

No. 13014

# Supreme Court of Illinois

Brady

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vs.

Anderson

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71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 125.

Grady

Anderson

STATE OF ILLINOIS,  
IN THE  
SUPREME COURT,

OTTAWA TERM, A. D. 1860.

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|                                            |   |                         |
|--------------------------------------------|---|-------------------------|
| WILLIAM BRADY,                             | } | <i>Error to Peoria.</i> |
| v.                                         |   |                         |
| HORACE G. ANDERSON AND<br>JOHN C. PROCTOR. |   |                         |

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ABSTRACT OF THE RECORD.

As a matter of convenience, a copy of the abstract, the same except in form as the foolscap copy required by the rules, is prefixed to the brief.

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BRIEF OF CHARLES C. BONNEY  
FOR PLAINTIFFS IN ERROR.

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PEORIA, ILL.:  
BENJAMIN FOSTER, PRINTER AND BOOKBINDER.  
1860.

STATE OF ILLINOIS, ss.

{ IN THE SUPREME COURT AT OTTAWA,  
{ OF THE APRIL TERM, A. D. 1860.

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| WILLIAM BRADY,                             | } | <i>Error to Peoria.</i> |
| v.                                         |   |                         |
| HORACE G. ANDERSON AND<br>JOHN C. PROCTOR. |   |                         |

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Record.

**1.** PETITION FOR MECHANICS LIEN, filed February 8, 1858, to March Term of that year—Horace G. Anderson and John C. Proctor, against William Brady, Hezekiah M. Wead, and Robert A. Smith.

**2.** The petition may be resolved into the following points:

(1.) Petitioners are partners, firm of Anderson & Proctor.

(2.) About 25th of August, 1856; "William Brady, being or pretending to be the owner" of Lots 4 and 5, in Block 35, in Peoria, and being then about to build a hotel thereon, "contracted with petitioners to sell and furnish such lumber and materials as Brady might want or need in the prosecution of such building. No particular quantity contracted for, and no price fixed, but a reasonable price was to be paid in a reasonable time.

**3.** In pursuance of such contract the petitioners furnished lumber, materials, joists, boards, strips, studding, and other articles in Schedule "A," attached.

Brady received such materials and appropriated them in said building.



On the 5th of January, 1857, petitioners took and received from Brady for lumber, materials, and other articles delivered to him before that time, after deducting \$200, paid and credited in account, a note in these words:

"PEORIA, January 5th, 1857.

\$563 21. On or before the 28th of September next, I promise to pay to the order of Anderson & Proctor Five Hundred and Sixty-three &  $\frac{21}{100}$  Dollars, value received, with interest at ten per cent. per annum, it being for material furnished for the building of my hotel called the Buckeye House, situated in the City of Peoria, payable at the Banking House of N. B. Curtiss & Co.

(Signed) WILLIAM BRADY."

4. Since the execution of the note, Brady has received lumber and materials amounting to the further sum of \$30 94. Charge that there is due \$655 14.

Wead and Smith have some interest in the premises, &c., as security for money borrowed by Brady.

Premises worth at least \$15000. "The time for furnishing said lumber and materials was not extended for a longer period than three years, nor the time of payment beyond the period of one year for the time stipulated for the completion thereof."

5. Prayer for the answer—that an account may be taken, decree made, &c.

6. ACCOUNT commencing August 25, 1856, ending September 18, 1857, and amounting to \$794 14, upon which sum is allowed a payment of \$200. August 25, 1856.

8. SUMMONS AND RETURN—

9. DEMURRER OF BRADY, filed March 7, 1859, for the following among other reasons—

Extending the time for payment and taking the note at ten per cent. discharged the lien if any had attached.

The court is asked to enforce not the original, but a subsequent contract, unknown to the statute.

The petition is otherwise defective.

10. ANSWER OF WILLIAM BRADY, filed March 15th, 1859, containing the following points:

- (1.) All exceptions, &c., saved.
- (2.) Admits ownership of lots.

(3.) Admits a contract for the first and second items of the account, viz :

|                                              |          |
|----------------------------------------------|----------|
| 1856 Aug. 25, 1857, to 10720 ft. of flooring | \$343 04 |
| Sept. 5, " " 544 " "                         | 17 40    |

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360 44

(4.) Denies that he contracted for any other or further lumber at or about that time.

(5.) Sets up payment of \$200 on above two items at or about date thereof.

(6.) Admits that he received the other items specified in the account, but denies that he received the same under the alleged contract, or under any specific contract to use the same in or upon said hotel buildings.

(7.) Admits the making of the note set out in the petition.

(8.) Charges that the agreement therein to pay ten per cent. is illegal and void.

(9.) Charges that the defendants were bound to furnish good merchantable flooring, but that the flooring furnished by them was not such.

(10.) Subscribed and sworn to March 15th, 1859.

**13.** REPLICATION filed March 18th, 1859.

**14.** PROCEEDINGS OF COURT.

**17.** DEMURRER SUSTAINED March 8th, 1859, and leave to amend.

**18.** RULE ON BRADY March 10th, 1859, to answer petition by Monday next.

**19.** BILL DISMISSED as to all the defendants except Brady. Trial by jury.

**20.** VERDICT IN THESE WORDS :

"We, the jury, find the issues for the plaintiffs, and assess their damages at the sum of \$692 04. Motion for new trial.

**21.** DECREE, containing the following points :

(1.) Dismissal as to Wead and Smith.

(2.) Trial by jury. Recital that the jury find the issues for petitioners, amount due them, \$692 04, "and sustain their lien, &c."

(3.) Court finds petition to be true, and \$694 04 due, and decrees lien on lots, &c.

(4.) Decree that Brady pay amount of decree in four



months, otherwise sale at Court-House to highest and best bidder for cash, between the hours of 10 A. M. and 3 P. M., having given four weeks notice by advertisement in some weekly newspaper, being the nearest and of general circulation in Peoria, &c.

(5.) That out of proceeds of sale costs and amount of decree be paid, and report of proceedings be made by Master in Chancery.

**23. MOTIONS FOR NEW TRIAL AND TO VACATE DECREE OVERRULED.**

Appeal to Supreme Court allowed on filing bond in \$1000 in 30 days security, to be approved by the clerk.

**24. BILL OF EXCEPTIONS**, filed 24th December, 1859, setting out all the evidence.

**EVIDENCE FOR PETITIONERS.**

**TESTIMONY OF CHARLES W. TRIPP.**—Knows Brady got some lumber of petitioners at or about dates of account. Can't say how much or what kinds except first two items of flooring. The prices are about as petitioners sold, &c., except flooring \$1 per thousand cheaper because not first rate, and he took a whole car load. *Knows nothing of any contract, nor how, nor where the lumber was used.* Brady said he got lumber for the Buckeye House; I helped load a good many loads for his teams. He got the last items in September, 1857.

**25. PETITIONERS OFFERED NOTE SET OUT IN PETITION.** Defendant Brady objected.

- (1.) Not evidence under the contract sued on.
- (2.) Agreement to pay ten per cent. illegal and void.
- (3.) Attempt to obtain a mechanics lien upon a contract unknown to the statute.

Objections overruled, note read, and defendant excepted.

**26. TESTIMONY OF RALPH HAMLIN.**—The Buckeye House is on Block 35, in Peoria; can't say what lots.

**TESTIMONY OF JAMES F. MURDEN.**—Thinks hotel is on Lots 4 and 5, in Block 35, &c.; that such articles as petitioners have charged would be required in building such a hotel;

heard Brady say he got lumber *to finish it* from petitioners; I did the plastering. Brady told me he got the lumber to build the Buckeye House from Anderson & Proctor; said he still owed them, and they were clever fellows. The lumber was good as far as I could see.

**27. FURTHER TESTIMONY OF CHARLES W. TRIPP.**—The last bill of lumber was got after the note was given.

### EVIDENCE FOR DEFENDANT.

Brady read his answer to the jury.

Petitioners admitted they could not recover more than six per cent. interest.

#### INSTRUCTIONS.—

(1.) Jury sole judges of the facts, and must find them according to the evidence.

(2.) Petitioners cannot recover without having shown a contract for the lumber to be used on the premises.

(3.) And that such lumber was furnished and was used, &c.

(4.) Interest not recoverable on a mere balance of unsettled account.

(5.) Answer of defendant, evidence in his favor so far as responsive to the petition.

(6.) Petitioners not entitled to recover on note as such, but the note was evidence tending to establish their case.

**28. VERDICT.**—Jury find for plaintiffs, damages \$692 04 and sustain lien against Buckeye House.

#### MOTION FOR NEW TRIAL.—

(1.) Petition defective—shows contract discharged—does not contain provisions required by the statute.

(2.) Improper evidence for petitioners.

(3.) Verdict against evidence and instructions.

(4.) Amount of verdict excessive.

(5.) Note improperly admitted.

(6.) No evidence even tending to show answer untrue.

(7.) Verdict doth not show the facts required by the statute.

(8.) Proceedings otherwise illegal.



**29.** Motion for new trial overruled, and exception taken.

MOTION TO VACATE DECREE.—

- (1.) Decree not warranted by the pleadings.
- (2.) Nor by the evidence.
- (3.) Nor by the verdict.
- (4.) Time allowed for the payment unreasonably short.
- (5.) Decree otherwise illegal.

**30.** Motion to vacate decree overruled, and exception taken.

Certificate, signature and seal of Clerk.

**31.** ASSIGNMENT OF ERRORS.—

(1.) The contract is not within the statute. No time is stipulated by "the provisions of the contract," for furnishing the materials, or for making payment.

