under my hand and Seal this 5th day of July, A. D., 1856.

L. W. GUITEAU, P. M. [SEAL.]

Recorded Sept. 8th, 1856, at 4 P. M.

JOSEPH B. SMITH, Clerk.  
 By N. R. ORDWAY, Dept.

STATE OF ILLINOIS, }  
 STEPHENSON COUNTY. } ss.

I, Luther W. Guiteau, Clerk of the Circuit Court, within and for said county, do hereby certify that the foregoing is a true copy of the Trust Deed given by John K. Brewster et ux, to Homer N. Hibbard, as appears of record in my office, book (K) (of mortgages,) pages 117, 118, and 119.

Witness my hand and the seal of my office, this  
 2nd day of December, A. D., 1858.

, Clerk.



*L. W. Guiteau*  
*17* *MS and 104*

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“ D. ”

One note dated 22d day of March, 1856, payable eight months after date, to the order of James Mitchell & Co., for \$5000, with interest at the rate of ten per cent. per annum, which note is secured by a trust deed of even date.

Principal sum due,	\$5000 00
Interest thereon from 22d March, 1856, to 28th December, 1856, being 2 years, 9 months, 6 days, at ten per cent. per annum,	1383 33
Amount due James Mitchell & Co.,	<u>\$6383 33</u>

“ E. ” *four years 1860*

First note for \$5000, dated 5th July, 1856, payable ~~four years~~ *four years 1860* after date, to the order of John A. Clark, with interest from 1st August, 1856.

Principal sum to be due,	\$5000 00
Interest thereon from 1st day of August, 1856, to 1st day of August, 1860, at ten per cent. per annum, 4 years,	<u>\$2000 00</u>

Amount to be due on said note,

*five years 1st Sept 1861* \$7000 00

Second note for \$5000, dated 5th July, 1856, payable ~~five years~~ *five years* after date to the order of John A. Clark, with interest from 1st September, 1856.

Principal sum to be due,	\$5000 00
Interest thereon from 1st September, 1856, to 1st September, 1861, at ten per cent. per annum, being five years,	<u>\$2500 00</u>

Amount to be due on said note,

*Six years 1st Sept 1862* \$7500 00

Third note for \$5000, dated 5th July, 1856, payable ~~six years~~ *six years* after date, to order of John A. Clark, with interest from 1st October, 1856.

Principal sum to be due,	\$5000 00
Interest thereon from 1st October, 1856, to 1st October, 1862, at ten per cent per annum, being six years,	<u>\$3000 00</u>

Amount to be due on said note,

\$8000 00

Whole amount due on said notes, \$22,500 00

“ F. ”

HENRY C. CHILDS commenced performance of his contract 1st July, 1856 ; completed said contract 9th November, 1857.

Amount found to be due thereon,	\$6622 64
Interest on same from 9th November, 1857, to 28th December, 1858, being 1 year, 1 month and 19 days, at 6 per cent. per annum,	451 43
	<u>\$7073 07</u>

THOMAS COLTMAN commenced performance of his contract 1st July, 1856 ; completed said contract 15 September, 1857.

Amount found to be due thereon,	\$1882 17
Interest on same from 15th September, 1857, to 28th December, 1858, being 1 year, 3 months and 13 days, at 6 per cent. per annum,	145 24
	<u>\$2027 41</u>

JAY THOMAS commenced performance of his contract February, 1857 ; completed said contract 9th November, 1857.

Amount found to be due thereon,	\$1206 35
Interest on the same from 9th November, 1857, to 28th December, 1858, being 1 year, 1 month and 19 days, at 6 per cent. per annum,	82 03
	<u>\$1288 38</u>

HENRY H. UPP commenced performance of his contract 1st July, 1856 ; completed said contract 12th November, 1857.

Amount found to be due thereon,	<del>\$577 95</del> <i>757 95</i>
Interest on the same from 12th November, 1857, to 28th December, 1858, being 1 year, 1 month and 16 days, at 6 per cent. per annum,	50 78
	<u>\$808 71</u>

*808 71*

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DENARD SHOCKLEY commenced performance of his contract 1st July, 1856; completed said contract 15th October, 1857.  
Amount found to be due thereon, \$585 00  
Interest on the same from 15th October, 1857, to 28th December, 1858, being 1 year, 2 months and 13 days, at 6 per cent., 40 12  
\$625 12

GILBERT M. CLAYTON, et al., commenced performance of their contract 16th February, 1857; completed said contract 16th October, 1857.  
Amount found to be due thereon, \$1274 93  
Interest on same from 16th October, 1857, to 28th Dec'br, 1858, being 1 year, 2 months and 12 days, at 6 per ct. per annum, 91 79  
\$1366 72

JOHN A. BIGELOW commenced performance of his contract 1st October, 1857; completed said contract 6th November, 1857.  
Amount found to be due thereon, \$635 03  
Interest on same from 6th November, 1857, to 28th December, 1858, being 1 year, 1 month and 22 days, at 6 per cent. per annum, 48 81  
\$678 84

JEROME B. HAZEN commenced performance of his contract — December, 1856; completed said contract 7th October, 1857.  
Amount found to be due thereon, \$128 82  
Interest on same from 7th October, 1857, to 28th December, 1858, being 1 year, 2 months and 21 days, at 6 per cent. per annum, 9 46  
\$138 28

JOHN & ROBT. CLARK commenced performance of their contract — September, 1857; completed said contract 12th November, 1857.  
Amount found to be due thereon, \$916 05  
Interest on the same from 12th November, 1857, to 28th December, 1858, being 1 year, 1 month and 16 days, at 6 per cent. per annum, 61 97  
\$978 02

L. SCHUERMAN et al. commenced performance of their contract 1st June, 1857; completed said contract 1st September, 1857.  
Amount found to be due thereon, \$137 50  
Interest on the same from 1st September, 1857, to 28th December, 1858, being 1 year, 3 months and 27 days, at 6 per cent. per annum, 10 86  
\$148 36

JAMES BROWN commenced the performance of his contract 1st April, 1857; completed said contract 1st September, 1857.  
Amount found to be due thereon, \$1166 62  
Interest on the same from 1st September, 1857, to 28th December, 1858, being 1 year, 3 months and 27 days, at 6 per cent. per annum, 92 16  
\$1258 78

LUTHER G. HALE, FOR USE &C., commenced the performance of his contract 2d October 1856, completed said contract 1st August 1857.  
Amount found to be due thereon, \$353 16  
Interest on the same from 1st August, 1857, to 28th December, 1858, being 1 year, 4 months and 27 days, at 6 per cent. interest per annum, 29 76  
\$382 92

LUTHER G. HALE, FOR USE &C., commenced the performance of his contract 3d August, 1857; completed said contract 20th October, 1857.  
Amount found to be due thereon, 82 92  
Interest on the same from 20th October, 1857, to 28th December, 1858, being 1 year, 2 months and 8 days, at 6 per cent. per annum, 5 88  
\$88 80

GEO. W. PRICKETT commenced the performance of his contract 23d July, 1857; completed said contract 27th July, 1857.  
Amount found to be due thereon, 85 00  
Interest on the same from 27th July, 1857, to 28th December, 1858, being 1 year, 5 months and 1 day, at 6 per cent. per annum, 7 22  
\$92 22

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JOHN SCHMIDT commenced performance of his contract 15th June, 1857; completed said contract 15th November, 1857.		
Amount found to be due thereon,	\$120 40	
Interest on the same from 15th November, 1857, to 28th December, 1858, being 1 year, 1 month and 13 days, at 6 per cent. per annum,	8 06	
	<hr/>	\$128 46
WM. B. BOYNTON et al., commenced performance of his contract 1st May, 1856; completed said contract 20th August, 1857.		
Amount found to be due thereon,	\$400 00	
Interest on the same from 20th August, 1857, to 28th December, 1858, being 1 year, 4 months and 8 days, at 6 per cent. per annum,	32 40	
	<hr/>	\$432 40
SIMON ANSTEIN commenced performance of his contract 8th September, 1856; completed said contract 15th September, 1857.		
Amount found to be due thereon,	\$72 41	
Interest on the same from 15th September, 1857, to 28th December, 1858, being 1 year, 3 months and 13 days, at 6 per cent. per annum,	5 57	
	<hr/>	\$77 98
JOHN WOLFINGER commenced performance of his contract 10th July, 1856; completed said contract 18th June, 1857.		
Amount found to be due thereon,	\$42 37	
Interest on the same from 10th July, 1857, to 28th December, 1858, being 1 year, 6 months and 10 days, at 6 per cent. per annum,	3 75	
	<hr/>	\$46 12
JONATHAN TIPPERREY commenced performance of his contract 17th September, 1856; completed said contract 1st October, 1857.		
Amount found to be due thereon,	\$79 80	
Interest on the same from 1st October, 1857, to 28th December, 1858, being 1 year, 2 months and 27 days, at 6 per cent. per annum,	7 28	
	<hr/>	\$87 08
ALOUIS FRICK commenced performance of his contract — May, 1856; completed said contract 30th July, 1857.		
Amount found to be due thereon,	\$167 42	
Interest on same from 30th July, 1857, to 28th December, 1858, being 1 year, 4 months and 28 days, at 6 per cent. per annum,	14 06	
	<hr/>	\$181 48
JOHN S. EMMERT, et al., commenced performance of their contract 7th May, 1857; completed said contract 8th October, 1857.		
Amount found to be due thereon,	\$273 34	
Interest on the same from 8th October, 1857, to 28th December, 1858, being 1 year, 2 months and 21 days, at 6 per cent. per annum,	19 95	
	<hr/>	\$293 29
FREEMPORT GAS LIGHT & COKE COMPANY commenced performance of their contract 12th June, 1857; completed said contract 28th August, 1857.		
Amount found to be due thereon,	\$216 42	
Interest on same from 28th August, 1857, to 28th December, 1858, being 1 year and 4 months, at 6 per cent. per annum,	17 31	
	<hr/>	\$233 73

*On the back of which Master's Report is the following endorsement, to wit:*  
*"Filed Jan 4. 1859. L. W. Guitman clk"*

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And afterwards to wit: on the 5th day of January A.D. 1858 as yet of said December Term of said Court the following entry appears of Record in this cause to wit:

Jay Thomas

vs

John K. Brewster et al

Petition for Mch<sup>t</sup> Lien

Now come Defendants Mitchell and Putnam by their attorney and file their exceptions to the Master's Report in this cause -

Jay Thomas

vs

John K. Brewster et al

Steph Cir Court

The said Defendants James Mitchell and Holden Putnam, by Marsh their attorney come and except to the Master's Report. P. filed in this cause. for cause as follows -

1<sup>st</sup> - Because the said Defendants were not allowed to produce witnesses and make proof before said Master on said Reference

2<sup>nd</sup> - Because said Report is erroneous in respect to the amounts awarded due to said Plaintiffs respectively

3<sup>rd</sup> - Because said Report is erroneous in not having considered the evidence before taken in this cause, of the subsequent claim in favor of said James Mitchell also upon said Lots 3, 4, & 5. and in reporting that the Lien of said Defendants upon the Lot or premises mentioned in said petition should first be satisfied on said Lots 3, 4, & 5.

J. Marsh for said Defps -

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on the back of which appears the following endorsement to wit: "Filed Jan 5<sup>th</sup> 1859"  
"L. M. Guitan etc"

And afterwards to wit: on the 10<sup>th</sup> day of January A. D. 1859. as yet of said December Term of said Court. the following Entry appears of Record in this cause to wit:

Jay Thomas  
" Pet for Mech Lien  
John R. Brewster Et. al

Now come Defendants Thompson Wilcoxon and others by Turner and Ingalls their Attorneys. and file their Exceptions to the Masters Report in this cause—

Jay Thomas  
" Petition for Mechanics Lien  
John R. Brewster Et. al

In the Stephenson County Circuit Court of the December Term A. D. 1858—

The said Defendants Thompson Wilcoxon, John O. Taylor, John Black, James B. Childs, Abraham T. Green, Frederick P. Dyerly, Tobias Engle, E. Howard Hyde, Henry Strohm, William M. Buckley, Asahel M. Rice, Rudolph K. Prubacker, Grace B. Snyder, Isaac B. Stouman, John Hoëble, John Wade, Chancellor Martin, Frederick P. Kohlor, John Coakes, Hollis Jewell, Jared Shutz, Charles B. Rosenthal and Tho J. Turner. by Turner & Ingalls their Attorneys. come and except to the Masters Report filed in this cause. for the causes following—

1<sup>st</sup> Because the Report shows that the Plaintiff commenced furnishing labor and materials for said Brewster House on the

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day of February A.D. 1857. and the Report does not show the value of Lots number five and six (5 & 6) in Block No fifty six (56) in the original Town of Newport together with the improvements thereon on the day of February A.D. 1857. when said Jay Thomas commenced to furnish labor and materials for said Brewster House erected upon said Lots

And because the said Report is erroneous in showing the dates of the commencement of the performance of the contracts of the several Petitioners the time when the contracts respectively were completed and the amounts due the respective Petitioners when there was no testimony before the Master touching any of the matters mentioned in this Exception

Turner & Ingalls  
for said Defts

On the back of which is the following endorsement to wit: "Filed Jan 10. 1859"

J. M. Guiteau clk."

106.

And afterwards to wit: On the 15<sup>th</sup> day of January A.D. 1859. no yet of said December Term of said Court. the following entry appears of Record in this cause to wit:

Jay Thomas

John B. Brewster et. al<sup>o</sup>

3 Petition for Michael  
Sherin

Now on this day come Defendants Mitchell. Putnam. Shaffer. Burrell. by Jason Marsh Esq their Attorney and files their Exceptions to the Masters Report herein.

James Mitchell & al<sup>o</sup> Steph. Orr Court  
Jay Thomas

The said Defendants Mitchell. Putnam. Shaffer. and Burrell by J. Marsh their Attorney come and except to the Masters Report filed herein and for cause of Exception set forth

1<sup>st</sup> That the said Master erred in denying to said Defendants the right to make further proof before him

2<sup>nd</sup> The said Master erred in Reporting that the mortgage or Trust deed of said Defendants James Mitchell & Co. should exhaust the value of other premises before attaching as a Lien upon the premises mentioned in said Petition

3<sup>rd</sup> The said Report is erroneous in respect to the several amounts found to be due to

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the respective parties petitions

J. Marsh  
for said Defts

4 The said Report is erroneous in respect  
to excluding the buildings upon the premises  
in question in satisfying the said first lien  
of said James Mitchell & Co.