(2.) If any lien ever attached, the petition shows a discharge thereof before suit commenced.

(3.) The evidence is insufficient—it does not show any contract.

(4.) The amount of the verdict and decree is enormously excessive.

(5.) The decree is not warranted, either by the pleadings or the evidence.

(6.) The proceedings are otherwise erroneous.

CHARLES C. BONNEY,  
*Attorney for Plaintiff in Error.*

**35.** JOINDER IN ERROR.

HENRY GROVE,  
*Attorney for Defendant in Error.*

{ IN THE SUPREME COURT,  
{ OTTAWA TERM, A. D. 1860.

WILLIAM BRADY,

HORACE G. ANDERSON & JNO. C. PROCTOR.

*ERROR TO PEORIA.*

MECHANICS' LIEN.

## II.—OF THE ERRORS ASSIGNED.

I.

1. There must be a contract with *the owner* of the land.  
—S. 1.

3. Work and materials must be furnished *under the provisions of the contract.*—S. 2.

4. Kind and quantity of materials &c., or amount to be paid need not be specified.—S. 2.

5. *Provided the time fixed for completing the contract shall be within three years, and the time for payment within one year.—S. 2.*

6. The bill or petition must state, 1, the *contract*; 2, the *amount due*; 3, a *description of the premises*; 4, *all other material facts, and circumstances*.—S. 4.

7. Answer shall be under oath.—S. 7.

8. Mechanic may recover for part performance, where failure is by default of owner, and without his own.—S. 13.

9. If a part of the premises can be separated and sold, the court may [shall] so order.—S. 14.

10. Any right or interest in the premises constitutes *own-*

*ership* within the statute, and lien shall bind as a mortgage would have done.—S. 17 & S. 21.

11. No incumbrance shall operate upon the building or materials till after lien shall have been satisfied. Previous incumbrancers entitled to value of the land.—S. 20.

12. No creditor shall enforce lien to the prejudice of any other creditor, or any incumbrance, unless suit be instituted within six months after the last payment shall have become due.—S. 24.

13. Creditor also entitled to action at law.—S. 25.

14. Execution may issue for balance not made by sale.—S. 26.

The leading cases in our own reports establish the following among other points:

1. The petitioner is strictly confined to the contract stated.  
Carroll v. Crane, 4 Gil. R. 566.

2. There must not only be a *contract*, but the materials must be *used* under it, &c.

Hunter & al. v. Blanchard 18, Ill. R. 318.

3. Extending the time for payment, cannot extend the lien.  
Logan v. Dunlap, 3 Scam. R., 189.

4. An answer of *payment* is responsive to the petition, and evidence for the respondent.

Garrett v. Stevenson, 3 Gil. R. 269.

5. The time for the performance of the contract and the payment of the money must be determined at the time when the contract is entered into, and *if there be no time fixed and agreed upon in the contract* for the performance of the labor or the furnishing of the materials within three years from its execution, and for the payment within one year from the completion of the labor or furnishing the materials, *the lien would not*



*attach.* The petition should aver a time when the contract was to be performed by the agreement, and the time when the money was to be paid, within the times severally limited by the act.

Cook et al. v. Heald et al. 21 Ill., R. 429, 430.

6. The obvious intention of the legislature was to dispense with precision in the contract, as to the kind of work to be performed, and as to the specific amount to be paid, but to require the contract to fix and limit a time when the work should be completed and the money should be paid.

*The lien could not attach* unless the contract provided a time within which the work was to be completed. The law could not imply any time for its completion.

Cook et al. v. Vreeland 21, Ill., R. 435, 436.

Senior v. Brebner et al. 22, Ill., R. 252.

It can hardly be necessary now to say that the rule of construction in cases of this nature,—where extraordinary and dangerous proceedings are authorized, and a concurrent remedy by the common law is given,—is so strict, that to doubt whether the statute and the case warrants a decree for the petitioners, is to decide in favor of the defendant.

Cook et al. v. Heald et al. 21 Ill. R. 429.

Cook et al. v. Vreeland 21 Ill. R. 435.

Senior v. Brebner et al. 22 Ill. R. 252.

## II.

The errors assigned will be considered in their order:

1. The contract is not within the statute. No time is stipulated by "the provisions of the contract" for furnishing the materials, or for making payment.

The abstract shows that the error is well assigned in point of fact, and the cases cited above from 21 and 22 Ill. R. are conclusively to the point.

2. If any lien ever attached, the petition shows a discharge thereof before suit commenced.

The taking of the promissory note *with the agreement to pay ten per cent. interest, &c.*, therein, discharged the lien if any had attached. The case is analagous to a vendors' lien; and there is no difference in principle between taking a further security and taking a larger sum of money.

Conover v. Warren et al. 1 Gil. R. 501.

Trustees &c. v. Wright et al. 11 Ill. R. 606.

Smalley v. Edey 19 Ill. R. 297.

3. The evidence is insufficient—it does not show any contract.

4. The amount of the verdict and decree is enormously excessive.

5. The decree is not warranted, either by the pleadings or the evidence.

6. The proceedings are otherwise erroneous.

There is literally no evidence even tending to contradict the answer of the defendant below. Without that there is *no proof of any contract*: with it the contract shown is not within the statute in the first place, and extends only to the first two items of the account \$360,44, less payment of \$200, leaving balance of but \$160,44 in the second. Yet the verdict and decree are for \$692,04! and the court below overruled motions for a new trial, and to vacate the decree!

It would be hard to believe that such proceedings had been deliberately sustained by so learned a tribunal as the court below, but incredulity must yield to the official verification of the clerk, and we must believe that there is indeed a necessity for the interposition sought upon this writ of error.

It is also objected that the decree ought to show upon its face a case clearly within the statute; and that it should have directed a sale of part only of the premises if practicable.

Brady  
v.

Anderson et al.

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Plaintiffs' Brief

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Filed April 2, 1860

L. Leland  
clerk



STATE OF ILLINOIS,  
IN THE  
SUPREME COURT,

OTTAWA TERM, A. D. 1860.

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**2.** The petition may be resolved into the following points:

(1.) Petitioners are partners, firm of Anderson & Proctor.

(2.) About 25th of August, 1856, "William Brady, being or pretending to be the owner" of Lots 4 and 5, in Block 35, in Peoria, and being then about to build a hotel thereon, "contracted with petitioners to sell and furnish such lumber and materials as Brady might want or need in the prosecution of such building. No particular quantity contracted for, and no price fixed, but a reasonable price was to be paid in a reasonable time.

**3.** In pursuance of such contract the petitioners furnished lumber, materials, joists, boards, strips, studding, and other articles in Schedule "A," attached.

Brady received such materials and appropriated them in said building.

On the 5th of January, 1857, petitioners took and received from Brady for lumber, materials, and other articles delivered to him before that time, after deducting \$200, paid and credited in account, a note in these words:

"PEORIA, January 5th, 1857.

\$563 21. On or before the 28th of September next, I promise to pay to the order of Anderson & Proctor Five Hundred and Sixty-three &  $\frac{21}{100}$  Dollars, value received, with interest at ten per cent. per annum, it being for material furnished for the building of my hotel called the Buckeye House, situated in the City of Peoria, payable at the Banking House of N. B. Curtiss & Co.

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4. Since the execution of the note, Brady has received lumber and materials amounting to the further sum of \$30 94. Charge that there is due \$655 14.

Wead and Smith have some interest in the premises, &c., as security for money borrowed by Brady.

Premises worth at least \$15000. "The time for furnishing said lumber and materials was not extended for a longer period than three years, nor the time of payment beyond the period of one year for the time stipulated for the completion thereof."

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6. ACCOUNT commencing August 25, 1856, ending September 18, 1857, and amounting to \$794 14, upon which sum is allowed a payment of \$200. August 25, 1856.

8. SUMMONS AND RETURN—

9. DEMURRER OF BRADY, filed March 7, 1859, for the following among other reasons—

Extending the time for payment and taking the note at ten per cent. discharged the lien if any had attached.

The court is asked to enforce not the original, but a subsequent contract, unknown to the statute.

The petition is otherwise defective.

10. ANSWER OF WILLIAM BRADY, filed March 15th, 1859, containing the following points:

- (1.) All exceptions, &c., saved.
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| 1856 Aug. 25, 1857, to 10720 ft. of flooring | \$343 04     |
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**14.** PROCEEDINGS OF COURT.

**17.** DEMURRER SUSTAINED March 8th, 1859, and leave to amend.

**18.** RULE ON BRADY March 10th, 1859, to answer petition by Monday next.

**19.** BILL DISMISSED as to all the defendants except Brady. Trial by jury.

**20.** VERDICT IN THESE WORDS :

"We, the jury, find the issues for the plaintiffs, and assess their damages at the sum of \$692 04. Motion for new trial.

**21.** DECREE, containing the following points :

(1.) Dismissal as to Wead and Smith.

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(5.) That out of proceeds of sale costs and amount of decree be paid, and report of proceedings be made by Master in Chancery.

**23. MOTIONS FOR NEW TRIAL AND TO VACATE DECREE OVERRULED.**

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**EVIDENCE FOR PETITIONERS.**

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**25. PETITIONERS OFFERED NOTE SET OUT IN PETITION.** Defendant Brady objected.

- (1.) Not evidence under the contract sued on.
- (2.) Agreement to pay ten per cent. illegal and void.
- (3.) Attempt to obtain a mechanics lien upon a contract unknown to the statute.

Objections overruled, note read, and defendant excepted.

**26. TESTIMONY OF RALPH HAMLIN.**—The Buckeye House is on Block 35, in Peoria; can't say what lots.

**TESTIMONY OF JAMES F. MURDEN.**—Thinks hotel is on Lots 4 and 5, in Block 35, &c.; that such articles as petitioners have charged would be required in building such a hotel;

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**27. FURTHER TESTIMONY OF CHARLES W. TRIPP.**—The last bill of lumber was got after the note was given.

### EVIDENCE FOR DEFENDANT.

Brady read his answer to the jury.

Petitioners admitted they could not recover more than six per cent. interest.

#### INSTRUCTIONS.—

(1.) Jury sole judges of the facts, and must find them according to the evidence.

(2.) Petitioners cannot recover without having shown a contract for the lumber to be used on the premises.

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(1.) Petition defective—shows contract discharged—does not contain provisions required by the statute.

(2.) Improper evidence for petitioners.

(3.) Verdict against evidence and instructions.

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**29.** Motion for new trial overruled, and exception taken.

MOTION TO VACATE DECREE.—

- (1.) Decree not warranted by the pleadings.
- (2.) Nor by the evidence.
- (3.) Nor by the verdict.
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**30.** Motion to vacate decree overruled, and exception taken.

Certificate, signature and seal of Clerk.

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(1.) The contract is not within the statute. No time is stipulated by "the provisions of the contract," for furnishing the materials, or for making payment.

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CHARLES C. BONNEY,  
*Attorney for Plaintiff in Error.*

**35.** JOINDER IN ERROR.

HENRY GROVE,  
*Attorney for Defendant in Error.*

STATE OF ILLINOIS, ss. { IN THE SUPREME COURT,  
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WILLIAM BRADY,  
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HORACE G. ANDERSON & JNO. C. PROCTOR. } *ERROR TO PEORIA.*

## BRIEF OF CHARLES C. BONNEY FOR PLAINTIFFS IN ERROR.

## MECHANICS' LIEN.

## I.—OF THE LAW.

## II.—OF THE ERRORS ASSIGNED.

I.

The statute of LIENS may be resolved into the following points, omitting the provisions relative to matters of practice, and contests between different creditors.

1. There must be a contract with *the owner* of the land.—S. 1.
2. For erecting or repairing building on *such* land.—S. 2.
3. Work and materials must be furnished *under the provisions of the contract*.—S. 2.
4. Kind and quantity of materials &c., or amount to be paid need not be specified.—S. 2.
5. *Provided the time fixed for completing the contract* shall be within three years, and the time for payment within one year.—S. 2.
6. The bill or petition must state, 1, the *contract*; 2, the *amount due*; 3, a *description of the premises*; 4, *all other material facts, and circumstances*.—S. 4.
7. Answer shall be under oath.—S. 7.
8. Mechanic may recover for part performance, where failure is by default of owner, and without his own.—S. 13.
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*ership* within the statute, and lien shall bind as a mortgage would have done.—S. 17 & S. 21.

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12. No creditor shall enforce lien to the prejudice of any other creditor, or any incumbrance, unless suit be instituted within six months after the last payment shall have become due.—S. 24.

13. Creditor also entitled to action at law.—S. 25.

14. Execution may issue for balance not made by sale.—S. 26.

The leading cases in our own reports establish the following among other points :

1. The petitioner is strictly confined to the contract stated.  
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2. There must not only be a *contract*, but the materials must be *used* under it, &c.  
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4. An answer of *payment* is responsive to the petition, and evidence for the respondent.  
Garrett v. Stevenson, 3 Gil. R. 269.

5. The time for the performance of the contract and the payment of the money must be determined at the time when the contract is entered into, and *if there be no time fixed and agreed upon in the contract* for the performance of the labor or the furnishing of the materials within three years from its execution, and for the payment within one year from the completion of the labor or furnishing the materials, *the lien would not*



*attach.* The petition should aver a *time when the contract was to be performed by the agreement*, and the *time when the money was to be paid*, within the times severally limited by the act.

Cook et al. v. Heald et al. 21 Ill., R. 429, 430.

6. The obvious intention of the legislature was to dispense with precision in the contract, as to the kind of work to be performed, and as to the specific amount to be paid, but to require the contract to fix and limit a time when the work should be completed and the money should be paid.

*The lien could not attach* unless the contract provided a time within which the work was to be completed. The law could not imply any time for its completion.

Cook et al. v. Vreeland 21, Ill., R. 435, 436.

Senior v. Brebner et al. 22, Ill., R. 252.

It can hardly be necessary now to say that the rule of construction in cases of this nature,—where extraordinary and dangerous proceedings are authorized, and a concurrent remedy by the common law is given,—is so strict, that to doubt whether the statute and the case warrants a decree for the petitioners, is to decide in favor of the defendant.

Cook et al. v. Heald et al. 21 Ill. R. 429.

Cook et al. v. Vreeland 21 Ill. R. 435.

Senior v. Brebner et al. 22 Ill. R. 252.

## II.

The errors assigned will be considered in their order:

1. The contract is not within the statute. No time is stipulated by "the provisions of the contract" for furnishing the materials, or for making payment.

The abstract shows that the error is well assigned in point of fact, and the cases cited above from 21 and 22 Ill. R. are conclusively to the point.

2. If any lien ever attached, the petition shows a discharge thereof before suit commenced.

The taking of the promissory note *with the agreement to pay ten per cent. interest, &c.*, therein, discharged the lien if any had attached. The case is analogous to a vendors' lien; and there is no difference in principle between taking a further security and taking a larger sum of money.

Conover v. Warren et al 1 Gil. R. 501.

Trustees &c. v. Wright et al. 11 Ill. R. 606.

Smalley v. Edey 19 Ill. R. 207.

3. The evidence is insufficient—it does not show any contract.

4. The amount of the verdict and decree is enormously excessive.

5. The decree is not warranted, either by the pleadings or the evidence.

6. The proceedings are otherwise erroneous.

There is literally no evidence even tending to contradict the answer of the defendant below. Without that there is *no proof of any contract*: with it the contract shown is not within the statute in the first place, and extends only to the first two items of the account \$360,44, less payment of \$200, leaving balance of but \$160,44 in the second. Yet the verdict and decree are for \$692,04! and the court below overruled motions for a new trial, and to vacate the decree!

It would be hard to believe that such proceedings had been deliberately sustained by so learned a tribunal as the court below, but incredulity must yield to the official verification of the clerk, and we must believe that there is indeed a necessity for the interposition sought upon this writ of error.

It is also objected that the decree ought to show upon its face a case clearly within the statute; and that it should have directed a sale of part only of the premises if practicable.

Brady

v.

Anderson et al.

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Plaintiff's Brief

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Filed April 2, 1860

L. Leland  
Clerk



STATE OF ILLINOIS,  
IN THE  
SUPREME COURT,

OTTAWA TERM, A. D. 1860.

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|                                                                    |   |                         |
|--------------------------------------------------------------------|---|-------------------------|
| WILLIAM BRADY,<br>v.<br>HORACE G. ANDERSON AND<br>JOHN C. PROCTOR. | } | <i>Error to Peoria.</i> |
|--------------------------------------------------------------------|---|-------------------------|

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ABSTRACT OF THE RECORD.

As a matter of convenience, a copy of the abstract, the same except in form as the foolscap copy required by the rules, is prefixed to the brief.

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BRIEF OF CHARLES C. BONNEY  
FOR PLAINTIFFS IN ERROR.

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PEORIA, ILL.:  
BENJAMIN FOSTER, PRINTER AND BOOKBINDER.  
1860.

## STATE OF ILLINOIS, ss.

{ IN THE SUPREME COURT AT OTTAWA,  
{ OF THE APRIL TERM, A. D. 1860.

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|                                            |   |                         |
|--------------------------------------------|---|-------------------------|
| WILLIAM BRADY,                             | } | <i>Error to Peoria.</i> |
| v.                                         |   |                         |
| HORACE G. ANDERSON AND<br>JOHN C. PROCTOR. |   |                         |

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### ABSTRACT OF THE RECORD.

Page of  
Record.

**1.** PETITION FOR MECHANICS LIEN, filed February 8, 1858, to March Term of that year—Horace G. Anderson and John C. Proctor, against William Brady, Hezekiah M. Wead, and Robert A. Smith.

**2.** The petition may be resolved into the following points:

(1.) Petitioners are partners, firm of Anderson & Proctor.

(2.) About 25th of August, 1856, "William Brady, being or pretending to be the owner" of Lots 4 and 5, in Block 35, in Peoria, and being then about to build a hotel thereon, "contracted with petitioners to sell and furnish such lumber and materials as Brady might want or need in the prosecution of such building. No particular quantity contracted for, and no price fixed, but a reasonable price was to be paid in a reasonable time.

**3.** In pursuance of such contract the petitioners furnished lumber, materials, joists, boards, strips, studding, and other articles in Schedule "A," attached.

Brady received such materials and appropriated them in said building.

On the 5th of January, 1857, petitioners took and received from Brady for lumber, materials, and other articles delivered to him before that time, after deducting \$200, paid and credited in account, a note in these words:

"PEORIA, January 5th, 1857.

\$563 21. On or before the 28th of September next, I promise to pay to the order of Anderson & Proctor Five Hundred and Sixty-three &  $\frac{21}{100}$  Dollars, value received, with interest at ten per cent. per annum, it being for material furnished for the building of my hotel called the Buckeye House, situated in the City of Peoria, payable at the Banking House of N. B. Curtiss & Co.