J. Marsh  
for said Defts

On the back of which appears the following  
endorsement to wit: "Filed Jan 15. 1859"  
"S. W. Spitzeran clk"

And afterwards to wit: on the 14th day of Janu-  
ary A. D. 1859. as cert of said December Term  
of said Court. the following entry appears  
of Record in this cause to wit:

Jay Thomas

vs  
John K. Brewster et al

2 Petition for m<sup>ch</sup> Lien

Now come Defendants  
Mitchell. Putnam. Shaffer and Burill by  
Gerson Marsh <sup>Esq</sup> their Attorney. and file the affi-  
davit of Holden Putnam in this cause -

And the said Plaintiff by Sweet & Hibbard  
his Attorneys enters his motion to have said  
affidavit stricken from the files - which  
motion is overruled by the Court. and the  
Plaintiff excepts -

Steph<sup>r</sup> Civ Court

Jay Thomas

vs  
John K. Brewster

James Mitchell & also  
"

2  
2  
2

State of Illinois  
Stephens on County

Holden Putnam one

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of the Defendants in this cause being duly sworn deposes and says that on Saturday of the week in which notice had been given to take testimony in this cause before the Master, this Deponent appeared before said Master at his office and produced a witness for the purpose of having his testimony taken before said Master. And this Deponent further says that the counsel of said Petitioners objected to having said testimony taken, but finally withdrew such objection so far as to the testimony of said witness L. D. Clark, and this Deponent further says that said Petitioners have been taking testimony in said cause on said day as this deponent was informed and believed, and after the testimony of said L. D. Clark was taken this deponent requested said Master to continue said proceedings over to the Monday following to enable said Defendants to produce other witnesses and proof. This deponent further says that the counsel for said Petitioners then objected to such arrangement and insisted that the taking of proofs in said cause was then closed and said Master then decided to not continue the cause beyond said Saturday, and this deponent further says that he was unable to produce such witnesses as he desired on said day, and that he stated such fact to said Master, or that it was necessary to have further time -

Subscribed and sworn to } Holder Putnam  
 this 15<sup>th</sup> day of July 1859 before me }  
 L. W. Suitman clk } 3

On the back of which appears the following endorsement & suit: "filed Jan 14<sup>th</sup> 1859 L. W. Suitman clk"

111 he had forty of fifty witnesses to produce and  
 this affiant further saith that neither the said  
 111 defendants nor either or any of them did pro-  
 duce any witnesses or witnesses proof or evi-  
 dence in said cause or <sup>either or</sup> any of them after said  
 application by said Putnam. and this affiant  
 further saith that he did not refuse to take the  
 proofs of the said defendants or either of them  
 at any time. but if the said defendants had  
 appeared any proof on said last named day  
 or any day after that day this affiant  
 could have taken the same. subject to the  
 exceptions of the said Petitioners and this  
 affiant further saith that <sup>the</sup> said petitioners nor  
 either of them took any proof before this affiant  
 on said fourth day of December

Subscribed and sworn to  
 this 17<sup>th</sup> day of January  
 A. D. 1859 before me  
 Homer A. Hibbard  
 Notary Public

On the back of which is the following endorse-  
 ment to wit: Filed Jan. 17. 1859. S. N. Whitman clk

Jay Thomas }  
 " } In the Stephenson County Circuit  
 John K. Brewster } Court of the December Term A. D. 1858.

State of Illinois }  
 Stephenson County }  
 Deemard Shackley of said  
 County being first duly sworn  
 on oath saith that he is one of the Petitioners  
 for a mechanics Lien against John K. Brewster  
 and that his suit is still pending in the cir-  
 cuit Court of said County. and that this af-  
 fiant's case with several other causes #

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\*. for mechanics liens against the said Brewster were referred to J. A. Brain Master in Chancery to take proofs in said causes. and this affiant further saith that on Wednesday the first day of December A. D. 1858 the day fixed by said Master to take said proofs this affiant was in a room in the Brewster House in the City of Newport in said County which room was occupied by Gaspar Marsh Esquire. that while this affair was in said room the said Marsh was present. as was Thomas J. Turner Esquire. that during the time this affair was so as aforesaid present. the said Turner said to the said Marsh "this is the day for taking the proofs in the Brewster House cases" - And he then enquired of the said Marsh what they had better do about it. to which the said Marsh replied. let them go on. our cases will take care of themselves. and the said Turner assented thereto. and this affiant further saith that J. A. Brain the said Master in Chancery was present at said conversation and had informed the said Marsh that he had commenced taking said proofs.

Subscribed and sworn to  
 this 17<sup>th</sup> day of January  
 A. D. 1859. before me  
 Homer A. Hibbard  
 Notary Public

on the back of which appears the following endorsement  
 "Filed Jan 27. 1859. d. M. Guiteau cllk"

110 A. D. 1858. And this Affiant further saith, that on the first day of December A. D. 1858. he informed Jason Marsh Esquire and Thomas J. Turner Esquire and Holden Putnam, that the said Petitioners had commenced to take proof in the said cause that this affiant understood from said Marsh and Turner, that it was not their intention to appear before this affiant to take proofs in said cause, and this affiant further saith that neither of the defendants in any of said causes appeared before this affiant to procure subpoenas that this affiant on the first and second days of said December requested the said Marsh and Turner, to produce their witnesses as it was important to this affiant in view of the short time he had for making his Report to this Court, that the proofs should be in, and upon the statement last aforesaid this affiant understood from said Marsh and Turner that they did not intend to appear and produce witnesses. And this Affiant further saith, that on Saturday the fourth day of said December, Holden Putnam came to the Office of this Affiant and said he wanted to produce witnesses on the part of the Defendants in said causes, that this affiant then notified the Attorneys of said Petitioners M. P. Sweet, that Mr Sweet came into the Office of this affiant, and on being informed of said desire on the part of the said Putnam, objected on the ground that the proofs were closed. That after said Sweet had left the Office of said affiant this affiant said to the said Putnam that he this affiant would take the proofs of the said Defendants if they would then set about to produce their witnesses, that said Putnam replied that

1859

and afterwards to wit: on the 17<sup>th</sup> day of January A.D. 1859. as yet of said December Term of said Court. the following entry appears of Record in said cause to wit:

Jay Thomas  
vs  
John K. Brewster et al

Petition for mechanic  
lien

Now comes said Plaintiff by his Attorney, and files the several affidavits of J. W. Crain, and Denward Shackley in this cause -

Jay Thomas  
vs  
John K. Brewster et al

In the Circuit Court of  
Stephenson County of the De-  
cember Term A.D. 1858 -

State of Illinois  
Stephenson County  
J. W. Crain of said County being first duly sworn on oath saith that he is the Master in Chancery to whom the above entitled cause was referred by the Circuit Court of said County to take proof. that on the first day of December A.D. 1858, the said Petitioners appeared before this affiant by his counsel and produced his witnesses. the said several defendants in said cause did not either of them appear during that day nor any other day while said proofs were being taken. on the part of said Petitioners; and this affiant further saith that the said Petitioners and the several other Petitioners for a Mechanic's Lien against John K. Brewster which said cause were severally referred to this affiant to take proof. all concluded and closed their proofs on Thursday the second day of December

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And afterwards to wit: on the 18<sup>th</sup> day of January A.D. 1859. as cert of said District Court of said court. the following entry appears of Record in said cause—

Jay Thomas

John K. Brewster Et. al

Petition for Mechanics Lien

Now come Defendants Mitchell, Putnam, Shaffer & Burrill, by their attorney Jason Marsh Esq. and file a Trust Deed from John K. Brewster, Et. ux to Joseph B. Smith, Trustee, a Trust Deed from John K. Brewster, Et. ux to Luther N. Guitman as trustee, and agreement from John K. Brewster to John A. Clark and others—

Trust Deed

This Indenture made this twenty second day of March, in the year of our Lord, one Thousand Eight Hundred and Fifty six. Between John K. Brewster and Emily S. Brewster his wife of the County of Stephenson and State of Illinois of the First Part, and Joseph B. Smith of the County of Stephenson and State of Illinois of the Second Part, Witnesseth, That the said John K. Brewster is justly indebted unto James Mitchell also in the sum of Five Thousand dollars, secured by one Promissory Note bearing even date herewith drawn by the said John K. Brewster, payable to said James Mitchell also for said sum of Five Thousand dollars, and due eight months after date with interest at the rate of ten per cent per annum for money loaned—

Now Therefore these Parties witness— That the said Party of the First Part in order

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to secure the prompt and punctual payment of the said Promissory Note herein before specified, according to its tenor and effect and in consideration of five dollars to the said party of the first part paid, the receipt whereof is hereby confessed, doth hereby Grant Bargain and Sell unto the said party of the second part, and to his Executors, For Administrators, All the following described premises, situate lying and being in the County of Stephenson and State of Illinois to wit:

The North Easterly half of lots number five and six (556) in Block Number fifty six (56) said lots being divided by a line of iron through the center of said lots parallel with Mechanics Street and fronting thirty feet and two inches on Stephenson Street in the original Town of Keupost (now City of Keupost) —

Also Lots numbered three four and five in Block Number fifty one (51) in said original Town of Keupost (now City of Keupost) — For a more full description of said Lots, reference may be had to the Recorded Plat of said "Town of Keupost," in the office of the Clerk of the Circuit Court of said County of Stephenson —

Together with all and singular, the Tenements, Hereditaments, and Appurtenances therunto belonging, or in anywise appertaining, To Have and to Hold, the above described premises unto the said party of the second part, and to his heirs, In Trust Nevertheless, for the following purposes to wit: In Trust, in case default shall be made by the said party of the first part his heirs, Executors, Administrators or Assigns, to pay the said Note above mentioned, according to the tenor and effect thereof then on application of the

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said James Mitchell also or the legal holder or holders of said Note. and having first given ten days Notice by publishing the same in a public Newspaper, printed in the County where said premises are situated. then I shall and may be lawful for the said party of the second Part. or his heirs or his Attorney (by him authorized by a writing under his Hand and seal duly acknowledged and Recorded) to take possession of the premises aforesaid and to sell the same or any part thereof. at Public Sale at such an hour and place as said Party of the second Part or his heirs or Attorney may appoint. or to adjourn said Sale from time to time. and upon sale as aforesaid to make and deliver to the purchaser or purchasers thereof. a good and sufficient Deed or Deeds of Conveyance in the law for the same in Fee Simple. and out of money arising from such sale. after first paying all reasonable expenses growing out of the Execution of the Trusts aforesaid and all taxes and assessments levied on the premises aforesaid. or on such part thereof as may be sold for the purposes aforesaid to pay the said James Mitchell also their Representatives or Assigns. or to the legal holder or holders thereof. the amount which may be then due upon said Note above mentioned. for principal and interest rendering the surplus of the proceeds of such sale. (if any there should be) unto said party of the first Part or his heirs. Executors. Administrators or Assigns - In case no default is made in the payment of the aforesaid Promissory Note. then this Deed shall be null and void. and the manner of cancelling the same and releasing said Trust shall be



Certify That John C. Brewster, and Emily D Brewster personally known to me to be the Persons whose names are subscribed to the foregoing Deed as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act and deed for the uses and purposes therein set forth. And the said Emily D. Brewster, personally known to me to be the wife of the said John C. Brewster, and as the person who subscribed said Deed as such having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion from her husband, and that she does not wish to retract the same. Given under my hand and Notarial Seal at Newport this 22<sup>nd</sup> Day of March A.D. 1856.

*John A. Clark*

John A. Clark, Notary Public

On the Back of which Trust Deed appear the following Endorsement of filing and certificate to wit: "Filed Jan 18. 1859. L. N. Putnam clk"

State of Illinois  
County of Stephenson

Office of Clerk of Circuit Court.

I certify that this Deed was filed for Record in my Office on the twenty sixth day of March A.D. 1856 at 9 1/2 o'clock A.M. Recorded in Book "D" of Deeds page 214 to 219 - and Examined -  
Joseph S. Smith, Clerk  
By A. R. Ordway Dep

Trust and

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This Indenture made this twenty sixth day of October in the year of our Lord One Thousand Eight Hundred and Fifty seven. Between John K. Brewster, and Emily S. Brewster his wife of the County of Stephenson and State of Illinois of the first Part, and Luther W. Guiteau of the County of Stephenson and State of Illinois of the second Part. Witnesseth—

That the said John K. Brewster is justly indebted unto James Mitchell & Co in the sum of Thirty Five hundred Dollars. Secured by three promissory Notes to wit: one Note dated August 1<sup>st</sup> 1855. due thirty days after date for fourteen hundred dollars— And one Note dated April 8<sup>th</sup> 1856. due thirty days after date for one thousand dollars Both of said notes signed John K. Brewster & Co. payable to James Mitchell & Co or order with 10 per cent interest after due and endorsed "interest paid in full to February 26<sup>th</sup> 1858. and time of payment extended to February 26<sup>th</sup> 1858"— Also one Note bearing date October 26<sup>th</sup> 1854 signed by John K. Brewster payable to James Mitchell & Co or order for Eleven hundred dollars. and due four months after date with interest after due at the rate of ten per cent—

Now Therefore. These presents witness. that the said party of the first part. in order to secure the prompt and punctual payment of the said promissory Notes herein before specified. according to its tenor and effect. and in consideration of five Dollars to the said party of the first part paid. the receipt whereof is hereby confessed. do hereby Grant. Bargain and Sell unto the said party of the second part and to his Executors. Administrators and Assigns. all the following described premises situate

lying and being in the County of Stephenson  
 and State of Illinois to wit: Lots numbered  
 three, four and five, and the North Easterly  
 one half of Lot No two (said lot two being  
 divided by a line drawn parallel with  
 Cherry Street) in Block number fifty one (51) in  
 the original town of Freeport (now City of Free-  
 port) For a more full description of which reference  
 may be had to the recorded plat of said "Town  
 of Freeport" in the office of the Clerk of the  
 Circuit Court of said County of Stephenson.

Together with all and singular, the Tenements  
 Hereditaments and Appurtenances therunto be-  
 longing or in anywise appertaining - To Have  
 and to hold the above described Premises unto  
 the said party of the second part, and to his  
 heirs: In Trust Nevertheless, for the following  
 purposes to wit: In Trust, in case default shall  
 be made by the said John K. Brewster of the  
 party of the first part his Heirs, Executors, Ad-  
 ministrators or Assigns, to pay the said Prom-  
 issory Notes above mentioned, according  
 to the tenor and effect thereof. Then on Appli-  
 cation of the said James Mitchell & Co. or the  
 legal holder or holders of said promissory  
 Notes or either of them, and having first  
 given ten days notice, by publishing the same  
 in a public Newspaper printed in the County  
 where said premises are situated, then it shall  
 and may be lawful for the said party of the  
 second part or his Executors, Administrators  
 or Attorney (by him authorized by a writing  
 under his hand and seal duly acknowledged  
 and recorded) to take possession of the premises  
 aforesaid, and to sell the same, or any part  
 thereof at Public Sale, at such an hour and  
 place as said party of the second part, or his

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Executors or administrators or Attorney may appoint, or to adjourn said sale from time to time and upon sale as aforesaid to make and deliver to the purchaser or purchasers thereof, a good and sufficient Deed or Deeds of Conveyance in the law for the same, in fee simple: and out of money arising from such sale, after first paying all reasonable expenses growing out of the execution of the trust aforesaid and all taxes and assessments levied on the premises aforesaid, or on such part thereof as may be sold for the purposes aforesaid, to pay the said James Mitchell & Co. their Representatives or assigns or to the legal holder or holders thereof of the amount which may be then due on said promissory Notes or either of them above mentioned for principal and interest rendering the surplus of the proceeds of such sale (if any there shall be) unto said party of the first part or his heirs Executors, Administrators or Assigns.

The certificate of the Printer of said publication of the notice of the sale, and of the adjournment or adjournments thereof, with a printed copy of said notice annexed, or the Record of such certificate and notice in the Recorder's Office of the County in which said premises or any part of them lie or are situated, shall be final and perfect Evidence that said publication and notice has been duly made and given - In case no default is made in the payment of the aforesaid promissory Notes - then this Deed shall be null and void, and the manner of cancelling the same and releasing said trust shall be the same as is prescribed by law for the release of mortgages, which releasing and cancelling shall be sufficient, whether

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given by the party or used, or by the said trustee  
 or by his Executors or administrators or the at-  
 torney constituted as aforesaid of said Trustee.  
 In Case the aforesaid promissory Notes and  
 all costs of the execution of said trust, and  
 all taxes levied on said premises, be satisfied  
 by the sale of part of the premises aforesaid, then  
 such part of said premises as may remain  
 undisposed of, and as are not required for  
 the purposes of this trust (if any so remain) shall  
 be duly re-conveyed to said party of the first part  
 his heirs or assigns by Deed of Conveyance or  
 release, signed sealed and acknowledged  
 by said party of the second part, his executors  
 or administrators or by his attorney duly con-  
 stituted as aforesaid—

And the said John C.  
 Brewster for him and his heirs Executors and  
 administrators hereby covenants to and with  
 party of the second part his executors, adminis-  
 trators and assigns that he is seized of  
 a fee simple estate in said premises, and  
 that he will warrant and defend said premi-  
 ses against all lawful claims, and will pay  
 all taxes levied on said premises during the  
 continuance of these presents— In witness whereof  
 the said party of the first part hereunto set  
 their hands and seals the day and year first  
 above written

Signed, Sealed and Delivered by John C. Brewster  
 in presence of Joseph B. Smith & Emily S. Brewster

State of Illinois } I Joseph B. Smith a Notary  
 Stephenson County } Public for Freeport in  
 said County do hereby cer-  
 tify that John C. Brewster and Emily S. Brewster

122 personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same appeared before me this day in person, and acknowledged that they signed sealed and delivered the same as their free and voluntary act <sup>and</sup> for the uses and purposes therein set forth - And the said Emily S. Brewster personally known to me to be the wife of the said John C. Brewster, and as the person who subscribed said deed as such having been by me made acquainted with the contents and meaning of said instrument of writing separate and apart from her husband. Acknowledged that she had signed executed the same and relinquished her dower to the lands and tenements therein mentioned voluntarily fully and without compulsion of her said husband. and that she did not wish to retract the same - Given under my hand and <sup>Notarial</sup> seal this 28<sup>th</sup> day of October A.D. 1854.

Notary Seal

Joseph B. Smith  
Notary Public

On the back of which said deed appear the following certificate of Record and endorsement to wit:

State of Illinois Office of Clerk of Circuit Court  
Stephenson County

I hereby certify that this deed was filed for Record in my Office on the 28<sup>th</sup> day of Oct<sup>ober</sup> A. D. 1854. at One O'clock or minutes P.M. and Recorded in Book "I" of mortgages page 202. and examined by J. M. Lewis a copy of the within deed of trust satisfied by sale of

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 lands therein described for the sum of One  
 Thousand Dollars to Holden Putnam March  
 15<sup>th</sup> 1858 - <sup>S. M. Putnam clerk</sup> Filed Jan 18. 1859 S. M. Putnam clk"

Whereas Holden Putnam and others Citizens  
 of Troup Co. Illinois have signed as sureties with  
 John R. Brewster as principal. three notes for  
 five thousand dollars each payable to the order  
 of John A. Clark. and due respectively August  
 1<sup>st</sup> 1860. September 1. 1861. and October 1. 1862. with  
 10 per cent interest. And whereas the said Notes  
 were executed for the purpose of raising  
 funds. where with to erect a Hotel on Lot 6 & 7.  
 in Block 56. in the original Town of Troup  
 to be not less than 50 feet front on Stephenson  
 Street by 125 feet deep and four stories high  
 above the cellar or basement. and whereas  
 said Brewster has agreed to furnish in addi-  
 tion to the said sum of Fifteen Thousand Dollars  
 the sum of at least five thousand dollars  
 so that said Hotel Building when completed  
 shall cost at least Twenty Thousand Dollars  
 Now therefore it is agreed by said John R.  
 Brewster. and the said John R. Brewster  
 hereby binds himself and coventants with said  
 Holden Putnam. and with each of the signers  
 of said Notes and the endorser thereof. that he  
 will expend the proceeds of said Notes as fast  
 as the same shall be drawn in building said  
 Hotel. and that he will furnish of his means  
 in addition to the money to be drawn as afore-  
 said. to every three thousand dollars <sup>of the money</sup> so be  
 drawn. the sum of One thousand Dollars - that  
 he will pay off or remove all liens or incum-  
 brances of what ever character now against  
 said premises. so that the deed of Trust

124 given to secure the said notes shall be the first lien upon the same, and it is further agreed by said Brewster that the said sum of fifteen thousand Dollars, the proceeds of said notes shall be deposited with Messrs James Mitchell & Co and drawn by said Brewster as the same or all be required in the construction of said Building in the proportion as aforesaid. He furnishing to said James Mitchell & Co satisfactory evidence that he has expended of his other means in the proportion as above.

In witness whereof the said John K. Brewster has hereunto set his hand and seal at Newport this 5<sup>th</sup> Day of July 1856

John K. Brewster

On the back of which appears the following endorsement to wit: "Filed Jan. 18. 1859."  
"L. M. Squirean clk"

And on the said 18<sup>th</sup> day of January A. D. 1859, as yet of said December Term of said Court, the following entry appears of Record in this cause to wit:

Jay Thomas

vs  
John K. Brewster, Et. al.

3 Pet for Mech Lien

Now came on for a final hearing of the exceptions of Defendants Mitchell, Putnam, Shaffer and Purcell, filed in this cause by Marsh their Attorney to the Master's Report herein - and the Arguments of Counsel having been concluded, and the Court advised in the premises. It is considered and ordered and adjudged that the third exception be sustained in so far as said Master's Report differs from the former finding of the

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Court. Also that the 2<sup>nd</sup> Exception be sustained  
It is further Ordered that the 1<sup>st</sup> Exception to  
said Report be overruled-

Again on the said 18<sup>th</sup> day of January A. D. 1859.  
of said Term of said Court the following entry  
also appears of Record in this cause to wit:

Jay Thomas  
vs  
John K. Brewster et al  
Pet for Mch<sup>l</sup> Lien

Now came on for  
final hearing the Exceptions of Defendants  
Thompson Wilcoxen and others filed in this  
cause by Jurner their Attorney to the Report  
of the Master in this cause. And after ar-  
guments of Counsel the Court being advised  
in the premises - It is considered Ordered and  
adjudged that the Exceptions be overruled -  
It which ruling Defendants except -

And afterwards to wit: on the 19<sup>th</sup> day of  
January A. D. 1859. as yet of said December  
Term of said Court. the following entry appears  
of Record in this cause to wit:

Jay Thomas  
vs  
John K. Brewster et al  
Petition for Mch<sup>l</sup> Lien

Now after the evidence  
in this cause being concluded. and also ar-  
guments of Counsel being concluded - Come  
Defendants Thompson Wilcoxen and others  
by Jurner their Attorney and file their Cross-  
Bill in this cause. And the said Plaintiff  
by his Attorney enters his motion to strike  
said Defendants Cross-Bill from the files of

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this Court - and said motion coming on to be heard. the motion is sustained - And it is ordered by the Court that said Cross Bill be stricken from the files - to which ruling of the Court said Defendants Wilcox and others by their Attorney except -

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Again on the said <sup>(127)</sup> ~~21<sup>st</sup>~~ day of January A.D. 1859  
as aft of said December Term of said Court.  
the following entry appears of Record in  
this cause to wit:

Jay Thomas  
vs  
John R. Brewster Et. al

Petition for Mch<sup>d</sup> Sim

Now come Defendants  
Mitchell, Putnam, Shaffer & Purill by Marsh  
their Attorney and file their motion to dis-  
miss this bill -

Jay Thomas  
vs  
John R. Brewster Et. al

The said Defendants  
Mitchell, Putnam,  
Shaffer & Purill.

come & make their motion  
to dismiss the said Sim case, for the rea-  
son that the said Petitioners refuse to pre-  
pare a Decree in said case  
Jan 21. 1859.

J. Marsh  
Atty for said Deffs

On the Back of which appears the follow-  
ing endorsement to wit: "Filed Jan 21<sup>st</sup> 1859"  
"J. W. Guiteau Clerk"  
"By Tho North Dep"

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And afterwards to wit: on the 24<sup>th</sup> day of January A. D. 1859 as yet of said December Term of said Court. the following Dovers appears of Record in this cause to wit:

- Henry C. Childs
- John R. Brewster
- Joseph B. Smith
- Thomas A. Hibbard
- James Mitchell
- Holden Putnam
- Alexander Neely
- Gabriel B. Howe
- George O. Hovey
- Samuel C. Parsons
- John B. Hutchinson
- Charles H. Dalton.
- Jacob Wendell Jr.
- J. Wilson Shaffer.
- Louis S. Purcell.
- Chancellor Martin.
- Abraham T. Green.
- Henry Strohm.
- Isaac C. Stoneham.
- Henry W. Pennington.
- Thomas Cottonman.
- John Black.
- John P. Pyrely.
- John O. Taylor.
- William M. Buckley.
- Jared Shutz.
- John S. Emmeret.
- Thompson Wilcox.
- Silas D. Clark.
- John Coates.
- John Wall.
- Hiram Bright.
- Jesse B. Snyder.
- John Hibel.
- Jobias Engle.
- Gilbert M. Clayton.
- A. Cannon Hunt.
- Francis Foley.
- Charles Rosensteel.
- Asahel W. Rice.
- Hollis Jewell.
- Frederick P. Kohler.
- James P. Childs.
- George Purinton.
- Thomas J. Turner.
- Matthias Hettinger.
- Jesse Taylor.
- E. Howard Kayde.
- J. Reigard

In the  
District Court of the  
December Term A. D. 1858-

Petition for a  
Mechanic's  
Lien

Dover

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Francis W. S. Brantley & Rudolph Brubaker.  
John A. Clark & Daniel S. Brewster

Thomas K. Colman  
to  
Same

~~~~~

Jay Thomas  
to  
Same

~~~~~

Henry H. Alpp  
to  
Same

~~~~~

Denard Schockley  
to  
Same

~~~~~

Gilbert M. Clayton & Oliver S. Clayton  
to  
Same

~~~~~

John A. Bigelow  
to  
Same

~~~~~

Jerome B. Hazen  
to  
Same

~~~~~

John Clark & Robert Clarke  
to  
Same

~~~~~

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Leonard Schuerman, Jacob Schuerman & Abraham Melick

to  
Same

~~~~~

James Brown

to  
Same

~~~~~

Sutton G. Hale for the use of E. Corning also

to P  
Same

~~~~~

Sutton G. Hale & George W. Fossler for the use of George N. Fossler

to  
Same

~~~~~

George W. Pickett

to  
Same

~~~~~

John Schmidt

to  
Same

~~~~~

William B. Baynton & Olin S. Wheelock

to  
Same

~~~~~

Simon Austin

to  
Same

~~~~~

John Wolfinger  
 " Same

7  
 6  
 5  
 4  
 3  
 2  
 1

Johnathan Tipper  
 " Same

7  
 6  
 5  
 4  
 3  
 2  
 1

Alais Frick  
 " Same

7  
 6  
 5  
 4  
 3  
 2  
 1

John S. Emmert & John Burrill  
 " Same

7  
 6  
 5  
 4  
 3  
 2  
 1

The Trust Gas Light & Coke Company  
 " Same

7  
 6  
 5  
 4  
 3  
 2  
 1

And now at this day come again the said parties by their solicitors and these causes having been brought on to a final hearing upon the petitions and answers filed herein and upon the proofs taken before the Master in Chancery and also in open Court and it appearing that the said John C. Brewster from the first day of May A.D. 1856 during and until the fifteenth day of November A.D. 1857 was the owner in Fee Simple of the following described pieces or parcels of land situated in the City of Trust in the County of Stephenson and State of Illinois to wit: Lot Number five and six in Block Number fifty six in the original Town of Trust and all that part of Lot number seven in said Block particularly

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described as follows: Commencing at the  
 Northwestly corner of said Lot Number six,  
 and running thence Southwardly along the  
 line between said Lots number Six and Seven in  
 said Block, thirty five feet. Thence westwardly  
 on a line parallel with Bridge Street twenty feet  
 Thence Northwardly on a line parallel with  
 Mechanics Street thirty five feet to said Bridge  
 Street. Thence Eastwardly along the line of said  
 Bridge Street to the place of Beginning —

It further  
 appearing that said John R. Brewster made  
 contracts with the said several petitioners in the  
 above entitled writs mentioned for the furnishing  
 of labor or materials for the erection of a Build-  
 ing which is situated upon and covers all  
 the land hereinbefore described. and it appear-  
 ing that said contracts were made and the  
 performance of the same was commenced and  
 said contracts were completed severally at the  
 times hereinafter severally stated. and that the  
 amounts severally due to said petitioners on their  
 said several contracts on the seventh Day of  
 January A. D. 1858. were as hereinafter stated —  
 and the amounts which they have severally  
 received on their respective contracts as aforesaid  
 are as hereinafter stated to wit: —

The contract  
 with said Baynton & Wheelock, was made on  
 the first day of May A. D. 1856. they commenced  
 the performance of the same on the first day  
 of May A. D. 1856. and completed the same the  
 20<sup>th</sup> Day of August A. D. 1857. There was due  
 them on said contract on the seventh Day  
 of January A. D. 1858 the sum of four hundred  
 dollars. Paid they had previously received on  
 said contract, the sum of one hundred dollars

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The contract with said Henry C. Childs. was made on the first day of June 1856. He commenced the performance of the same the 1<sup>st</sup> day of July 1856. and completed the same on the 19<sup>th</sup> day of November 1857. There was due him on said contract on the seventh day of January A.D. 1858 the sum of Six Thousand Six hundred and twenty two & <sup>64</sup>/<sub>100</sub> Dollars. and he had previously received on said contract the sum of Six thousand ninety four and <sup>99</sup>/<sub>100</sub> Dollars—

The contract with said Frick was made on the — day of May 1856. He commenced the performance of the same on the — day of May 1856. and completed the same on the 3<sup>rd</sup> day of July 1857. There was due him on said contract on the seventh day of January A.D. 1858 the sum of one hundred and sixty seven and <sup>4</sup>/<sub>100</sub> Dollars. and he has received on said contract. the sum of twelve hundred and fifty three and <sup>95</sup>/<sub>100</sub> Dollars—

The contract with said Colman was made on the 1<sup>st</sup> day of June 1856. He commenced the performance of the same on the 1<sup>st</sup> day of July 1856. and completed the same on the 15<sup>th</sup> day of September 1857. There was due him on said contract on the seventh day of January A.D. 1858. the sum of Eighteen hundred and eighty two & <sup>14</sup>/<sub>100</sub> Dollars. and he had previously received on said contract. the sum of twenty four hundred and eighty— two & <sup>63</sup>/<sub>100</sub> Dollars—