(Signed) WILLIAM BRADY."

4. Since the execution of the note, Brady has received lumber and materials amounting to the further sum of \$30 94. Charge that there is due \$655 14.

Wead and Smith have some interest in the premises, &c., as security for money borrowed by Brady.

Premises worth at least \$15000. "The time for furnishing said lumber and materials was not extended for a longer period than three years, nor the time of payment beyond the period of one year for the time stipulated for the completion thereof."

5. Prayer for the answer—that an account may be taken, decree made, &c.

6. ACCOUNT commencing August 25, 1856, ending September 18, 1857, and amounting to \$794 14, upon which sum is allowed a payment of \$200. August 25, 1856.

8. SUMMONS AND RETURN—

9. DEMURRER OF BRADY, filed March 7, 1859, for the following among other reasons—

Extending the time for payment and taking the note at ten per cent. discharged the lien if any had attached.

The court is asked to enforce not the original, but a subsequent contract, unknown to the statute.

The petition is otherwise defective.

10. ANSWER OF WILLIAM BRADY, filed March 15th, 1859, containing the following points:

- (1.) All exceptions, &c., saved.
- (2.) Admits ownership of lots.



(3.) Admits a contract for the first and second items of the account, viz :

|      |                                         |              |
|------|-----------------------------------------|--------------|
| 1856 | Aug. 25, 1857, to 10720 ft. of flooring | \$343 04     |
|      | Sept. 5, " " 544 " "                    | 17 40        |
|      |                                         | <hr/> 360 44 |

(4.) Denies that he contracted for any other or further lumber at or about that time.

(5.) Sets up payment of \$200 on above two items at or about date thereof.

(6.) Admits that he received the other items specified in the account, but denies that he received the same under the alleged contract, or under any specific contract to use the same in or upon said hotel buildings.

(7.) Admits the making of the note set out in the petition.

(8.) Charges that the agreement therein to pay ten per cent. is illegal and void.

(9.) Charges that the defendants were bound to furnish good merchantable flooring, but that the flooring furnished by them was not such.

(10.) Subscribed and sworn to March 15th, 1859.

**13.** REPLICATION filed March 18th, 1859.

**14.** PROCEEDINGS OF COURT.

**17.** DEMURRER SUSTAINED March 8th, 1859, and leave to amend.

**18.** RULE ON BRADY March 10th, 1859, to answer petition by Monday next.

**19.** BILL DISMISSED as to all the defendants except Brady. Trial by jury.

**20.** VERDICT IN THESE WORDS :

" We, the jury, find the issues for the plaintiffs, and assess their damages at the sum of \$692 04. Motion for new trial.

**21.** DECREE, containing the following points :

(1.) Dismissal as to Wead and Smith.

(2.) Trial by jury. Recital that the jury find the issues for petitioners, amount due them \$692 04. " and sustain their lien, &c."

(3.) Court finds petition to be true, and \$694 04 due, and decrees lien on lots, &c.

(4.) Decree that Brady pay amount of decree in four

months, otherwise sale at Court-House to highest and best bidder for cash, between the hours of 10 A. M. and 3 P. M., having given four weeks notice by advertisement in some weekly newspaper, being the nearest and of general circulation in Peoria, &c.

(5.) That out of proceeds of sale costs and amount of decree be paid, and report of proceedings be made by Master in Chancery.

**23.** MOTIONS FOR NEW TRIAL AND TO VACATE DECREE OVERRULED.

Appeal to Supreme Court allowed on filing bond in \$1000 in 30 days security, to be approved by the clerk.

**24.** BILL OF EXCEPTIONS, filed 24th December, 1859, setting out all the evidence.

### EVIDENCE FOR PETITIONERS.

TESTIMONY OF CHARLES W. TRIPP.—Knows Brady got some lumber of petitioners at or about dates of account. Can't say how much or what kinds except first two items of flooring. The prices are about as petitioners sold, &c., except flooring \$1 per thousand cheaper because not first rate, and he took a whole car load. *Knows nothing of any contract, nor how, nor where the lumber was used.* Brady said he got lumber for the Buckeye House; I helped load a good many loads for his teams. He got the last items in September, 1857.

**25.** PETITIONERS OFFERED NOTE SET OUT IN PETITION. Defendant Brady objected.

- (1.) Not evidence under the contract sued on.
- (2.) Agreement to pay ten per cent. illegal and void.
- (3.) Attempt to obtain a mechanics lien upon a contract unknown to the statute,

Objections overruled, note read, and defendant excepted.

**26.** TESTIMONY OF RALPH HAMLIN.—The Buckeye House is on Block 35, in Peoria; can't say what lots.

TESTIMONY OF JAMES F. MURDEN.—Thinks hotel is on Lots 4 and 5, in Block 35, &c.; that such articles as petitioners have charged would be required in building such a hotel;

heard Brady say he got lumber *to finish it* from petitioners; I did the plastering. Brady told me he got the lumber to build the Buckeye House from Anderson & Proctor; said he still owed them, and they were clever fellows. The lumber was good as far as I could see.

**27. FURTHER TESTIMONY OF CHARLES W. TRIPP.**—The last bill of lumber was got after the note was given.

### EVIDENCE FOR DEFENDANT.

Brady read his answer to the jury.

Petitioners admitted they could not recover more than six per cent. interest.

#### INSTRUCTIONS.—

(1.) Jury sole judges of the facts, and must find them according to the evidence.

(2.) Petitioners cannot recover without having shown a contract for the lumber to be used on the premises.

(3.) And that such lumber was furnished and was used, &c.

(4.) Interest not recoverable on a mere balance of unsettled account.

(5.) Answer of defendant, evidence in his favor so far as responsive to the petition.

(6.) Petitioners not entitled to recover on note as such, but the note was evidence tending to establish their case.

**28. VERDICT.**—Jury find for plaintiffs, damages \$692 04 and sustain lien against Buckeye House.

#### MOTION FOR NEW TRIAL.—

(1.) Petition defective—shows contract discharged—does not contain provisions required by the statute.

(2.) Improper evidence for petitioners.

(3.) Verdict against evidence and instructions.

(4.) Amount of verdict excessive.

(5.) Note improperly admitted.

(6.) No evidence even tending to show answer untrue.

(7.) Verdict doth not show the facts required by the statute.

(8.) Proceedings otherwise illegal.



**29.** Motion for new trial overruled, and exception taken.

MOTION TO VACATE DECREE.—

- (1.) Decree not warranted by the pleadings.
- (2.) Nor by the evidence.
- (3.) Nor by the verdict.
- (4.) Time allowed for the payment unreasonably short.
- (5.) Decree otherwise illegal.

**30.** Motion to vacate decree overruled, and exception taken.

Certificate, signature and seal of Clerk.

**31.** ASSIGNMENT OF ERRORS.—

(1.) The contract is not within the statute. No time is stipulated by "the provisions of the contract," for furnishing the materials, or for making payment.

(2.) If any lien ever attached, the petition shows a discharge thereof before suit commenced.

(3.) The evidence is insufficient—it does not show any contract.

(4.) The amount of the verdict and decree is enormously excessive.

(5.) The decree is not warranted, either by the pleadings or the evidence.

(6.) The proceedings are otherwise erroneous.

CHARLES C. BONNEY,  
*Attorney for Plaintiff in Error.*

**35.** JOINDER IN ERROR.

HENRY GROVE,  
*Attorney for Defendant in Error.*

STATE OF ILLINOIS, ss. } IN THE SUPREME COURT,  
OTTAWA TERM, A. D. 1860.

WILLIAM BRADY,  
v. } ERROR TO PEORIA.  
HORACE G. ANDERSON & JNO. C. PROCTOR.

BRIEF OF CHARLES C. BONNEY FOR PLAINTIFFS IN ERROR.

MECHANICS' LIEN.

I.—OF THE LAW.

II.—OF THE ERRORS ASSIGNED.

I.

The statute of LIENS may be resolved into the following points, omitting the provisions relative to matters of practice, and contests between different creditors.

1. There must be a contract with *the owner* of the land.—S. 1.

2. For erecting or repairing building on *such* land.—S. 2.

3. Work and materials must be furnished *under the provisions of the contract*.—S. 2.

4. Kind and quantity of materials &c., or amount to be paid need not be specified.—S. 2.

5. *Provided the time fixed for completing the contract* shall be within three years, and the time for payment within one year.—S. 2.

6. The bill or petition must state, 1, the *contract*; 2, the *amount due*; 3, a *description of the premises*; 4, *all other material facts, and circumstances*.—S. 4.

7. Answer shall be under oath.—S. 7.

8. Mechanic may recover for part performance, where failure is by default of owner, and without his own.—S. 13.

9. If a part of the premises can be separated and sold, the court may [shall] so order.—S. 14.

10. Any right or interest in the premises constitutes *own-*

*ership* within the statute, and lien shall bind as a mortgage would have done.—S. 17 & S. 21.

11. No incumbrance shall operate upon the building or materials till after lien shall have been satisfied. Previous incumbrancers entitled to value of the land.—S. 20.

12. No creditor shall enforce lien to the prejudice of any other creditor, or any incumbrance, unless suit be instituted within six months after the last payment shall have become due.—S. 24.

13. Creditor also entitled to action at law.—S. 25.

14. Execution may issue for balance not made by sale.—S. 26.

The leading cases in our own reports establish the following among other points :

1. The petitioner is strictly confined to the contract stated.  
Carroll v. Crane, 4 Gil. R. 566.

2. There must not only be a *contract*, but the materials must be *used* under it, &c.

Hunter, & al. v. Blanchard 18, Ill. R. 318.

3. Extending the time for payment, cannot extend the lien.  
Logan v. Dunlap, 3 Scam. R., 189.

4. An answer of *payment* is responsive to the petition, and evidence for the respondent.

Garrett v. Stevenson, 3 Gil. R. 269.

5. The time for the performance of the contract and the payment of the money must be determined at the time when the contract is entered into, and *if there be no time fixed and agreed upon in the contract* for the performance of the labor or the furnishing of the materials within three years from its execution, and for the payment within one year from the completion of the labor or furnishing the materials, *the lien would not*



*attach.* The petition should aver a time when the contract was to be performed by the agreement, and the time when the money was to be paid, within the times severally limited by the act.

Cook et al. v. Heald et al. 21 Ill., R. 429, 430.

6. The obvious intention of the legislature was to dispense with precision in the contract, as to the kind of work to be performed, and as to the specific amount to be paid, but to require the contract to fix and limit a time when the work should be completed and the money should be paid.

*The lien could not attach* unless the contract provided a time within which the work was to be completed. The law could not imply any time for its completion.

Cook et al. v. Vreeland 21, Ill., R. 435, 436.  
Senior v. Brebner et al. 22, Ill., R. 252.

It can hardly be necessary now to say that the rule of construction in cases of this nature,—where extraordinary and dangerous proceedings are authorized, and a concurrent remedy by the common law is given,—is so strict, that to doubt whether the statute and the case warrants a decree for the petitioners, is to decide in favor of the defendant.

Cook et al. v. Heald et al. 21 Ill. R. 429.  
Cook et al. v. Vreeland 21 Ill. R. 435.  
Senior v. Brebner et al. 22 Ill. R. 252.

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The errors assigned will be considered in their order:

1. The contract is not within the statute. No time is stipulated by "the provisions of the contract" for furnishing the materials, or for making payment.

The abstract shows that the error is well assigned in point of fact, and the cases cited above from 21 and 22 Ill. R. are conclusively to the point.

2. If any lien ever attached, the petition shows a discharge thereof before suit commenced.

The taking of the promissory note *with the agreement to pay ten per cent. interest, &c.*, therein, discharged the lien if any had attached. The case is analagous to a vendors' lien; and there is no difference in principle between taking a further security and taking a larger sum of money.

Conover v. Warren et al. 1 Gil. R. 501.

Trustees &c. v. Wright et al. 11 Ill. R. 696.

Smalley v. Edey 19 Ill. R. 297.

3. The evidence is insufficient—it does not show any contract.

4. The amount of the verdict and decree is enormously excessive.

5. The decree is not warranted, either by the pleadings or the evidence.

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It would be hard to believe that such proceedings had been deliberately sustained by so learned a tribunal as the court below, but incredulity must yield to the official verification of the clerk, and we must believe that there is indeed a necessity for the interposition sought upon this writ of error.

It is also objected that the decree ought to show upon its face a case clearly within the statute; and that it should have directed a sale of part only of the premises if practicable.

125-35

Brady  
v.

Anderson et al.

---

Plaintiff's Brief

Filed April 2, 1860  
L. Leland  
Clerk



# IN THE SUPREME COURT,

IN THE STATE OF ILLINOIS.

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APRIL TERM, A. D., 1860.

AT OTTAWA.

---

WILLIAM BRADY,

vs.

HORACE G. ANDERSON,  
JOHN C. PROCTOR,

} *Error to Peoria.*

## DEFENDANT'S BRIEF AND POINTS.

The defendants filed their petition in the Court below to enforce their lien under the statute for materials furnished.

The statute provides "That any person who shall by contract with the owner of any piece of land, or town lot, furnish labor or materials for erecting or repairing any building or the appurtenances of any building in such land or lot, shall have lien upon the whole tract, etc.

2. "The lien shall extend to all work done and materials furnished under the provisions of the contract whether the kind or quantity of the work or amount to be paid be specified or not."

The petition alleges that on or about the 25th of August, 1856, at the city and county of Peoria, in the State of Illinois, defendant (below) contracted with your petitioners to sell and furnish such lumber and materials as said William Brady might want or need in the prosecution of said building, and your petitioners charged that no particular quantity was contracted for, nor was any particular price fixed for such lumber

and materials, but said Brady was to have such as he might need and that your petitioners could furnish, and said Brady was to pay for the same a reasonable price and in a reasonable time after the receipt of the lumber.

They further charge that in pursuance of said contract they did furnish said Brady all the lumber materials, posts, boards, strips and studding, and other articles in the bill or schedule thereof hereto attached and marked "A," and made part of this petition the same as though the same was herein set out item by item.

Your petitioners charge that all the lumber, materials and articles in said account or bill set forth and mentioned were received by said William Brady, and by him used and appropriated in erecting and building said building on said lots four and five, and were used thereon.

Your petitioners charge that said Brady received said lumber and materials at the time, in the quantities and kinds and at the prices in said bill mentioned.

That on the 5th day of January, A. D. 1857, your petitioners took and received from said Brady for lumber, materials and other articles delivered to him before that time, after deducting the two hundred dollars credited on said account, his, the said Brady's note, which note is in words and figures following :

PEORIA, January 5th, 1857.

\$563,21. On or before the 28th of September next, I promise to pay to the order of Anderson & Proctor, Five Hundred Sixty-Three and 21-100 Dollars value received with interest at 10 per cent per annum, it being for materials furnished for the building of my hotel, called the Buckeye House, situated in the city of Peoria, payable at the Banking House of A. B. Curtiss & Co.

Done September 28th, 1857.

WILLIAM BRADY.

The first question presented on the record is whether the contract is one within the Statute.

I claim that it is.

Brady wished to build and needed lumber. He could not state precisely the quality or quantity needed. He contracts with the defendants to furnish such as he shall need, and as they could spare, and promised to pay in a reasonable time. The defendants furnished the lumber needed, and it was used in building and completing the building. And unless the statute is to be used as a trap or snare, the defendants contract was within it and ought to be held good.

The second question is whether the contract as alleged has been proved.

The plaintiff in his answer admits that on or about the 25th day of August, 1856, he contracted with said petitioners for the first and second items of flooring specified in the account annexed to said petition. These two items amount to nearly half the amount remaining due.

There is no question as to the two items, and it only remains to be shown that the contract extended to the other items. The receipt of all the lumber is expressly admitted in the answer.

Tripp swears Brady said he got the lumber for the Buckeye House from defendants. Murden swears Brady told him he got the lumber to build the Buckeye House from defendants, and that such lumber as that described in the account, was used in the building.

The Note offered in evidence was given January 5th, 1857, and Brady admits "it being given for materials furnished for the building of my hotel called the Buckeye House."



This evidence was all proper to be considered by the jury in determining whether the lumber was delivered to Brady under the contract.

The questions was fairly submitted to the jury, and they found the issues in favor of the plaintiff below.

I claim the contract was fairly and clearly proved. At the time the contract was made Brady wanted all the lumber mentioned in the bill ; would he contract for the flooring alone and say nothing about the other lumber. When he talked about the matter he spoke of it as one transaction ; no distinction or difference was mentioned in the note.

There was evidence tending to prove the contract. The jury were fully instructed as to the law, and this Court will not interfere with their verdict.

French vs. Lowery, 19 Ill. 158 ; see 19, Ill. 166, 274, 565 ; 20 Ill. 170, 93, 191, 17, do 494.

The case has been tried and determined upon its merits, and as substantial justice has been done, it is submitted that the decree should be affirmed.

GROVE,

For defendants in error.



125-35

Brady Anderson

## Depts. Briefs & Points

Filed Apr. 18, 1860

V. Helmer.

Berk



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Peoria Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Horace G. Anderson and John C. Proctor

plaintiffs and William Brady, Hezekiah M. Weed  
& Robert A. Smith

defendants..., it is said manifest error hath intervened, to the injury of the aforesaid William Brady

as we are informed by his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy





William Brady  
vs  
pleaded &c  
No. 3 vs.  
Horace G. Anderson  
& others

WRIT OF ERROR.

This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.

L. Leland

J. B. R. R. & Co. Clerk.

Filed April 2, 1860 A. D. 1860

L. Leland

Clerk.





Pleas before the Circuit Court within and for the County of Peoria in the State of Illinois at a term thereof began and held at the Court House in the City & County of Peoria in the State of Illinois, on the third Monday of November in the year of our Lord One thousand eight hundred and fifty nine, it being the fifteenth day of said month.  
Present Honorable Elisha N. Powell Judge of the sixteenth Judicial Circuit in said State John Bryner Sheriff & Enoch P. Sloan Clerk to wit; on the 5th day of December A.D. 1859

State of Illinois  
Peoria County {<sup>ss</sup> Be it remembered that heretofore to wit  
on the 8th day of February A.D. 1858  
there was filed in the office of the Clerk of the Circuit Court within and for the County of Peoria in the State of Illinois a petition, which with the praecipe thereto attached is in the words and figures following to wit:

Petition

"State of Illinois  
Peoria County {<sup>ss</sup> In the Circuit Court of Peoria County  
Petition for mechanics Lien  
To March term 1858

To the Honorable E. N. Powell Judge of the 16th Judicial Circuit in the State of Illinois in Chancery sitting;



2  
Your petitioners Horace G. Anderson and John C. Proctor, partners in trade, trading and dealing in lumber under the name style and firm of Anderson & Proctor, of the City and County of Peoria and State of Illinois respectfully represent, That on or about the twenty fifth day of August A.D. 1856 at the City and County of Peoria and State of Illinois William Brady being or pretending to be the owner of Lots four and five #4 & 5 in Block number thirty five (35) in the old town now City of Peoria in the County of Peoria and State of Illinois and being then about to build a hotel building on said lots, contracted with your petitioners to sell and furnish such lumber and materials as said William Brady might want or need in the prosecution of said building and your petitioners charge that no particular quantity was contracted for nor was any particular price fixed for such lumber and materials, but said Brady was to have such as he might need and that your petitioners could furnish and said Brady was to pay for the same a reasonable price and in a reasonable time after the receipt of the lumber.