The contract with said Upp was made on the first day of June 1856. He commenced the performance of the same the 1<sup>st</sup> day of July 1856. and completed the same on the 16<sup>th</sup> day of November 1857. There was due him on said

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contract on the seventh day of January A.D. 1858. the sum of seven hundred and fifty seven and  $\frac{3}{4}$  Dollars. and he had previously received on said contract the sum of seven hundred and forty two and  $\frac{1}{2}$  Dollars—

The contract with said Shooley was made on the 1<sup>st</sup> day of June 1856. he commenced the performance of the same the 1<sup>st</sup> day of July 1856. and completed the same the 15<sup>th</sup> day of October 1857. There was due him on said contract on the seventh day of January A.D. 1858. the sum of five hundred and eighty five Dollars. and he had previously received on said contract the sum of two thousand Dollars—

The contract with said Jay Thomas was made the 14<sup>th</sup> day of February 1857. he commenced the performance of the same the — day of February 1857. and completed the same the 9<sup>th</sup> day of November 1857. There was due him on said contract on the seventh day of January A.D. 1858. the sum of twelve hundred and six and  $\frac{3}{4}$  Dollars. and he had previously received nothing on said contract—

The contract with said Gilbert W. Clayton and Oliver D. Clayton was made on the — day of — 1857. They commenced the performance of the same on the 16<sup>th</sup> day of February 1857. and completed the same the 19<sup>th</sup> day of October 1857. There was due them on said contract on the seventh day of January A.D. 1858. the sum of twelve hundred and seventy four and  $\frac{3}{4}$  Dollars.

and they had previously received on said contract the sum of nine hundred and sixty nine and  $\frac{1}{2}$  Dollars—

The contract with said Bigelow was

made on the 1<sup>st</sup> Day of October 1854. He commenced the performance of the same on the 1<sup>st</sup> Day of October 1854. and completed the same on the 4<sup>th</sup> Day of November 1854. And there was due him on said contract on the seventh Day of January A.D. 1858. the sum of six hundred and thirty five and <sup>03</sup>/<sub>100</sub> Dollars. and he has received nothing on said contract —

The contract with said Hazen was made the 10<sup>th</sup> day of December 1856. He commenced the performance of the same the — Day of December 1856. and completed the same the 7<sup>th</sup> Day of October 1857. and there was due him on said contract on the seventh Day of January A.D. 1858 the sum of one hundred and twenty eight and <sup>02</sup>/<sub>100</sub> Dollars and he had previously received on said contract the sum of three hundred and ninety nine and <sup>43</sup>/<sub>100</sub> Dollars —

The contract with said John Clark and Robert Clark was made on the 1<sup>st</sup> Day of September 1854. They commenced the performance of the same on the — Day of September 1854. and completed the same on the 10<sup>th</sup> Day of November 1854. There was due them on said Contract on the seventh Day of January A.D. 1858 the sum of nine hundred and sixteen and <sup>05</sup>/<sub>100</sub> Dollars. and they have received nothing on said contract —

The contract with said Leonard Schureman, Jacob Schureman and Abraham Melick was made on the 1<sup>st</sup> Day of May 1854. They commenced the performance of the same on the 1<sup>st</sup> Day of June 1854. and completed the same on the 1<sup>st</sup> Day of September 1854. There was due them on said Contract on the seventh Day of January A.D. 1858. the sum of one hundred

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and thirty seven and  $50/100$  Dollars. and they have received nothing on said contract —

The contract with said Brown was made on the 5<sup>th</sup> Day of March 1854. he commenced the performance of the same on the 1<sup>st</sup> Day of April 1854. and completed the same on the 1<sup>st</sup> Day of September 1854. There was due him on said contract on the seventh Day of January A.D. 1858. the sum of Eleven hundred and sixty six and  $50/100$  Dollars. and he had previously received on said contract the sum of fourteen hundred and ninety five and  $38/100$  Dollars —

The contract with said Sutter G. Hale who was for the use of E. Corning Co was made on the — Day of — 185— he commenced the performance of his contract on the 2<sup>nd</sup> Day of October 1854. and completed the same on the 1<sup>st</sup> Day of August 1854. There was due him for the use of E. Corning Co on said contract on the seventh Day of January 1858. the sum of three hundred and fifty three and  $1/100$  Dollars. and he had previously received the sum of one hundred and seventeen and  $56/100$  Dollars —

The contract with said Hale and Towles who was for the use of George A. Towles was made on the — Day of — 185— They commenced the performance of the same the 3<sup>rd</sup> Day of August 1854. and completed the same the 20<sup>th</sup> Day of October 1854. There was due said Hale and Towles for use of Towles as aforesaid on said contract on the seventh Day of January A.D. 1858 the sum of Eighty two and  $92/100$  Dollars. and they have received nothing on said contract —

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The contract with said Pickett was made on the — day of — 185—: he commenced the performance of the same the 23<sup>rd</sup> Day of July 1854. and completed the same on the 24<sup>th</sup> Day of July 1854. And there was due him on said contract on the seventh Day of January 1858 the sum of Eighty five Dollars. and he has received nothing on said contract —

The contract with said Schmidt was made on the 1<sup>st</sup> Day of June 1854. he commenced the performance of the same on the 15<sup>th</sup> Day of June 1854. and completed the same on the 15<sup>th</sup> Day of November 1854. There was due him on said contract the sum of on the seventh Day of January 1858. the sum of one hundred and twenty and 40/100 Dollars. and he has received nothing on said contract —

The contract with said Arstein was made on the 5<sup>th</sup> Day of September 1856. he commenced the performance of the same on the 8<sup>th</sup> Day of September 1856. and completed the same the 13<sup>th</sup> Day of September 1854. There was due him on said contract on the seventh Day of January 1858. the sum of seventy two. and 40/100 Dollars. and he had previously received on said contract the sum of four hundred and twenty nine and 38/100 Dollars —

The contract with said Wolfinger was made on the 12<sup>th</sup> Day of July 1856. he commenced the performance of the same on the 12<sup>th</sup> Day of July 1856. and completed the same the 18<sup>th</sup> Day of June 1854. There was due him on said contract on the seventh Day of January 1858. the sum of forty two and 30/100 Dollars. and he had previously received on said contract the sum of two hundred and ninety one and 40/100 Dollars —

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The contract with said Tippley was made on the 8<sup>th</sup> Day of August 1856. He commenced the performance of the same on the 14<sup>th</sup> Day of September 1856. and completed the same on the 1<sup>st</sup> Day of October 1857. There was due him on said contract on the Seventh Day of January 1858. the sum of Seventy nine and 80/100 Dollars. And he had previously received on said contract the sum of fifty two and 50/100 Dollars —

The contract with said Emmet and Purcell was made on the 7<sup>th</sup> Day of May 1854. They commenced the performance of the same on the 7<sup>th</sup> Day of May 1854. and completed the same on the 8<sup>th</sup> Day of October 1854. There was due them on said contract on the Seventh Day of January 1858. the sum of Two hundred and Seventy three and 34/100 Dollars. and they have received nothing on said contract —

The contract with the said <sup>Trust</sup> Gas Light and Coke Company was made on the 13<sup>th</sup> Day of June 1854. Said Company commenced the performance of said contract on the 12<sup>th</sup> Day of June 1854. and completed the same on the 28<sup>th</sup> Day of August 1854. There was due said Company on said contract on the Seventh Day of January 1858. the sum of Two hundred and Fifteen and 42/100 Dollars and said Company has received nothing on said contract —

And it appearing further that all of said Petitioners. have filed their petitions respectively for a Mechanics Lien on said described piece or parcels of land. and the building erected thereon. which is known as the Plaster House. which said Petitioners

are now pending in this Court, and that such proceedings have heretofore been had in this Court, that this Court has ascertained and determined that the above named sums stated to be due to said parties respectively on the said seventh day of January 1858. were then due to them respectively as above stated, and that said sums are now due to said Petitioners respectively, together with interest thereon from the said day and year last mentioned—

And it further appearing that said John R. Brewster and Emily S. Brewster his wife did on the 22<sup>nd</sup> day of March A.D. 1856. make execute and deliver to Joseph B. Smith as Trustee, a deed of Trust of the North-eastern one-half of said Lots. number five and six in said Block Number Fifty six; and also of Lot Number three four and five in Block Number Fifty one, in the original Town of Freeport (now City of Freeport) all in said Stephenson County to secure the payment of a certain promissory Note made by the said John R. Brewster and dated the said 22<sup>nd</sup> day of March A.D. 1856. for the sum of Five Thousand Dollars with interest at the rate of ten per cent per annum and payable to James Mitchell & Co. and due eight months after date thereof— And it further appearing that said deed of Trust was recorded in the Records Office in and for said Stephenson County on the 26<sup>th</sup> day of March A.D. 1856.

at 9<sup>1/2</sup> o'clock A.M.— And it further appearing that said Note and interest as aforesaid still remain due and wholly unpaid, and that the Firm of James Mitchell & Co. consisted of said James Mitchell, Holden Putnam, and Alexander Neely—

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And it further appearing that at the time said John R. Brewster commenced the erection of said Brewster House. to wit: on the 1<sup>st</sup> Day of July A. D. 1856. the said North Easterly Tenth part of said Lot Five and six in said Block Fifty six in said Deed of Trust described was worth the sum of Four Thousand five hundred Dollars. and that said Lot three four and five in said Block Fifty one. in said Deed of Trust described were worth at the date last mentioned the sum of four Thousand five hundred Dollars and that the present value of said last named Lot Three four. and five is two thousand five hundred Dollars —

And it further appearing that said John R. Brewster and Emily S. Brewster his wife did on the 5<sup>th</sup> Day of July A. D. 1856. make execute and deliver to Homer A. Hibbard. as Trustee a deed of Trust of said Lot five and six in said Block Fifty six to secure the payment of three certain Promissory Notes. all dated June 23<sup>rd</sup> 1856. for the sum of Five Thousand Dollars each. said three last named Promissory Notes being made payable to John W. Clark. and signed by said John R. Brewster as principal and by said James Mitchell. Chancellor Martin. Henry Strickm. H. H. Penningman. John Black. J. O. Taylor. Jacob Schultz. Thompson Wilcoxon. John Coates. Miriam Bright. John Koebel. G. M. Clayton. Francis Foley. A. W. Rice. A. J. Green. H. S. Stoneham. Thomas Cottonman. John P. Dyerly. William M. Buckley. John S. Emmert. Holden Putnam. S. D. Clark. John Wade. J. B. Snyder. Tobias Engle. A. B. Hunt. Charles Rosenthal. Hollis Jewell. A. P. Köhler. James B. Childs. George Parinton. Thomas J. Turner. M. Hollinger. C. Taylor. E. H. Hyde. J. Rigard.

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 J. W. D. Brawley, and Rudolph Brubaker, as sureties. the first of said three last named Notes being due on the 1<sup>st</sup> Day of August 1860. the second of said Notes being due on the 1<sup>st</sup> day of September 1861. and the last of said three Notes being due on the 1<sup>st</sup> day of October 1862. all of said Notes being made payable with interest at the rate of ten per cent per annum— Interest on the first of said <sup>three</sup> Notes from August the first 1856. on the second from September the first 1856. and on the third. from October the first 1856. said interest being payable semi-annually. with current rate of Exchange on New York.

And it further appearing that said last named Deed of Trust was recorded in the Records Office in and for said Stephens County on the 8<sup>th</sup> Day of September 1856. at 4 O'clock P. M. And it further appearing that said last named three Notes. are all unpaid. And it further appearing that the South westerly one-half of said Lots five and six in said Block fifty six at the time of commencing the erection of said Brewster House as aforesaid was worth the sum of three thousand Dollars. and that the whole of said Lots five and six. last named at the time of commencing the erection of said Brewster House as aforesaid was worth the sum of seven Thousand five hundred Dollars—

And it further appearing that the entire value of the said Building together with the land upon which the same is situated is the sum of Fifty one Thousand three hundred and Fifty (51,350) Dollars— which said value last named is made up of or composed of the following items to wit:

1. The North Easterly one-half of said Lots five and six in said

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Block fifty six exclusive of that portion of the building situated thereon is worth four thousand five hundred (4500) Dollars —

2 The South-westerly one-half of said Lot five and six exclusive of that portion of the building situated thereon is worth Three Thousand (3000) Dollars —

3 That portion of said Building which is situated on said Lot five and six exclusive of the value of the land upon which that portion is situated is worth thirty six Thousand four hundred and fifty (36,450) Dollars —

4 That portion of the building which is situated on that part of Lot seven in Block fifty six herein before described including the value of the land upon which that portion is situated is worth seven Thousand eight hundred (7800) Dollars — the value of said land being 700 Dollars, and the value of that portion of the Building thereon being 7100 Dollars —

It further appearing that at the September Term 1857. of this Court said Jacob B. Howe, George O. Hovey, Samuel K. Payson, John B. Hutchinson, Charles K. Dalton, and Jacob Wendell Jr. partners under the style of J. B. Howe and Company recovered a judgment against the said John K. Brewster, J. Wilson Mather, and Lewis S. Parnell, for the sum of two Thousand seven hundred two and 1/100 Dollars — and that said J. B. Howe and Company at the same term of said Court recovered a judgment against said John K. Brewster for the sum of six hundred and seventeen and 88/100 Dollars — upon which said judgments there still remains unpaid the sum of twenty

one hundred and seventy one and  $\frac{1}{100}$  Dollars with interest thereon from the 30<sup>th</sup> Day of December A. D. 1837.

It further appearing that the said John C. Brewster paid the sum of two thousand four hundred and sixty four (2464) Dollars for labor and materials employed and used in the erection of said Brewster House to parties who have not filed petitions for Mechanic's liens on said Building—

And it further appearing that said Petitioners have received in the aggregate on their several contracts the sum of sixteen thousand four hundred and thirty eight and  $\frac{89}{100}$  (16,438  $\frac{89}{100}$ ) Dollars—

And it further appearing that the said sum so received is found to be due said Petitioners as herein before stated in the aggregate exclusive of interest thereon as herein before stated amount to the sum of seventeen thousand two hundred and six and  $\frac{28}{100}$  (17,206  $\frac{28}{100}$ ) Dollars—

And it further appearing that the actual cost of the said Brewster House exclusive of the land upon which the same is situated is the sum of thirty six thousand one hundred and nine and  $\frac{1}{100}$  (36,109  $\frac{1}{100}$ ) Dollars—

And it further appearing in proof that the said Petitioners respectively furnished materials or labor which were used in or bestowed upon that portion of the said Building which is situated on said Lots five and six to the amounts respectively hereinafter stated to wit:

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Said Childs to the value of	10.656 <sup>6</sup> / <sub>100</sub> Dollars
Said Cottman to the value of	3.654 <sup>4</sup> / <sub>100</sub> Dollars
Said Thomas to the value of	1.010 <sup>8</sup> / <sub>100</sub> Dollars
Said App to the value of	1.256 <sup>9</sup> / <sub>100</sub> Dollars
Said Shockey to the value of	2.166 <sup>8</sup> / <sub>100</sub> Dollars
Said Clayton to the value of	1.880 <sup>6</sup> / <sub>100</sub> Dollars
Said Bigelow to the value of	530 <sup>1</sup> / <sub>100</sub> Dollars
Said Hazen to the value of	440 <sup>9</sup> / <sub>100</sub> Dollars
Said Clarke to the value of	464 <sup>6</sup> / <sub>100</sub> Dollars
Said Schyrum and also to the value of	115 <sup>2</sup> / <sub>100</sub> Dollars
Said Brown to the value of	2.230 <sup>6</sup> / <sub>100</sub> Dollars
Said Hale for use &c to the value of	394 <sup>4</sup> / <sub>100</sub> Dollars
Said Hale & Fowler use &c to the value of	69 <sup>4</sup> / <sub>100</sub> Dollars
Said Pickett to the value of	41 <sup>2</sup> / <sub>100</sub> Dollars
Said Schmidt to the value of	100 <sup>8</sup> / <sub>100</sub> Dollars
Said Raynton <sup>val</sup> to the value of	418 <sup>9</sup> / <sub>100</sub> Dollars
Said Austin to the value of	420 <sup>4</sup> / <sub>100</sub> Dollars
Said Wolfinger to the value of	249 <sup>6</sup> / <sub>100</sub> Dollars
Said Tippery to the value of	110 <sup>7</sup> / <sub>100</sub> Dollars
Said Rich to the value of	1.199 <sup>4</sup> / <sub>100</sub> Dollars
Said Emmert & al. to the value of	229 <sup>5</sup> / <sub>100</sub> Dollars
Said Sus Sight Co to the value of	181 <sup>3</sup> / <sub>100</sub> Dollars

And it further appearing that of the said sum of two thousand four hundred and sixty four (2464) Dollars (paid as hereinbefore stated for labor and materials used in the erection of said Brewster House to parties who have not filed Petitions for liens as aforesaid) the sum of two thousand fifty four and 66/100 (2064 <sup>66</sup>/<sub>100</sub>) dollars was expended in and upon that part of said Building situated upon said lots five and six -

And it appearing that the entire actual cost of that portion of said Building which is situated upon said lots five and six (exclusive of the land whereon situated) was the

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sum of thirty thousand two hundred and fifty seven and  $\frac{4}{100}$  (30257  $\frac{4}{100}$ ) Dollars

It is therefore ordered, adjudged and decreed that the said John K. Brewster within three months from the date of this decree pay to the said several Petitioners the sums heretofore stated to be due to them respectively together with interest on said several sums respectively from the seventh day of January 1858 and the costs of the above entitled suits.

And it is further ordered, adjudged and decreed that in default of said payment being made as aforesaid by said John K. Brewster then and in that case said lots five and six, and that portion of lot seven heretofore described all in said Block fifty six in said original Town of Freeport be sold at Public Auction to the highest and best bidder by the Master in Chancery of this Court at the Door of the Court House in said County between the hour of nine in the morning and the setting of the sun of the same day. That said Master give Public Notice of the time and place of said sale: by previously publishing the same for the space of Three months once each week in a Newspaper published in said City of Freeport, and once each week in some Newspaper of general circulation published in the City of Chicago, and that any party or any of the parties in any of the above entitled causes may become the purchaser or purchasers: That said Master on the sale of said premises execute a good and sufficient conveyance in fee simple of said premises so sold to the purchaser or purchasers thereof and that said Master out of the proceeds of

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said sale retain his pro disbursements and commissions on said sale. and that he pay to the Officers of this Court their costs in the said several above-entitled suits. and that the remainder of said proceeds be disposed of by said Master as follows. to wit: The said remainder shall be divided into four distinct funds.—

- 1 The first fund shall consist of  $\frac{4800}{57.750}$  of said remainder
- 2 The second fund shall consist of  $\frac{4500}{57.750}$  of said remainder
- 3 The third fund shall consist of  $\frac{3000}{57.750}$  of said remainder
- 4 The fourth fund shall consist of  $\frac{36.450}{57.750}$  of said remainder

The said first fund shall be paid to the said Petitioners Pro Rata in proportion to the amounts respectively due to them as hereinafore stated. interest however on said amounts respectively being ~~being~~ added thereto respectively from the said eighth day of January A.D. 1858 to the day of such payment. and if said first fund shall be more than sufficient to pay all of the amounts due to said Petitioners then the surplus shall be paid to the said J. C. Moore & Co.—

The sum of four Thousand one hundred and three Dollars and fifty seven cents. and interest thereon from the 28<sup>th</sup> day of December 1858 according to the tenor of said Note out of the said second fund (if the same shall be equal to that sum) shall be paid to Joseph B. Smith in Trust for the holders of said Note of said John K. Brewster dated

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March 22<sup>d</sup> 1856. for five Thous and Dacare  
 as hereinbefore stated the remaining portion  
 of said Note is hereby charged upon said Lots  
 three four and five in said Block fifty-one  
 such charge being according to their relative  
 value with the said North Eastern half of said  
 Lots 5 & 6.

It appearing from the proof that the  
 deed of Trust in evidence executed by said John  
 K. Brewster and Emily S. Brewster his wife, and  
 dated the 26<sup>th</sup> day of October 1854. which conveyed  
 to Luther W. Guitlan the said Lots three four and  
 five in said Block fifty-one. in Trust to secure  
 a Note of said Brewster for the sum of three  
 thousand five hundred Dacare and payable  
 to said James Mitchell and Company was  
 taken and received by said James Mitchell & Co.  
 they having notice that the said <sup>Deed of</sup> Trust to  
 said Homer N. Hibbard to secure the payment  
 of the three Notes therein mentioned as hereinbefore  
 stated was at the time said Conveyance was  
 made to said Guitlan a Lien upon said Lots five  
 and six in said Block Fifty Six. and it fur-  
 ther appearing that the said persons parties  
 on said three Notes last named signed said  
 Notes upon the representation to them of Holden  
 Putnam (one of the Payors of said three thou-  
 sand five hundred dollar Note) that said  
 Trust deed to said Homer N. Hibbard would  
 be ample security for the payment of said  
 three Notes —

And if the said second fund  
 shall exceed the sum of four thousand one  
 hundred and three and  $\frac{3}{4}$  dollars  
 and interest thereon as aforesaid. then such  
 surplus shall be added to the said third

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fund and constitute a portion thereof —  
 The said third fund with the overplus  
 last named, if any such there shall be,  
 shall be paid to the said Homer A. Heibord  
 in Trust for the holders of the said three  
 Notes of five thousand Dollars each, dated  
 June the 28<sup>th</sup> 1856, with interest thereon and  
 current rate of exchange on New York accord-  
 ing to the tenor and effect of said Notes, nothing  
 having been paid on said Notes. And if said  
 third fund and said overplus shall in the  
 aggregate exceed the amount due on said  
 three last named Notes, then the excess shall  
 be paid to said Petitioners Pro Rata the same  
 as is provided in relation to said first fund.

The said sum of two Thousand four hun-  
 dred and sixty four dollars (\$2464) which has  
 been paid as hereinbefore stated for labor and  
 materials used in the erection of the said Mem-  
 ber House, to parties who have not filed Peti-  
 tions for Mechanics Sums shall be considered  
 as paid, and two thousand fifty four <sup>6</sup>/<sub>100</sub>  
 (\$2064 <sup>6</sup>/<sub>100</sub>) dollars, part of said sum of two  
 thousand four hundred and sixty four (\$2464)  
 Dollars shall be considered to have been expen-  
 ded on said Lots five and six, as hereinbefore  
 determined, and the remainder to wit: the  
 sum of three hundred <sup>and</sup> thirty nine and <sup>3</sup>/<sub>4</sub> <sup>100</sup>  
 (\$397 <sup>3</sup>/<sub>4</sub> <sup>100</sup>) dollars, shall be considered to have  
 been expended on that portion of lot seven  
 hereinbefore described, said sums being propor-  
 tioned to each other, as the value of that  
 portion of said Building situated on said  
 lot five and six is to that portion of said  
 Building which is situated on said part of  
 said lot seven, to wit: as 36450 is to 7050 —

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The  $\frac{206466}{302541}$  part of the said fourth fund  
 (which is the part of said fund represented  
 by the said 2064  $\frac{6}{100}$  Dollars of labor and ma-  
 terials paid to others than said petitioners in  
 that portion of said Building which is situ-  
 ated on said ~~part of said lot~~ ~~cross front~~;  
~~as 26450 is to 4050~~ — (as five and six) shall  
 be divided equally between said Smith and  
 Hibbard Trustees as aforesaid for the use of  
 the holders respectively of the notes described  
 in the said Trust Deeds to them, so far as  
 may be necessary to satisfy the amounts to  
 be paid on them. but if the portion so to be  
 paid to said Smith shall exceed the amount  
 then remaining unpaid of the said four  
 thousand one hundred and three Dollars  
 and fifty seven cents and interest thereon  
 from the 28<sup>th</sup> day of December 1858, as here-  
 inbefore stated. then such excess shall be  
 paid to said Hibbard Trustee as aforesaid  
 for the use of the holders of said three notes  
 mentioned in the said Deed of Trust to him  
 so far as may be necessary to satisfy them —

The remaining portion of said fourth  
 fund shall be distributed between said petition-  
 ers pro rata until they are satisfied, and  
 then to said Trustees Smith and Hibbard for  
 the use of the respective holders of the notes  
 mentioned in the deeds of Trust to them  
 respectively equally so far as may be neces-  
 sary to satisfy the amount to be paid on them  
 respectively as before named till one is satisfied  
 and the residue to the other. except however  
 that in making such distribution the  
 work and materials of the petitioners paid  
 for by said Brewster shall be made first

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to avail so far as practicable to satisfy the remaining amounts to be paid on said Deeds of Trust before being made available for the benefit of the petitioners, where it can be done without prejudice to any petitioners seen on the whole amount of his own work and materials (paid as well as unpaid for) to satisfy what is due to him which may be done in this manner. by paying where it will be found advantageous to the said Trustee so to do in full the amount then remaining due to any petitioner in part paid by said John R. Brewster. and then extinguishing such Petitioner's claim out of the money of said Trustee arising from their exclusive funds. and then all owing said Trustee the portion of the said fourth fund represented by the whole work and materials on said Lots 5. & 6. of such Petitioner so paid in full. as for instance in so paying the then remaining amount due to said Petitioner such in full. the said Trustee will be entitled to  $\frac{119941}{3025741}$  of the said fourth fund. in case the amount remaining due any petitioner should be paid in full in this manner by said Trustee. then such Petitioner will not be considered in the further distribution. but it will be among the remaining petitioners. and said Trustee as aforesaid.

No notice is taken of said Judgment creditors in the distribution of said fourth fund. for the reason that it is not supposed that the amounts to be paid under said Deeds of Trust will be satisfied and their claims being prior. but should the proceeds of the sale be found sufficient to satisfy

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said amounts according to this Decree then the Master will bring into Court the three last named funds for distribution in order that the rights of said Judgment Creditors may be secured.

It is further Ordered ad iudicium and Decreed that upon the Execution and delivery of the Deed of Conveyance by said Master as aforesaid the said purchaser or purchasers their Representatives or assigns be let into possession of said premises so to be sold as aforesaid. and that any of the parties in any of the above entitled causes who may be in possession thereof or any part thereof. And any person who since the commencement of the above entitled suits has come into possession under them or either of them. on the production of the said Master's deed of Conveyance deliver possession thereof to such purchaser or purchasers their Representatives or assigns

Joy. R. Sheldon

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And again on the same day to-wit: on the 24<sup>th</sup> day of January A. D. 1859. as yet of said Dec-ember Term of said Court the following entry appears of Record in this cause to-wit:

Jay Thoms vs  
John K. Brewster et. als } Petition for writ of Habeas Corpus

Now comes the said Petitioner by his Attorney, and excepts to the decree in this cause and prays an appeal. It is thereupon ordered that said appeal be allowed upon said Petitioner filing his appeal Bond properly conditioned to Defendant John K. Brewster for the use of all the other Defendants in this suit within thirty days in the sum of five hundred dollars, with Wm. B. Wright as surety on the Appeal Bond. And the said Defendants James Mitchell & Co and Louis J. Sumner and J. W. Shaffer severally by Marsh their Attorney, and Thompson, McKeen, and Chancellor Martin and others by Sumner their Attorney, severally also pray an appeal. It is thereupon ordered that the appeal be allowed on them or any of said Defendants upon filing with the clerk of this Court an appeal Bond to Plaintiffs properly conditioned within thirty days in the sum of Three hundred and six dollars and thirty five cents with Thomas D. Robertson or Charles W. Spafford or Chancellor Martin, or John A. Clark, for Jas. Mitchell & Co Surety on Bond.

Again on the same day, the following entry appears of Record in this cause to-wit:

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Jay Thomas

vs  
John K. Brewster et. al

Pl for M & L Sim

And the said Defen-  
 dants James Mitchell & Co. John M. Shaffer and  
 Louis J. Furrill, Chancellor Martin, Abraham  
 J. Green, Thompson Wifcoxon and others securities  
 on the Notes from John K. Brewster to John A.  
 Clark. Except to all and every of the findings  
 orders and Decree found made and decreed  
 by the Court in the above entitled Cause  
 and pray that this their Exception may  
 be signed and sealed by the Court. and it  
 is Done

Levi R. Sheldon (Seal)

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And on the 22<sup>nd</sup> Day of January A. D. 1859.  
as yet of said De Clerk Jervis of said Court  
Thompson Wilcoxon and others Defendants  
in this cause come and file their Bill of Pro-  
tention or Exceptions in this cause to wit —

Jay Thomas

vs  
John C. Brewster et al

} Petition for Mv Chancery

} Testimony offered by  
Thompson Wilcoxon and others Defendants

The said Thompson Wilcoxon  
and others Defendants produced Alexander Smith  
a witness who was sworn and examined in  
behalf of said Defendants testified as follows—  
I know the lot on which the Brewster House  
was built. but not by the numbers. I do not know  
what lot five and six in Block fifty six were  
worth on the eighth day of September A. D. 1856.  
The Building on said lot was worth at that  
time, six or seven thousand Dollars— I believe  
the Building was up to the second story—  
On the first day of February A. D. 1857, the  
Building on lot five and six in Block fifty  
six independent of the value of the land. was  
worth fourteen or fifteen thousand Dollars—

{Cross Examined}

I refered to the cost of the materials and the  
labor on the lot on the 8<sup>th</sup> Sept 1856. if the  
Building had been left in the condition it was  
then in it would not be worth so much—

Abram P. Spitzer was then produced and  
sworn, and testified as follows. In addition  
to the value of said lot 5.6. in Block fifty six

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the Building on said Lot was worth on the Eighth day of Sept 1856. Five or Six Thousand Dollars—The work was worth Five or Six Thousand Dollars—I judge from the amount insured—I insured it for Five Thousand Dollars—We generally insure for two-thirds the value but in case of Buildings we take part of the risk—

John B. Johnson was then produced sworn and examined who testified as follows—  
Before hearing the other testimony I should have put the value of the Building on Lot Five and six in Block Fifty six on the Eighth day of Sept A.D. 1856. at four or five Thousand Dollars—

Robert H. Gettany was next sworn and examined who testified as follows—  
The Lot on which the Brewster House stands would have sold for one hundred and twenty or one hundred and thirty Dollars per front foot The stone work in the foundation was worth from two to three Thousand Dollars—The foundation was completed before the Eighth day of September A.D. 1856.—