Your petitioners further charge that they cannot state the size, style or particular kind of a house said Brady proposed to build, but they do charge that the same was and is a large valuable brick building calculated and designed for a hotel & said building is now used occupied and enjoyed for that purpose by said William Brady, who resides in said City of Peoria & whom your petitioners pray may be made defendant to this their petition.

Your petitioners further charge that in



pursuance of said contract they did furnish said Brady all the lumber materials joists boards strips and studding and other articles in the bill or schedule thereof hereto attached and marked "B" and made part of this petition the same as though the same was herein set out item by item.

Your petitioners charge that all the lumber materials and articles in said bill or account set forth & mentioned were received by said William Brady and by him used and appropriated in erecting and building said building on said Lots four & five and were used therein.

Your petitioners charge that said Brady received said lumber & materials at the times, in the quantities & kinds and at the prices in said bill mentioned.

That on the fifth day of January A.D. 1857 your petitioners took & received from said Brady for lumber materials and other articles delivered to him before that time, after first deducting the two hundred dollars credited in said account, his the said Bradys note which note is in words & figures following.

Peoria January 5<sup>th</sup> 1857

\$ 563.<sup>21</sup> On or before the 28<sup>th</sup> of September next - I promise to pay to the order of Anderson & Proctor, Five hundred sixty three & <sup>21</sup>/<sub>100</sub> Dollars, value received, with interest at ten per cent per annum it being for material furnished for the building of my hotel called the Buckeye House, situated in the City of Peoria - Payable at the Banking house of A.B. Curtis & C  
Due Sept. 28<sup>th</sup> 1857.

William Brady



X  
Your petitioners further say that said promissory note has long since been due & remains wholly unpaid & that interest has accrued thereon to the amount of sixty five dollars and that since the execution of said note said Brady has received lumber & materials amounting to the further sum of thirty dollars & ninety four cents.

Your petitioners charge that there is now due to them for said lumber materials after deducting all payments the sum of six hundred & fifty five dollars & fourteen cents which is and ought of right ought to be held, declared and taken as a valid lien on said premises.

Your petitioners further state that Hezekiah M. Wead and Robert A. Smith claim to hold some interest in said premises & that both said Wead & Smith reside in the County of Peoria and your petitioners pray they may be made defendants herein.

Your petitioners show that they are informed and believe that said Brady borrowed some money of said Smith & executed some kind of a conveyance to said Wead as security & that said Smith & Wead hold their claim subjected to the claim and lien of your petitioners. They further show that said lots four and five & the buildings thereon are worth at least fifteen thousand dollars & will sell for more than sufficient to pay the amount due to your petitioners and the claim of said Smith & said Wead, that the time for furnishing said lumber and materials, was not extended for a longer period than three years, nor the time of payment beyond the period of one year for the time stipulated for the



B

completion thereof. Your petitioners charge that the amount of said lumber & materials is due & ought to be paid & they therefore pray the aid of the Court to perfect their lien.

Your petitioners therefore pray that said William Brady, Robert H. Smith and H. M. Wead be duly summoned in this cause, that they all answer all and singular the premises, that upon the hearing of this cause an account may be taken of the amt. due to your ~~petitioners~~ petitioners for their said lumber materials &c & interest thereon, that said Brady be decreed to pay amount to be found due to your petitioners in some short day to be fixed by the Court, that in default of such payment that said premises be sold by a Commissioner to be appointed for that purpose by your honor & that out of proceeds of sale said Commissioner pay the costs of this proceeding the amt. due to your petitioners & then amt. due to said Smith & Wead & that your petitioners have such other further & sufficient relief as equity and good conscience & the case requires

Grove Sol. for petitioners



| Georgia |    | (Exhibit A)              | William Brady To Anderson & Proctor Dr. |     |    |  |
|---------|----|--------------------------|-----------------------------------------|-----|----|--|
| 1856    |    |                          |                                         |     |    |  |
| Aug.    | 25 | To 10720 ft. flooring    | 32¢                                     | 343 | 04 |  |
| Sept.   | 5  | " 544 " "                | 32¢                                     | 17  | 40 |  |
|         | 9  | " 344 Lath               | 4¢                                      | 12  | 00 |  |
|         |    | " 56 ft. joist           | 20¢                                     | 1   | 12 |  |
|         |    | " 2000 " scantling       | 21¢                                     | 42  | 00 |  |
|         | 11 | " 264 " "                | 21¢                                     | 5   | 54 |  |
|         | 15 | " 8 1/10 44 lath         | 4¢                                      | 32  | 40 |  |
|         | 17 | " 5 44 " "               | 4¢                                      | 20  | 00 |  |
|         |    | " 120 ft. scantling      | 21¢                                     | 2   | 52 |  |
|         | 18 | " 1007 " 2nd cl. Brds    | 35¢                                     | 35  | 24 |  |
|         | 19 | " 244 Lath               | 4¢                                      | 8   | 00 |  |
| Oct.    | 10 | " 404 ft. 2nd cl. Brds   | 33¢                                     | 13  | 34 |  |
|         |    | " 126 " long joist       | 25¢                                     | 3   | 15 |  |
|         | 13 | " 500 " 2nd cl. Brds     | 36¢                                     | 18  | 00 |  |
|         |    | " 507 " cl. Rf. flooring | 33¢                                     | 16  | 73 |  |
|         | 25 | " 500 " " " "            | 33¢                                     | 16  | 50 |  |
|         | 29 | " 407 " 2nd cl. Brds     | 36¢                                     | 14  | 65 |  |
|         | 20 | " 352 " " " "            | 36¢                                     | 12  | 66 |  |
|         |    | " 152 " " flooring       | 33¢                                     | 5   | 02 |  |
| Nov.    | 10 | " 203 " 2nd cl. Brds     | 36¢                                     | 7   | 31 |  |
|         | 24 | " 2006 ft. com Brds      | 22¢                                     | 44  | 12 |  |
|         | 26 | " 1028 " " "             | 22¢                                     | 22  | 61 |  |
|         |    | " 198 " scantling        | 22¢                                     | 4   | 36 |  |
|         |    | " 18 cedar posts         | 25¢                                     | 4   | 50 |  |
| Dec.    | 6  | " 360 ft. long joist     | 26¢                                     | 9   | 36 |  |
|         |    | " 236 " " "              | 22¢                                     | 5   | 19 |  |
|         |    | " 656 drsd flooring      | 33¢                                     | 21  | 64 |  |



Summons

8  
the seal thereof a Summons in the above cause directed to the Sheriff of Peoria County which is in the words and figures following to wit:  
The People of the State of Illinois to the Sheriff of Peoria County Greeting: We command you as we have before commanded you to summon William Brady, Robert A. Smith and Ezekiah M. Wead, if they may be found in your County to appear before our Circuit Court on the first day of the term thereof to be held at Peoria within and for the said County of Peoria on the first Monday of March next, then and there, in our said Court to answer the matters and things contained in a certain bill of complaint lately exhibited before our Circuit Court by Horace G. Anderson and John C. Proctor against said William Brady, Robert A. Smith and Ezekiah M. Wead, for mechanics lien and make return of this writ with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid. Witness Enoch P. Sloan, Clerk of our said Court and the seal thereof at Peoria this 24th day of December in the year of our Lord One thousand eight hundred and fifty eight  
Enoch P. Sloan, Clerk

Which Summons was afterwards returned by the said Sheriff endorsed as follows to wit:

Return

"State of Illinois  
Peoria County } I have served this Summons by delivering to the within named Robert A. Smith a true copy of this writ on the 15th day of January A.D. 1859 and on the within



named William Brady by delivering him a true copy of  
this writ on the 19th day of January A.D. 1859. Also on  
Hezekiah M. Mead by delivering him a true copy of this  
writ on the 3rd day of February A.D. 1859.  
John Boyner Sheriff."

And afterwards to wit on the 7th day of March A.D. 1859  
the defendant William Brady filed his demurrer to the  
petition in the above case which is in the words and figures  
following to wit:

Demurrer

State of Illinois }  
County of Peoria }

In the Circuit Court of the  
November Term A.D. 1858  
William Brady defendant inpleaded  
with Robert A. Smith & Hezekiah M. Mead

Mechanics Lien

at  
Horace G. Anderson &  
John L. Proctor

This defendant by protestation, not confessing, all or any  
of matters and things in the said petitioners petition, to be  
true in such manner and form as the same are therein set  
forth and alleged, doth demur thereto, and for cause of  
demurrer sheweth, that the said petitioners have not in and  
by their said petition made or stated such a case as doth  
or ought to entitle them to any such discovery or relief  
as is thereby sought and prayed for, from or against this  
defendant, therefore this defendant demands the judgment of  
this Honorable Court, whether he shall be compelled to



make any further or other answer to the said petition or any of the matters and things therein contained and prayed to be hence dismissed with his reasonable costs in this behalf sustained &

Charles C. Bonney, of Counsel for aft.  
Special causes of demurrer

1. Said petition is not properly entitled of any Court County or term.
2. The extending of the time for the payment of the price of the materials together with the taking of the note described, at the rate of interest therein specified, discharged the lien if any had attached.
3. The Court is asked to enforce not the original, but a subsequent, and altogether different contract, a contract wholly unknown to the Statute of Mechanics Lien.
4. The petition is otherwise defective "

And afterwards to wit on the 15<sup>th</sup> day of March A.D. 1859 there was filed in the Clerk's Office of said Court the separate answer of William Brady in the above cause which is in the words and figures following to wit:

Answer

State of Illinois

County of Peoria

} ss In the Circuit Court.  
March Term A.D. 1859

The separate answer of William Brady impleaded with Robert A. Smith and Hezekiah M. Wead defendants to the petition of Horace G. Anderson and John C. Proctor complainants.