Desmond Shockley Examined and testified as follows—The foundation was finished and a part of the Brick wall on Mechanics Street and on the middle walls were laid before the 8<sup>th</sup> Sept A.D. 1856. We were hindered some time for want of the cut stone—We did not get the water tables till Sept 1<sup>st</sup> 1856—

The next testimony offered by said Defend<sup>ts</sup> was. The Trust deed to Homer D. Hibbard to wit:

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John C. Brewster et. ux

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to  
Homer N. Hibbard

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This Indenture made this fifth day of July in the year of Our Lord one thousand eight hundred and fifty six. Between John C. Brewster of the County of Stephenson and State of Illinois of the first part. and Homer N. Hibbard, of the same County and State of the second part Witness etc. that the said John C. Brewster is justly indebted unto John A. Clark of said County in the sum of Fifteen Thousand Dollars. created by three Promissory Notes bearing Date June 2<sup>nd</sup> 1856. Drawn by the said John C. Brewster as principal and James Mitchell, Chancellor Martin, Henry Strohm, W. H. Permain, John Black, J. C. Taylor, Jared S. Gutz, Thompson Wilcox, John Coaker, Vivian Deight, John Keasel, G. M. Clayton, Francis Foley, A. W. Rice, A. J. Guen, J. B. Stoumgar, Thomas Cottonson, John P. Lively, Wm M. Buckley, John S. Emmet, Golden Putnam, S. D. Clark, John Wade, J. B. Snyder, Tobias Engle, A. C. Hunt, Charles Rosenthal, Hollis Jewell, J. W. Kohler, James B. Childs, George Purinton, Thos J. Turner, W. Wettinger, O. Taylor, E. W. Hyde, J. Reigard, F. W. S. Prasley, Raphael Prubaker, as sureties to wit: One Note for Five Thousand Dollars, due on the first day of August A. D. 1860 - One Note for Five Thousand Dollars due September first A. D. 1861. and one Note for Five Thousand Dollars due on the first day of October A. D. 1862. with interest on all of said Notes at the rate of ten per cent per annum for money loaned. Interest from August 1<sup>st</sup> 1856. on first, from September 1<sup>st</sup> 1856. on second, and from Oct 1<sup>st</sup> 1856. on last of said Notes, and payable semi-annually, with current rate of exchange

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on New York - Now therefore these Presents witness that the said party of the first part in order to secure the prompt and punctual payment of the said Promissory Notes and interest hereinbefore specified, according to their tenor and effect, and in consideration of the sum of five Dollars to the said party of the first part paid, the receipt whereof is hereby confessed, doth hereby grant bargain and sell unto the said party of the second part and to his Executors or Administrators, all the following described premises, situate, lying and being in the City of Annapolis, County of St. Stephens and State of Illinois to wit: Lots Number five and six (5 & 6) in Block Number fifty six (56) in the (Original) Town of Annapolis fronting sixty feet and four inches on Stephenson Street, and extending to Bridge Street - For a more full description of said Lots reference may be had to the Recorded plat of said "Town of Annapolis" in the Office of the Clerk of the Circuit Court of said County of St. Stephens together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining - To have and to hold the above described premises unto the said party of the second part, and to his Executors Administrators and assigns - In Trust nevertheless, for the following purposes to wit: In Trust, in case default shall be made by the said party of the first part his heirs Executors Administrators or assigns - To pay the said Promissory Notes above mentioned, and the interest on the same semi-annually according to the tenor and effect thereof - then on application of the said John A. Clark, or the legal holder or holders of said Promissory Notes

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or either of them. and having first given twenty  
Days Notice. by publishing the same in a  
Public Newspaper printed in the County where  
said premises are situated. then it shall and  
may be lawful for the said party of the second  
part or his Executors. administrators or his  
Attorney (by him authorized by a writing under  
his hand and seal duly acknowledged and  
recorded.) to take possession of the premises aforesaid  
and to sell the same or any part thereof  
at public sale at such an hour. and place as  
said party of the second part or his Executors  
Administrators or attorney may appoint. or  
to adjourn said sale from time to time. and upon sale  
as aforesaid to make and deliver to the purchaser  
or purchasers thereof a good and sufficient  
Deed or Deeds of Conveyance in the law  
for the same in Fee Simple. And out of money  
arising from such sale after payable all reasonable  
expenses growing out of the execution of  
the Trusts aforesaid. And all taxes and assessments  
levied on ~~the~~ premises aforesaid or on such  
part thereof as may be sold for the purposes aforesaid  
to pay the said John A. Clark. his Representatives  
or assigns or to the legal holder or holders  
thereof the amount which may be then due  
on said Notes or either of them above mentioned  
for principal and interest. rendering the surplus  
of the proceeds of such sale (if any there should be)  
unto the said party of the first part or his heirs  
Executors. administrators or assigns. In case no  
default is made in the payment of the aforesaid  
promissory Notes or either of them or the semi-  
annual interest as aforesaid then this Deed shall  
be null and void. and the manner of cancelling  
the same. and releasing said Trust shall be the same

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as is prescribed by law for the release of Mortgages. which releasing and cancelling shall be sufficient whether given by the party secured or by the said Trustee or by his Executors, Administrators or by the Attorney constituted as aforesaid of said Trustee - In case the aforesaid promissory Notes and interest and all costs of the execution of said Trust and all taxes levied on said premises be satisfied by the sale of part of the premises aforesaid then such part of said premises as may remain undisposed of, and so are not required for the purposes of this Trust (if any so remain) shall be duly reconveyed to said party of the first part his heirs or assigns by Deed or release signed sealed and acknowledged by said party of the second part his Executors administrators or by his Attorney duly constituted as aforesaid And the said John K. Brewster for himself and his heirs executors and administrators hereby covenant to and with the said party of the second part his Executors administrators and assigns that he is seized a fee simple title to said premises and that he will and his heirs executors and administrators shall warrant and defend said premises against all lawful claims, and that he will pay all taxes levied on said premises during the continuance of these Presents - And Emily Brewster wife of the said John K. Brewster in consideration of the premises and of the payment made as aforesaid doth hereby release to said party of the second part his Executors, Administrators and assigns forever all her right of Dower in the above described premises

In Testimony whereof said Grantors have hereunto subscribed their hands and seals at Newport this fifth day of July A.D. 1856.

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John B. Brewster Esq  
Emily S. Brewster Esq

State of Illinois  
Stephens county  
City of Troup

I Simeon W. Guiteau Police  
Magistrate in and for said  
City in the County and State aforesaid do hereby  
Certify that John B. Brewster personally known  
to me to be the person whose name is subscribed  
to the foregoing Deed, as having executed the  
same appeared before me this day in person and  
acknowledged that he signed said and delivered  
the same as his free and voluntary act for the  
uses and purposes therein expressed. And the  
said Emily S. Brewster personally known to me  
to be the wife of the said John B. and as the per-  
son who subscribed said Deed and as such hav-  
ing been by me made acquainted with its con-  
tents and meaning separate and apart from  
her husband acknowledged that she had exe-  
cuted the same, and relinquished her Dower to  
the lands and tenements therein mentioned vol-  
untarily and freely and without compulsion  
of her said husband and does not wish to retract  
the same. Given under my hand and seal this  
5<sup>th</sup> day of July A. D. 1856.

S. W. Guiteau P. M.

Recorded Sept 8<sup>th</sup> 1856 at 4 P. M. Joseph B. Smith Clerk  
Pages 117, 118, & 119. Book "K" 3 By A. C. Ordway Dep

They then offered the written agreement from  
John B. Brewster to John A. Clark. To wit:

Whereas  
Golden Putnam and others citizens of Troup  
Illinois have signed as aunts with John B. Brewster

as Principal three Notes for five Thousand dollars each payable to the order of John A. Clark and due respectively August 1<sup>st</sup> 1860. September 1 1861. and October 1. 1862. with 10 per cent interest. and whereas the said notes were executed for the purpose of raising funds wherewith to erect a Hotel on Lots 60 & 61 in Block 56. in the original form of Newport. to be not less than 56 feet front on Stephenson Street by 155 feet deep and four stories high above the Cellar or basement. and whereas said Brewster has agreed to furnish in addition to the said sum of fifteen Thousand Dollars the sum of at least five Thousand Dollars. so that said Hotel Building when completed shall cost at least twenty Thousand Dollars— And therefore it is agreed by said John K. Brewster. and the said John K. Brewster hereby binds himself and covenants with said Holden Putnam and with each of the signers of said Notes and the endorser thereof. that he will expend the proceeds of said Notes as fast as the same shall be drawn in building said Hotel. and that he will furnish of his means in addition to the money to be drawn as aforesaid to every three Thousand Dollars of the money so to be drawn as aforesaid the sum of one Thousand Dollars. That he will pay off or remove all liens or incumbrances of whatever character now against said premises. so that the deed of Trust given to secure the said Notes shall be the first lien upon the same. and it is further agreed by said Brewster that the said sum of fifteen Thousand Dollars the proceeds of said Notes shall be deposited with Messrs James Mitchell & Co and drawn by said Brewster as the same shall be required in the construction of said Building in the proportion as aforesaid. he furnishing to said James Mitchell & Co satisfactory evidence that he has expended of his other means in the proportion as above

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In Witness Whereof the said John K. Brewster has hereunto set his hand and seal at Newport this 5<sup>th</sup> day of July 1856.

John K. Brewster

On the back of which appears the following endorsement to wit: "Filed Jan 18. 1859. L. W. Guitan clk"

Smith D. Atkins sworn and examined who testified as follows. John K. Brewster is insolvent made an assignment of his property in December A. D. 1854.

Luther W. Guitan sworn who testified as follows - I am Clerk of the Circuit Court - John K. Brewster is insolvent - There are judgments against him and Executions unsatisfied against him - He made an assignment at least there is an assignment on Record which he made - Here said Defendant closed their testimony - The foregoing testimony was introduced on the hearing of the above and all the said Debts -  
Benj. B. Sheldon

On the back of which appears the following endorsement to wit: "Filed Jan 22<sup>nd</sup> 1859.

L. W. Guitan clk"

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Jay Thomas  
John R. Brewster. James  
Mitchell and others

Steph Civ Court  
}  
}  
} Pr it remembered that

on the trial of this  
cause and all the other Sim cases on the part  
of the said defendants. James Mitchell. Holden Putnam.  
Wilson Shaffer. and Lewis G. Russell the following  
proofs were made - to wit: -

An agreement executed  
by John R. Brewster dated July 5. 1856 as follows.  
To wit:

Whereas Holden Putnam and other citizens  
of Troup County Georgia have signed as sureties with  
John R. Brewster as principal three notes for five  
Thousand Dollars each payable to the order of John  
A. Clark and due respectively August 1. 1860. September  
1. 1861. and October 1. 1862. with 10 per cent interest,  
and whereas the said notes were executed for the  
purpose of raising funds wherewith to erect a  
Hotel on Lots 6. & 5. in Block 56. in the original  
Town of Troup County to be not less than 56 feet front  
on Stephenson Street by 155 feet deep and four  
stories high above the cellar or basement. and  
whereas said Brewster has agreed to furnish  
in addition to the said sum of fifteen Thousand  
dollars the sum of at least five Thousand Dollars  
so that said Hotel Building when completed shall  
cost at least twenty Thousand Dollars -

Now therefore it is agreed by said John R. Brewster  
and the said John R. Brewster hereby binds him-  
self and covenants with said Holden Putnam  
and with each of the signers of said notes. and  
the endorsees thereof that he will expend the pro-  
ceeds of said notes as fast as the same shall  
be drawn in building said Hotel. and that he

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will furnish of his means in addition to the money to be drawn as aforesaid to every three thousand dollars of the money so to be drawn the sum of one thousand dollars - That he will pay off or remove all liens or incumbrances of whatever character now against said premises. So that the deed of trust given to secure the said notes shall be the first lien upon the same. and it is further agreed by said Brewster that the said sum of fifteen thousand dollars the proceeds of said notes shall be deposited with James Mitchell Esq and drawn by said Brewster as the same shall be required in the construction of said building in the proportion as aforesaid. He furnishing to said James Mitchell Esq satisfactory evidence that he has expended of his other means in the proportion as above - In witness whereof the said John K. Brewster has hereunto set his hand and seal at Newport this 4<sup>th</sup> day of July 1856 -

John K. Brewster (Seal)

On the back of which appears the following endorsement & is filed Jan 18. 1859.

S. W. Guiteau Esq

A Trust deed executed by John K. Brewster and wife dated March 23<sup>rd</sup> 1856 to Joseph B. Smith being the same a copy whereof is set forth in the Master's Report in this cause marked "6" -

A Trust deed executed by John K. Brewster and wife to S. W. Guiteau dated Oct 27. 1854. a copy whereof is filed as proof in this cause marked "13" - to wit -

This Indenture made this twenty sixth day of October in the year of our Lord

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One Thousand Eight Hundred and Fifty Dollars  
 Between John R. Brewster and Emily L. Brewster  
 his wife of the County of Stephenson and State  
 of Illinois of the first Part - and Luther W.  
 Guiteau of the County of Stephenson and  
 State of Illinois of the second Part - Witness-  
 eth - That the said John R. Brewster is justly  
 indebted unto James Mitchell Esq in the  
 sum of Thirty Five Hundred Dollars secured by  
 three Promissory Notes to wit: one Note dated  
 August 1<sup>st</sup> 1855 due thirty days after date for  
 fourteen hundred dollars - and one note dated  
 April 8<sup>th</sup> 1856 due thirty days after date for One  
 Thousand Dollars both of said Notes signed  
 John R. Brewster Esq and payable to James  
 Mitchell Esq or order with ten per cent interest  
 after due and endorsed. "interest paid in full to  
 February 26<sup>th</sup> 1858 and time of payment exten-  
 ded to February 26<sup>th</sup> 1858" - also one Note bearing  
 date October 26<sup>th</sup> 1854 signed by John R. Brewster  
 payable to James Mitchell Esq or order for  
 eleven hundred dollars and due four months  
 after date with interest after due at the rate  
 of ten per cent - Now therefore These Presents  
 Witness that the said party of the first Part  
 in order to secure the prompt and punctual pay-  
 ment of the said Promissory Notes herein before  
 specified according to its tenor and effect and  
 in consideration of five Dollars to the said  
 party of the first Part paid the receipt whereof  
 is hereby confessed do hereby Grant Bargain  
 and Sell unto the said party of the second Part  
 and to his Executors Administrators and As-  
 signs all the following described premises  
 Situate lying and being in the County of  
 Stephenson and State of Illinois to wit -

Lots Numbered three four and five. and the North Easterly one half of Lot No 150 (said lot two being divided by a line drawn parallel with Perry Street) in Block number fifty one (51) in the Original Town of Newport (in the city of Newport) For a more full description of which reference may be had to the Recorded Plat of said "Town of Newport" in the Office of the Clerk of the Circuit Court of said County of Stephenson— Together with all and singular the tenements Hereditaments and appurtenances therunto belonging or in anywise appertaining To have and to hold the above described premises unto the said party of the second part and to his heirs: In Trust Nevertheless for the following purposes to wit: In Trust in case default shall be made by the said John R. Brewster of the party of the first part his heirs Executors administrators or assigns to pay the said Promissory Note above mentioned according to the tenor and effect thereof. then an application of the said James Mitchell Co or the legal holder or holders of said Promissory Note or either of them and having first given ten days notice by publishing the same in a public newspaper printed in the County where said premises are situated. then it shall and maybe lawful for <sup>the</sup> said party of the second Part or his Executors or administrators or attorney (by him authorized by a writing under his hand and seal duly acknowledged and recorded) to take possession of the premises aforesaid. and to sell the same or any part thereof at Public Sale at such an hour and place as said party of the second part or his Executors or administrators or Attorney may appoint. or to adjourn said sale

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from time to time: and upon sale as aforesaid to make and deliver to the purchaser or purchasers thereof a good and sufficient Deed or Deeds of Conveyance in law for the same in fee simple, and also of money arising from such sale, after first paying all reasonable expenses growing out of the execution of the trust aforesaid and all taxes and assessments levied on the premises aforesaid, or on such part thereof as may be sold for the purposes aforesaid to pay the said James Mitchell or his Representatives or assigns or to the legal holder or holders thereof, the amount which may be then due on said Promissory Note or either of them above mentioned for principal and interest rendering the surplus of the proceeds of such sale (if any there should be) unto said party of the first Part or his heirs, Executors, administrators or assigns - The certificate of the printer of said publication <sup>of the Notice</sup> of the sale, and of the adjournment, or adjournments thereof with a printed copy of said notice annexed or the Record of such certificate and notice in the Recorder's Office of the County in which said premises or any part of them lie or are situated shall be final and perfect evidence that said publication and notice has been duly made and given - In case no default is made in the payment of the aforesaid Promissory Notes, then this Deed shall be null and void and the manner of cancelling the same and releasing said Trust shall be the same as is prescribed by law for the release of mortgages, which releasing and cancelling shall be sufficient, whether given by the party secured or by the said Trustee, or by his Executors, or administrators, or the attorney constituted as aforesaid of said Trustee - In case the aforesaid Promissory

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notes and all costs of the execution of said Trust and all taxes levied on said premises be satisfied by the sale of part of the premises aforesaid then such part of said premises as may remain undisposed of and as are not required for the purposes of this Trust (if any so remain) shall be duly reconveyed to said party of the first Part his heirs or assigns. By Deed Chain Deed or Release signed sealed and acknowledged by said party of the second Part his Executors or Administrators or by his Attorney duly constituted as aforesaid - And that said John K. Brewster for him and his heirs Executors and administrators hereby covenant to and with party of the second Part his Executors Administrators and assigns that he is seized of a Fee Simple Estate in said premises. and that he will covenant and defend said premises against all lawful claims. and will pay all taxes levied on said premises during the continuance of these Presents - In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written

Signed Sealed and Delivered of John K. Brewster and Emily S. Brewster in presence of Joseph B. Smith

State of Illinois  
 County of Stephenson  
 I Joseph B. Smith a Notary Public for the support in said County. do hereby certify that John K. Brewster and Emily S. Brewster personally known to me to be the persons whose names are subscribed to the foregoing Deed as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the same as their free and voluntary act

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and for the uses and purposes therein set forth - And the said Emily S. Brewster personally known to me to be the wife of the said John B. Brewster and as the person who subscribed said Deed as such having been by me made acquainted with the contents and meaning of said Instrument of Writing, separate and apart from her husband acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned voluntarily freely and without compulsion of her said husband, and that she did not wish to retract the same Given under my hand and Notarial Seal this twenty eighth day of October A. D. 1854.

*Emily S. Brewster*

Joseph P. Smith  
Notary Public

On the back of which appear the following endorsement to wit -

State of Illinois      Office of Clerk of Circuit  
County of Stephenson      Court

I hereby certify that this Deed was filed for Record in my Office on the 28<sup>th</sup> day of October A. D. 1854 at one O'clock or minutes P. M. and recorded in Book "S" of Mortgage page 202. and Examined

L. M. Squirean Clerk  
By J. W. Lewis Deputy

The within Deed of Trust satisfied by sale of Lands therein described for the sum of One Thousand dollars to Holden Putnam March 15<sup>th</sup> 1858.

L. M. Squirean Trustee  
"Filed Jan 18. 1859. L. M. Squirean clk"

The said defendants also offered in evidence in this case the Record of Judgments of the Circuit Court of said County of Stephenson in which was the entry as follows -

Attorneys	No 351	
Lathrop & Brown	Jabez Howe, George O. Howe	Assumpsit
Ex issued Oct 21. 1857.	Samuel M. Payson, John B.	
alias Ex issued to coroner Nov 8. 1858.	Hutchinson, Charles H.	
	Dalton, & Jacob Wendell Jr.	
	"	
	John K. Brewster, John	Defendants
	W. Shaffer & Lewis F. Currier	

Attorneys	No 351.	
Lathrop & Brown	Jabez Howe, George O. Howe	Assumpsit \$ 12.5 Sept 25. 1857.
Ex issued Oct 21. 1857.	Samuel M. Payson, John B.	Damages \$ 2402.13
alias Ex issued to coroner Nov 8. 1858.	Hutchinson, Charles H.	Costs 5.15
	Dalton, & Jacob Wendell Jr.	Def. do 1.00
	"	
	John K. Brewster, John	Defendants
	W. Shaffer & Lewis F. Currier	

Property sold amt \$ 753.21  
 also \$ 1134.9 Rec of P's atty  
 \$ 560. alias rec for \$ 26.46  
 costs paid

Attorneys	No 351.	
Lathrop & Brown	Jabez b. Howe, George O. Howe	Assumpsit \$ 122. Sept 25. 1857
Ex issued Oct 21. 1857.	Samuel M. Payson, John B.	Damages \$ 614.88
alias Ex Nov 22. 1858.	Hutchinson, Charles H. Dalton	Costs 4.25
	& Jacob Wendell Jr.	Defendant
	"	
	John K. Brewster	

Real Estate sold amt \$ 400.  
 Refs Rec for \$ 381. Cash pd Jan 19. 1858.

This Indenture, Made this Twenty sixth day of March in the year of our Lord One Thousand Eight Hundred and Fifty Eight BETWEEN Luther W. Guilbeau

of the City of Freeport of the County of Stephenson and State of Illinois party of the first part, and Golden Putnam of the place

County of Stephenson and State of Illinois of the second part,

WITNESSETH, That whereas John R. Brewster and Emily S. Brewster his wife

of the County of Stephenson and State of Illinois did, by a certain Deed of Trust, dated the 26<sup>th</sup> day of October A. D. 1877, which Deed is recorded in the Recorder's Office of the County of Stephenson in the State of Illinois

convey to the said party of the first part, all the premises hereinafter described, to secure the payment of three certain Promissory Notes in said Deed particularly mentioned, and upon certain Trusts in said Deed

particularly declared; and whereas default hath been made in the payment of said notes and James Mitchell the legal holder of said notes having applied to said party of the first part to advertise and sell said premises described in said Trust Deed, and hereinafter described, for the purposes and to carry out the Trusts therein declared; and whereas, the said premises were, by the said party of the first part, duly advertised for Public Sale at the door of the Court House in the City of Freeport in the County of Stephenson and State of Illinois on the fifteenth day of March A. D. 1878 to wit: by publishing the same ten days in the Freeport Journal a public newspaper printed in the County of Stephenson and State of Illinois, (where said premises are situated,) a copy of which, with the certificate of the publisher thereof being hereto attached, in the manner prescribed in and by said Deed of Trust, specified and were, upon the day and year and at the place last mentioned aforesaid, in pursuance of said notice, sold at Public Sale, and at said sale the said party of the second part was the highest and best bidder therefor, and bid for the tract ~~last~~ hereinafter named, the sum of One Thousand dollars,

Now, Therefore, these presents witness, That the said party of the first part, in pursuance of the power and authority in him vested in and by the said Deed of Trust, and in consideration of the sum of one dollar, and also the farther sum of One Thousand

dollars, to the said party of the first part paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath and doth hereby convey, remise, release, and quit-claim to the said party of the second part, his heirs and assigns forever, all the right, title and interest, as well in law as in equity, which the said party of the first part hath acquired by virtue of the Trust Deed above mentioned, of, in and to all that three certain tract, piece or parcels of land situated in the City of Freeport County of Stephenson and State of Illinois and described as follows, to wit: lots numbered three four & five (3, 4 & 5), and the North westerly one half of Lot number two (2) (said lot two being divided by a line drawn parallel with Cherry Street, in Block number fifty one (51) in the original Town of Freeport (now City of Freeport)) for a more full description of which reference may be had to the recorded plat of said "Town of Freeport" in the office of the Clerk of the Circuit Court of said County of Stephenson

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and any and every part thereof, with the appurtenances, which the said party of the first part acquired by virtue of said Trust Deed:

TO HAVE AND TO HOLD the aforesaid right, title and interest of the said party of the first part, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part can, by virtue of the power and authority in him by said Trust Deed in him vested, convey the same.

In WITNESS WHEREOF, The party of the first part hath hereto set his hand and seal the day and year first above written.  
SEALED AND DELIVERED }  
IN PRESENCE OF } Luther W. Guilbeau Trustee

State of Illinois, } ss.  
STEPHENSON COUNTY,

I, David H. Sunderland Clerk of the County Court

in and for the County and State aforesaid, do hereby certify that Suther McCreary personally known to me to be the person described in, and who executed the within deed of conveyance as Trustee, this day appeared before me in person and acknowledged that he executed and delivered said deed as Trustee as aforesaid, as his free act and deed for the uses and purposes therein expressed.

*Signature*

Witness my hand and Official seal this Twenty seventh day of March A. D. 1858 David H. Sunderland No. Clerk

Trustee Sale - Whereas, John K. Brewster and Emily S. Brewster his wife of the county of Stephenson and State of Illinois did on the 26<sup>th</sup> day of October A.D. 1857 execute a certain deed of trust to the undersigned (upon the following described premises, situate lying and being in the County of Stephenson and State of Illinois to wit: Lots Nos three (3), four (4) and five (5) and the North Eastern one-half of lot No two (2) (said lot two being divided by a line drawn parallel with Cherry Street) in Block No. fifty-one (51) in the original Town (Town City) of Freeport, for a more full description of which reference may be had to the Recorded Plat of said Town of Freeport in the office of the Clerk of the Circuit Court of said County of Stephenson - which deed of trust is recorded in the office of the Clerk of the Circuit Court aforesaid in Book "L" of Mortgages page 202) to secure the payment of three certain promissory Notes to James Mitchell & Co. or the legal holder thereof, to wit: one for the sum of fourteen hundred dollars, one for one thousand dollars, and one for eleven hundred dollars, according to the tenor and effect of said Notes, and which are particularly described in said deed of trust; and whereas default has been made in the payment of the aforesaid Notes, and the undersigned having been designated by the said James Mitchell & Co. as trustee as aforesaid to proceed to sell the above named premises in accordance with the provisions granted in said deed of trust, now therefore in pursuance of the power and authority conferred upon the undersigned as the trustee in said deed of trust mentioned, public notice is hereby given that on Monday the 15<sup>th</sup> day of March 1858, between the hours of 10 o'clock A.M. and 4 o'clock P.M. at the door of the Court House in the city of Freeport, in said County of Stephenson I will sell by Public outcry to the highest and best bidder for ready money, all the right title and interest which the said John K. Brewster, and Emily S. Brewster his wife have or had in and to the above named premises at the time of the execution of the said deed of trust, and which by virtue of said deed of trust is conveyed to the undersigned, and upon sale being made as aforesaid will execute to the purchaser or purchasers thereof a deed for the same as aforesaid. Freeport March 4<sup>th</sup> 1858. S. W. Scituate Trustee

17033 Trustee's Deed.

Suther McCreary  
Trustee of J. K. Brewster et al  
TO  
Holden Putnam

S. W. McCreary one of the Publishers of the Freeport Journal (a Newspaper published at Freeport Stephenson County Illinois) do hereby certify that an advertisement entitled "Trustee's Sale" (an exact copy of which is hereto attached) was published in said Newspaper two times successively. The first insertion of said advertisement was made on the 4<sup>th</sup> day of March A.D. 1858 and the last on the 11<sup>th</sup> day of March A.D. 1858 - this for publication \$5.00 - S. W. McCreary

State of Illinois, } ss.  
STEPHENSON COUNTY,

Office of Clerk Circuit Court.

Filed for record, and recorded this 27<sup>th</sup> day of March A. D. 1858  
at 11 o'clock 26 minutes, in Book 26 of Deeds, and examined, Page 553-55  
S. W. McCreary Clerk.

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Said Deft produced S. W. Suitman a witness and proved by him that he executed said Deed, that he was the Trustee and advertised the premises as specified in said Deed, and sold the premises at Public Auction to Holden Putnam as specified in said Deed - Said Defendants then offered in evidence a Deed executed by said S. W. Suitman to said Holden Putnam dated March 28, 1858 a copy of which is filed as proof marked "D" which said Deed and evidence was objected to by the Petitioners and objection overruled - and the same was received in evidence - At the sale it was stated that the property was incumbered. Sold subject to incumbrances -

✱

Said Defendants then offered as witnesses Smith Atkins who testified that the Brewster property being the premises mentioned in said Deed would have sold during the Summer of 1856 and to October 1854 for between \$3000. & \$4000. would sell now for \$2500. to \$3000. On cross-examination witness said it might have brought between \$4000. and \$5000. that he is not particularly acquainted with the house and his opinion is mere guess work -

J. M. De Armit testified that he was acquainted with the premises, and thinks they would have brought in Oct 1854, about \$3500. and during 1856, that they would not bring more than \$2500.

McShaffer (offered by the Petitioners) testified that the above judgments are not satisfied other wise than appears by the Record - That an <sup>arrangement</sup> was made between the Plaintiffs in said judgments and witness by which said Plaintiffs

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redemmed certain property of Brewsters and gave  
 to witness time to redem the same by paying  
 the amount of the judgment and the redemption  
 money - that witness intended to bid enough for  
 said property to cover the incumbrance on it - and  
 the balance due on said judgment, but at Brew-  
 sters request he allowed said ~~Plaintiffs~~ <sup>Plaintiff</sup> to bid it  
 off under said <sup>arrangement</sup> ~~judgments~~ - The property was  
 worth considerable more than the said amount.  
 The time for paying the money has expired -  
 The money has not been paid - At Brewsters re-  
 quest he agreed with the Plaintiff not to bid  
 at the sale and to let them bid off the property.  
 at said sale - said property was rated worth  
 about \$10,000. but that was too high. The in-  
 cumbrance was about \$3500. think the property  
 is worth about \$4000 to \$6000.

The said defendant also introduced  
 George Hullerton who testified that he was  
 clerk in the Banking Office of James Mitch-  
 ell & Co while the Brewster House was in process  
 of erection, that said John K. Brewster kept  
 his Bank account with them - that the pro-  
 ceeds of the Fifteen Thousand Dollar Loan were  
 deposited with them and paid out on  
 his checks on account of the Hotel - thinks  
 two of the Five Thousand Dollar Notes were  
 discounted at the East, and the money sent  
 by Express - and that Mitchell & Co discounted  
 the other - that the checks now produced in  
 Court which are filed as proofs in this cause,  
 were all given on that fund -

Checks - Not

Tripport Ill July 29. 1856.