This defendant now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners said petition contained for answer says, that he admits that he is the owner of said Lots mentioned in said petition. And this defendant further answering says, that he admits that on or about the 25th day of August 1856 he contracted with said petitioners for the first and second items of flooring specified in the account annexed to said petition. But this defendant denies that he contracted with said petitioners for any other or further lumber at or about that time.

And this defendant further answering says that on or about the same day he paid said petitioners on account of said flooring the sum of two hundred dollars.

And this defendant further answering says, that he admits that he received the other articles of lumber specified in the bill attached to said petition. But this defendant denies that he received the same under said contract or under any specific contract, to use the same in or upon said Hotel buildings, whether said petitioners knew to what use he intended to put those last-mentioned articles he cannot say, but he got said articles other than said first and second items of flooring from time to time as he required them and used the same upon said premises in part in said hotel and in part in other buildings on said premises.

And this defendant further answering says as to the

//



said note in the said petition mentioned says, that on or about the fifth day of January 1857 he settled with said petitioners and gave them his promissory note for the amount then due from him to them, which said note was made payable on or about sixty days thereafter, next thereafter, that afterwards to wit during the month of September in said year 1857 this defendant got from said petitioners several articles of lumber & materials specified in the account annexed to said petition amounting to the sum of \$ 31.90, but not under the contract set out in said petition, that afterwards to wit in or about the month of December A.D. 1857, this defendant at the instance of said petitioners gave them for and in lieu of said first mentioned promissory note, his certain other and second promissory note that upon the execution of said last mentioned note - the said first mentioned note was destroyed by said Horace G. Anderson.

And this defendant further answering says, that he is advised and believes and so charges that all and any agreements to pay ten per cent interest for the whole or any part of the price of said materials, were and are illegal and void, and this defendant ought to be released, therefrom by this Honorable Court -

And this defendant further answering says that said petitioners were bound to furnish good merchantable materials &c, but this defendant ~~says~~ charges that said lumber, materials &c were not good nor merchantable and that said lumber flooring &c were not such as said petitioners ought to and were bound



to furnish to said defendant, and therefore said defendant is entitled to a large deduction from the amount charged therefor. This defendant not being a judge of lumber he cannot tell how much money ought to be deducted from such amount, but prays leave to make proof on the trial of this cause and have such deduction as may be just and right in this behalf &c

And now having fully answered this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained &c

William Brady

Subscribed and sworn to before me this 15th day of March A.D. 1859

Emch P. Sloan, clk

And afterwards to wit on the 18th day of March A.D. 1859 the plaintiffs filed in the above cause their Replication to defendant William Brady's answer which is in the words and figures following to wit:-

Replication

" Horace G. Anderson  
John L. Proctor

vs

William Brady  
Robert A. Smith  
Hezekiah M. Weed

In the Circuit Court of Peoria County

And the said petitioners come and for replication to the answer of William Brady in this cause say that their said petition and the matters



therein contained are true in substance & in fact and that the answer of said William Brady and the matters therein set forth contrary thereto are false & untrue and thus they are ready to make appear as by this Court shall be directed by Grover the petitioners

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria and State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight being the first day of said month. Present - Honorable Elihu N. Powell, Judge of the sixteenth Judicial Circuit in said State Francis W. Smith, Sheriff and Enoch P. Sloan Clerk to wit:

Monday March 8th A.D. 1858

Horace G. Anderson

John C. Proctor

vs

Mechanics Lien

William Brady

Robert A. Smith

Hezekiah M. Wead

By agreement of parties this cause is continued.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria County of Peoria and State of Illinois on the second Monday of May in the year of our Lord One thousand eight hundred and



fifty eight it being the tenth day of said month. Present  
the Honorable Elihu N. Powell Judge of the sixteenth  
judicial circuit in said State Francis W. Smith, Sheriff  
and Enoch P. Sloan clerk to wit:

Thursday May 28<sup>th</sup>, 1858

Horace G. Anderson vs

William Brady & als for Lien

On motion this cause is continued  
with alias summons.

Proceedings at a term of the Circuit Court began and held  
at the Court house in the City and County of Peoria, State  
of Illinois on the third Monday in the month of November  
in the year of our Lord One thousand eight hundred and  
fifty eight it being the fifteenth day of said month.  
Present E. N. Powell Judge of the sixteenth judicial circuit  
in said State Francis W. Smith Sheriff and Enoch P.  
Sloan, clerk to wit:

Tuesday November 16<sup>th</sup> A.D. 1858

Horace G. Anderson vs

William Brady vs Mechanics Lien

Robert A. Smith & als

This day came the defendants by  
Bonney their attorney and enters his motion to quash the  
Summons issued herein for reasons on file



Wednesday November 17th A.D. 1858  
 Horace G. Anderson & al  
 vs  
 Mechanics Lien

William Brady  
 Robert A. Smith & al

This day came the defendant Brady by Bonney his attorney and moved the court to quash the summons issued and served in this case for reasons on file. And the court having heard the argument of counsel and not being satisfied in the premises takes time to consider.

Thursday November 18th A.D. 1858  
 Horace G. Anderson & al

vs  
 for Lien  
 William Brady  
 Robert A. Smith & al

This day came the parties to this ~~suit~~ cause by their respective attorneys and the court now here having fully considered the motion to quash the writ of summons issued herein do order that said writ be and hereby is quashed according to the motion of said defendants. And it is further ordered that this cause be continued with alias summons.

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord One thousand eight hundred and fifty nine, it being the seventh day of said month.



E

Present the Honorable Elisha N. Powell Judge of the 16th  
Judicial Circuit in the State of Illinois, John Boyner Sheriff  
and Enoch P. Sloan Clerk to wit:

Monday March 7th A.D. 1859

Horace G. Anderson & al

vs

For Lien

William Brady & al

This day came the defendant Brady  
by Bouney his attorney and moved the Court to quash the  
Summons issued herein and returnable to this term of this  
Court, because of the insufficiency of the Sheriff's return thereon  
and the Court being fully advised in the premises overruled  
said motion. This cause then again came on to be heard  
on defendant's demurrer to plaintiff's petition filed herein  
and the Court not being satisfied in the premises takes  
time to consider.

Tuesday March 8th A.D. 1859

Horace G. Anderson & al

vs

for Lien

William Brady & al

This day this cause again came  
on to be heard and the Court here now being fully ad-  
vised in the premises taken by the defendant Brady in  
his said demurrer, is of opinion that said demurrer is  
sufficient and therefore sustains the same. Whereupon  
the plaintiff upon motion asked and obtained leave to  
amend their said petition



Thursday March 10<sup>th</sup> A.D. 1859  
 Horace G. Anderson & al  
 vs  
 William Brady & al  
 for Lien

This day came the complainants by Grove their attorney and moved the court for a rule on defendant Brady to answer the petition filed herein and on consideration it is ordered by the court that the said defendant file his answer to said petition by Monday morning next.

Saturday March 19<sup>th</sup> A.D. 1859  
 Horace G. Anderson  
 John B. Proctor  
 vs  
 William Brady & al  
 for Lien

This day came the defendant Brady by Bonney his attorney and made his motion to the court, sustained by affidavit to continue this cause and the court being satisfied in the premises do order said cause continued, at the costs of said defendant to this date. Therefore it is considered that the said Horace G. Anderson and John B. Proctor have and recover of the said William Brady their costs and charges by them about their suit ~~expended~~ in this behalf expended and that they have execution therefor.

Proceedings at a term of the Circuit Court of Peoria County began and held at the Court house in the City of Peoria



in said County and State of Illinois on the third Monday in the month of November in the year of our Lord One thousand eight hundred and fifty nine it being the twenty first day of said month. Present the Honorable Elihu N. Powell Judge of the 16th Judicial Circuit in said State, John Bryner Sheriff and Enoch P. Sloan Clerk to wit:

Monday November 28th A.D. 1859  
Horace G. Anderson  
John C. Proctor

vs. for Lien  
William Brady & als

This day come the complainants by Grove their attorney and the defendant Brady by Bonney his attorney. On motion complainants dismiss their bill as to all defendants except William Brady and the parties being ready for trial it is ordered that a jury be empanelled to try the issues joined in this cause, whereupon come a jury of twelve good and lawful men to wit: James Elson Jas. A. Gilbert, John Gates, William Maxwell, E. J. Jones Geo. W. O'Dell, Marshal N. Dunlap, Iram Murry, Samuel Bouslough, P. A. Miller, Peter Seel & Edgar Robinson, who being duly chosen and tried to well and truly try the issues joined in this cause and a true verdict give according to the evidence, were adjourned to meet the Court at 9 o'clock to morrow morning.