Stephenson County Bank  
James Mitchell & Co

Pay N. C. Childs or Bearer Five Hundred Dollars and charge the same to account of  
\$500.00  
John K. Brewster

No -

Tripport Illinois Aug<sup>23</sup>. 1856.

Stephenson County Bank  
James Mitchell & Co

Pay S. Frick or Bearer Two Hundred Dollars  
\$200.00  
J. K. Brewster

No 2 -

Tripport Ill August 4. 1856

Stephenson County Bank  
James Mitchell & Co

Pay J. K. Brewster & Co or bearer Six Dollars and charge the same to account of  
\$6.00  
John K. Brewster  
By Bradford

No 3 -

Tripport Ill August 5. 1856

Stephenson County Bank  
James Mitchell & Co

Pay Louis Frick or Bearer Ten Dollars and charge the same to account of  
\$10.00  
John K. Brewster  
By Bradford

No 4

Tripport Illinois August 8. 1856

Stephenson County Bank  
James Mitchell & Co

Pay Louis Frick or Bearer Forty Dollars  
\$40.00  
John K. Brewster  
By Bradford

1176  
No 5-                      Trip out Illinois Aug 8. 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Louis Trick or Bearer Ten Dollars  
\$1000  
John K. Brewster  
By Bradford

No-                      Trip out Ill Aug 30<sup>th</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Tho Boltman or Bearer Two Hundred  
Dollars and charge the same to account of  
\$200  
J. K. Brewster

No-                      Trip out Ill Sept 1<sup>st</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Louis Trick or Bearer Fifty Dollars  
and charge the same to account of  
\$50  
J. K. Brewster

No-                      Trip out Ill Sept 2<sup>d</sup> 1856.  
Stephens on County Bank  
James Mitchell & Co  
Pay J. K. B. or Bearer Five Hundred Dollars  
and charge the same to account of  
\$500  
J. K. Brewster

No-                      Trip out Ill Sept 3<sup>d</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay D. Shockey for Hotel Money or Bearer  
One Hundred Dollars and charge the same to  
account of  
\$100  
J. K. Brewster

1771  
No- Tripport Ill Sept 6<sup>th</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay James Conner or Bearer One Hundred  
and fifty Dollars for expating &c  
\$150- J. K. Brewster

No- Tripport Ill Sept 6<sup>th</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Louis Brick (for masonry) or Bearer  
Twenty five Dollars  
\$25- J. K. Brewster

No- Tripport Ill Sept 6. 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Tho Colman (for Brick) or Bearer  
One Hundred Dollars  
\$100- J. K. Brewster

No- Tripport Ill Sept 9<sup>th</sup> 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay D. Shockey (for masonry) or Bearer  
Fifty Dollars  
\$50- J. K. Brewster

No- Tripport Ill Sept 13. 1856  
Stephens on County Bank  
James Mitchell & Co  
Pay Tho Colman (for Brick) or Bearer. One  
Hundred Dollars  
\$100- J. K. Brewster

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No- Troup or Ill Sept 19<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Ho  
Pay Alois Trick (for masonry) or Bearer  
Twenty five Dollars  
\$25  
J. K. Brewster

~~No- Troup or Ill <sup>miss</sup> Sept 19<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Ho  
Pay Alois Trick (for masonry) or Bearer  
Twenty five Dollars  
\$25  
J. K. Brewster~~

No- Troup or Illinois Sept 15<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Ho  
Pay H. B. Childs (for lumber) or Bearer  
Five Hundred Dollars  
\$500  
J. K. Brewster

No- Troup or Illinois Sept 20. 1856  
Stephenson County Bank  
James Mitchell Ho  
Pay Wm Colton or (for brick) or Bearer  
One Hundred Dollars  
\$100  
J. K. Brewster

No- Troup or Illinois Troup. 1856  
Stephenson County Bank  
James Mitchell Ho  
Pay Alois Trick (for masonry) or Bearer  
Fifty Dollars  
\$50  
J. K. Brewster



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No  
Troup Co Illinois Oct 9<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Co  
Pay Tho Kottman (for Brick) or Bear  
Two Hundred & Fifty Dollars  
\$250- J. K. Brewster

No-  
Troup Co Illinois Oct 11<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Co  
Pay Demard Shooley (for Masonry) or  
Bear Fifty Dollars  
\$50- J. K. Brewster

No-  
Troup Co Illinois Oct 14<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Co  
Pay Alois Trick (Masonry) or Bear  
Fifty Dollars  
\$50- J. K. Brewster

No-  
Troup Co Illinois Oct 18<sup>th</sup> 1856  
Stephenson County Bank  
James Mitchell Co  
Pay Tho Kottman for Brick or Bear  
Two Hundred & Fifty Dollars  
\$250- J. K. Brewster

No-  
Troup Co Illinois Oct 18. 1856  
Stephenson County Bank  
James Mitchell Co  
Pay Demard Shooley (Masonry) or Bear  
One Hundred & Fifty Dollars  
\$150- J. K. Brewster

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No-                      Troupport Ill Oct 25. 1856  
                            Stephenson county Bank  
                            James Mitchell & Co  
Pay Granger Bro (for castings) or Bear  
Seven Hundred Dollars  
\$700-                      J. K. Brewster

No-                      Troupport Ill. Nov 3<sup>rd</sup> 1856.  
                            Stephenson county Bank  
                            James Mitchell & Co  
Pay D. Shockley (for masonry) or Bear  
Two Hundred Dollars  
\$200-                      J. K. Brewster

No-                      Troupport Illinois Nov 8<sup>th</sup> 1856  
                            Stephenson county Bank  
                            James Mitchell & Co  
Pay D. Shockley (for masonry) or Bear  
Twenty five Dollars  
\$25-                      J. K. Brewster

No-                      Troupport Ill. Nov 14<sup>th</sup> 1856  
                            Stephenson county Bank  
                            James Mitchell & Co  
Pay J. B. Hazen (for iron work) or Bear  
Thirteen <sup>35</sup>/<sub>100</sub> Dollars  
\$13. <sup>35</sup>/<sub>100</sub>                      J. K. Brewster

No-                      Troupport Ill. Nov 18<sup>th</sup> 1856  
                            Stephenson county Bank  
                            James Mitchell & Co  
Pay D. Shockley (for masonry) or Bear  
Five Hundred Dollars  
\$500-                      J. K. Brewster





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which objection was overruled and the de-  
cision of the Court excepted to  
Gen. R. Sheldon

On the back of which appears the follow-  
ing endorsement to wit: Filed Jan. 22<sup>nd</sup> 1859  
L. N. Guiteau clk

appeal Bond

Know all men by these Presents that we James Mitchell & Holden Putnam, as principals, & John A. Clark, as surety, are held and firmly bound unto Jay Thomas in the penal sum of Fourteen Hundred Dollars lawful money of the United States for the faithful payment of which we bind ourselves our heirs Executors and Administrators jointly and severally, firmly by these presents. In witness whereof we have hereunto set our hands and seals this 22<sup>d</sup> day of February A. D. 1859.

The condition of the above obligation is such, that whereas on the 24<sup>th</sup> day of January A. D. 1859, in the Stephenson County Circuit Court on the Chancery side there of the above named Jay Thomas obtained and recovered a decree against the above bound James Mitchell, Holden Putnam, together with John K. Brewster, Joseph B. Smith, Henry M. Hibbard, Alexander Arly, James C. Howe, George C. Hovey, Samuel K. Pappan, John B. Whitchinson, Charles W. Dalton, Jacob Mudell Jr., J. Wilson Shaffer, Louis S. Burvill, Chancellor Martin, Henry Strohm, Henry W. Pennington, John Black, John O. Taylor, Jared Shutz, Thompson Milverton, John Cloates, Hiram Bright, John Koebel, Gilbert M. Clayton, Graves Soley, Asahel W. Rice, Abraham J. Green, Jacob Stoneman, Thomas Colman, John V. Dyerly, William M. Buckley, John S. Emmert, Silas Clark, John Wade, Jesse B. Snyder, Tobias Engle, A. Cameron Hunt, Charles Rosenstiel, Hollys Jewell, Andrew P. Kohan, George Purinton, Maffio Hettiger, S. Howard Wolfe Francis M. Young.

Rudolph Pubater. John A. Clark. Daniel  
 S. Brewster. James B. Childs. Thomas J. Turner.  
 Oscar Taylor. & J. Rigard. requiring the above  
 named Defendant John B. Brewster. to pay the  
 said Jay Thomas. the sum of Twelve Hundred  
 and Six Dollars and thirty five cents. and the  
 interest there of from and after the seventh day  
 of January A. D. 1858. together with the costs  
 of said suit. and in default of said payment  
 that certain lots parcels of land in said Decree  
 described and Designated be sold by the  
 Master in Chancery of said County and the proceeds  
 of <sup>said</sup> sale be divided and appropriated in pursuance  
 of the terms of said Decree -

And where as the said  
 James Mitchell and Holden Putnam prayed  
 an appeal from said Decree to remove the same  
 to the Supreme Court at the time of making said  
 Decree - Now therefore if the said James Mitchell  
 Holden Putnam. shall prosecute their said appeal  
 with diligence to effect and shall perform and  
 observe said Decree and shall pay all costs interest  
 and Damages. there as may be adjudged and  
 decreed against them in case said Decree  
 shall be affirmed in said Supreme Court. then  
 this Bond to be Void and of no effect. otherwise  
 to remain in full force -

Made and Executed under  
 our Seal the Day and Year  
 first above Writen -

In Presence of ~~John A. Clark~~  
 Thomas J. Turner

By James Mitchell  
 By N. Putnam agt  
 Holden Putnam  
 John A. Clark

On the Back of which appears the following  
 endorsement writ:  
 "Filed February 23<sup>rd</sup> 1859. L. W. Suit van clk"

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Jay Thomas  
 John R. Brewster Et. als  
 Decree of the County Civ Court  
 December Term A.D. 1858  
 Piffs Bill costs

Docuit & terms 50	Enty app & atty 15	filg Bill & Prae 10	"	75
Sumt & filg 40	Sumt to Rome 60	filg 40	Enty & filg Rep to ans 25	1.05
Enty mo for deflt Defts Brewster Et. als 20	order for do 20		"	40
" ord Pro confesso 20	Enty agt submit to Court 20	Except to wily <sup>to 20</sup>	"	60
Except to ruling Court to Mitchell & P. ans 20	Enty wily Ex to ans of		"	20
Shaffer & Knell 25	do of Mitchell Et. al 25	do of Curran Et. als 25	"	75
Enty ans of submission by all parties 20	ord certin 20	Mo to ans of Pet 20	"	60
Enty ans to ans of Pet 20	ord for Pub Notice 20	Enty wily proof of Notice 25	"	65
Enty wily ans of Bill 25	ord Pro confesso of Jabez K. Brown Et. al 20		"	45
Enty ans of Rep to Master 20	ctf copy of do 50	ctf copy Just Deed 35	"	1.05
Enty wily Master kept 25	ctf copy Deed to Hibbard 35		"	60
Enty mo to strike Putnam's aff from files 20	ord overly mo 20		"	40
Enty Excepta to ruling of Court 20	Enty wily off of brain & Shockley		"	55
Enty mo to strike copy Bill of Wilcoxen Et. al from files 20	ord on do do		"	40
Enty filg & Recording decree				8.25
Enty wily Ex to Decree 25	ord for appeal 20	long 10	mit 50	"
3 Subpa & filg 81.20	Scog & filg 2. aff 20			1.40
Bill book 30	copy do 20	ctf Seal do 35		"
				85
				19.90

Shffers - J. W. Shaffer - Ex & Ret Sumd	8.35	
" " " Ex & Ret Gouspal	2.55	11.90
" " " Ed. Tadel		1.35
Master in Chancery - J. A. brain Report		10.00
Witness - J. W. Schlott 4 days Decr term 1857		4.00
" " " David Berger 9 " " " "		9.00
Printers fee - W. Bright for Pub Notice to defts		5.00
		60.15

Gay Thomas	3	Defendants costs	
John K. Brewster et al			
Enty & fily answer of Deft Ribbons	25	Do J. B. Smith	25
" fily Pet of Milcoxon et al	25	ord admitting them as Parties	20
ord to answer	20	Enty & fily Pet of J. W. Shaffer	30
Enty & fily Pet of Burrill	30	ord to admit him as party	20
ord for Shaffer to answer	20	ord for Burrill to answer	20
Enty & fily ans of Sumner et al	25	Enty & fily ans of Burrill	25
Enty & fily ans of Shaffer	25	Enty & fily ans of Milcoxon et al	25
Enty & fily ans of Putnam	25	Do of Mitchell	25
Enty & fily Expts of Mitchell & Co to Masters report	25	Enty & fily Ex of Milcoxon et al	25
Enty & fily Ex of Mitchell, Putnam, Shaffer & Burrill to Masters report			25
" Sng & fily app of Putnam	30	Enty & fily Crust Due to Smith	25
" fily Crust Due to Putnam	25	Enty & fily Brewsters apt	25
" ord surty 3 <sup>rd</sup> Ex of Mitchell & Co to Masters report	20		
Enty ord overl p <sup>1</sup> Ex to Do	20	Ord overl g Ex of Milcoxon et al	20
Enty Expt to ruling of Court	20	Enty & fily cross Bill	25
Enty Expt to ruling of Court on Cross Bill	20		
" fily Mo of Mitchell & Co to dismiss suit	25		
" prayer for appeal	20	ord for appeal	20
Sng 12 wit 60 fily 42 papp in progress suit	2.10	Enty & fily Ex to Decree	25
Sng & fily 2 app 20 fily 3 Pracc 15			2.80
Bill cross 30 copy Do 20		cty & Seal Do	35
			15.65
Shffafus - J. W. Shaffer Ex Secty Subpa			6.05
Witness fees - E. L. De Puy 1 day Dre term 1858			1.00
J. B. Schlotz 1 " " " "			1.00
			23.70

I, Luther W. Putnam, Clerk of the Stephenson County Circuit Court, State of Illinois, do hereby certify that the above is a true copy from my Ser Book.

Witness my hand and the Seal of said Court

Luther W. Putnam Clerk  
By Chas. North Deputy

State of Illinois  
Stephenson County

I Luther W. Guiteau Clerk  
of the Circuit Court in and for said County  
Do hereby certify that the foregoing is a  
full and complete abstract from the Records  
and files in my office of all the proceedings  
in this Court in the above entitled cause where  
in Jay Thomas is Plaintiff and John B.  
Prebster et. al. are Defendants

Witness my hand and the seal  
of said Stephenson County Circuit  
Court at Preport in said County  
this 6<sup>th</sup> day of April A. D. 1859  
L. W. Guiteau Clerk  
By Geo. North Dep



Paid for  
transcript  
\$70<sup>00</sup>

#9 22 ~~35~~ ~~20~~

James Mitchell

vs  
Jay Thomas

Transcript

Filed May 3, 1859  
L. Deland  
Clerk