Tuesday November 29th A.D. 1859  
 Horace G. Anderson  
 John C. Proctor

vs  
 William Brady for Lien

This day came the parties to this suit by their respective attorneys and also came the jury impanelled and sworn on yesterday to try the issues in this cause, and the said jury having heard the evidence in the case the argument of counsel and the instructions of the Court upon their oaths aforesaid do say "We the jury find the issues for the plaintiffs and assess their damages at the sum of six hundred and ninety two dollars and four cents" Whereupon the defendant by his attorney enters his motion for a new trial.

Monday December 5th A.D. 1859  
 Horace G. Anderson  
 John C. Proctor

vs  
 William Brady Lien

This day this cause was regularly reached and called for trial and the petitioners dismises their petition as to the defendants Hezekiah W. Wead and Robert A. Smith and thereupon a jury of twelve good and lawful men of Peoria County were impanelled chosen and sworn according to law well and truly to try the issues joined between the Petitioners and the defendant William Brady and a true



State of Illinois and the buildings thereon situate. It is  
 therefore by the Court here ordered adjudged and decreed  
 that the defendant William Brady within four months  
 from the signing of this decree pay to the petitioners the  
 said sum of six hundred and ninety two dollars and  
 four cents with the interest thereon together with the costs  
 of this proceeding, and in default of such payment that  
 the master in chancery in this Court proceed to sell said  
 premises being Lots four and five in Block number thirty five  
 in the old town now City of Peoria in the City and County  
 of Peoria and State of Illinois with the buildings thereon  
 situate to the highest and best bidder for cash at the front  
 door of the Court house in the City and County of Peoria &  
 State of Illinois between the hours of ten o'clock in the  
 forenoon and three o'clock in the afternoon on the day of  
 such sale after having first given four weeks previous public  
 notice of the time place and terms of such sale together  
 with a correct description of the premises to be sold by  
 publication of such notice for four successive weeks in  
 some public newspaper printed and published weekly  
 in the City & County of Peoria & State of Illinois, being the  
 nearest newspaper and of general circulation therein and  
 that upon such sale he execute ~~and~~ a good and sufficient  
 deed of the premises sold to the purchaser or purchasers  
 and that out of proceeds of such sale he pay the costs of  
 this proceeding and of such sale and that he pay to petitioners  
 the amount due to them (principal and interest) under  
 this decree and that he make return of his proceedings



under this decree to the Court without delay

Saturday December 11th A.D. 1859  
Horace G. Anderson  
John C. Proctor

vs Lien  
William Brady

This day came the defendant by Barney his attorney and moved the Court to vacate the decree rendered in this cause and the Court being satisfied in the premises overruled said motion.

Saturday December 24th A.D. 1859  
Horace G. Anderson & al  
vs Lien

William Brady & al

This day this cause came on to be heard on the motion of defendant to set aside decree herein and for new trial, and on consideration the Court overruled said motion. Whereupon the defendant prayed an appeal to the Supreme Court of this State which is allowed on his filing in the office of the clerk of this Court in thirty days an appeal bond, payable to the plaintiffs in the penal sum of One thousand dollars, with, by agreement, such security as may be approved of by the clerk, said bond to be conditioned as the law directs,

And afterwards on the same day to wit on the 24th day



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of December A.D. 1859 there was filed in the clerk's office of the Circuit Court of said County a bill of exceptions in said cause, which is in the words and figures following to wit:

Bill of  
Exceptions

"State of Illinois }  
County of Peoria } In the Circuit Court  
of the November term A.D. 1859  
Horace G. Anderson &  
John L. Proctor

vs

Mechanics Lien

William Brady.  
impleaded with,  
Robert A. Smith &  
Hezekiah M. Wead

Bill of Exceptions

Be it remembered that on the trial of this cause the petitioners called Charles W. Tripp who testified as follows:

I know that Brady got some lumber of the petitioners at or about the dates of the a/c attached to the petition, cannot say how much, or what kinds except the first two items of flooring. The prices charged in said a/c are about as the petitioners sold lumber at those times except the flooring is one dollar per thousand lower, because it was not first quality. I know nothing of any contract, nor where or how the lumber got by Brady was used.

I know the parties to this proceeding. The petitioners for four years last past have been doing business as partners under the name and firm of Anderson & Proctor. They dealt in lumber and kept a lumber yard in Peoria. They kept



a general assortment of lumber. I know Brady built the Buck Eye House in 1856 - I was then working as clerk for the petitioners. I know Brady got lumber which he said was for the Buck Eye house. The first was a lot of flooring 40720 feet at \$32. It was sold to him at \$1 less per thousand than the usual and customary price because it was somewhat inferior in quality and he took the whole of the car load.

I know that Brady got lumber frequently for the Buck Eye house. He gave directions to have the lumber delivered to his teams. I helped load a good many loads out of the kind & quality as stated in the account annexed to the petition. The prices charged in that account are the usual & customary prices at that yard. I know Brady got the last items of lumber in Sept. 1857. I delivered them to him myself. He got to finish the Buck Eye House he told me so himself. I was not present when the contract was made. All the lumber delivered to Brady was first rate except the first lot of flooring.

The petitioners then offered ~~in evidence~~ a promissory note in substance as follows to wit:

\$563<sup>21</sup>

Peoria January 5th 1857

On or before the 28th of September next I promise to pay to the order of Anderson & Proctor Five hundred sixty three & <sup>21</sup>/<sub>100</sub> Dollars, value received, with interest at ten per cent per annum it being for material furnished for the building of my Hotel called the Buck Eye



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House, situated in the City of Peoria, payable at the  
Banking house of N. B. Curtis & Co.  
Due Sept. 28<sup>th</sup> 1857

William Brady

- To which the defendant Brady then and there objected
- 1 That it was not evidence under the contract on which  
if at all the petitioners must recover
  - 2 That the undertaking to pay ten per cent therein is  
contrary to law and void.
  3. It is an attempt to obtain a mechanics lien upon a  
contract unknown to the Statute.

But the Court overruled these objections and permitted  
said note to be read in evidence to which the said defendant  
then and there excepted.

The petitioners then called Ralph Hamlin who testified  
that the Hotel mentioned in the petition was situated on  
Block 35 in the City of Peoria but could not say on  
what Lots.

The petitioners then called James F. Mcorden, who testified  
that he thought said Hotel was on Lots 4 & 5 in said  
Block 35. that such articles as those mentioned in  
petitioners a/c were required and used in the building  
of said Hotel. Heard Brady say he got lumber to finish  
it from petitioners.

I know Brady got lumber to finish Buck Eye House  
Buck Eye House is a large Brick building & has over  
150 rooms. The kind & quality of lumber mentioned in  
account of petitioners was used and required in the



Buck Eye House. I done the plastering on the Buck-Eye House. While I was there plastering Brady told me he got the lumber of Proctor & Anderson to build the Buck Eye House, that he still owed them for the same, and that they were clever fellows. The lumber used was good lumber so far as I could see.

The petitioners then recalled said Charles W. Tripp who testified that the last bill of lumber mentioned in the petition after the note therein described was given.

The petitioners here rested their case. The said William Brady then read his answer to said petition and rested his case.

The petitioners admitted that they could not recover more than six per cent interest.

There was no other evidence in the case. The Court by agreement of the parties instructed the jury orally as follows.

- 1 That they were the sole judges of the facts and must find them according to the evidence.
2. That to entitle the plaintiffs to recover they must have shown a contract for the lumber in question to be used on the premises <sup>described</sup> in the petition.
- 3 That such lumber was in fact furnished under such contract, and used on such premises, must also be shown.
4. That interest is not allowable on a mere balance of an unsettled account.
5. That the answer of the defendant was evidence in



his favor so far as responsive to the petition,  
 6. That the petitioners were not entitled to recover on the note admitted as such, but that said note was for the consideration of the jury as tending to establish the petitioners case.

The jury returned the following verdict, to wit:

"We the jury find for the plaintiffs and assess damages to the amount of six hundred ninety two  $\frac{4}{100}$  dollars and sustain the lien against Buck Eye House"

And the defendant Brady filed and entered there upon the following motion for a new trial, with reasons therefor:

"State of Illinois } In the Circuit Court  
 County of Peoria }  
 Of the November term A.D. 1859  
 Horace G. Anderson &  
 John L. Proctor  
 vs  
 Mechanics Lien

William Brady impleaded &c  
 motion for new trial &c

The said William Brady moves the Court here to set aside the verdict <sup>rendered</sup> against him herein and to award a new trial thereof for the following among other reasons to wit:

1. The said petition is fatally defective in this that it shows upon its face that the contract set out therein was discharged before the commencement of this suit; and in this that the contract set out therein doth not contain the provisions required by the Statute.



2. The Court admitted improper evidence to the jury
3. The verdict is manifestly against the weight of evidence and the instructions of the Court.
4. The amount of the verdict is excessive.
5. The Court improperly permitted the promissory note set out in the petition to be read to the jury.
6. There is absolutely no evidence in the case even tending to show that the answer of the defendant is any respect untrue.
7. The verdict doth not show the facts required by the Statute before any decree can be made or any judgment rendered in the case.
8. The proceedings are otherwise irregular and contrary to the law of the land.

But the Court on the hearing of said ~~last mentioned~~ <sup>for a new trial</sup> motion, overruled the same, to which the said William Brady then and there excepted.

And thereupon the Court made and entered upon the motion of the said petitioners a decree upon said verdict, whereupon the said William Brady filed and entered his motion to set aside said decree, which said motion with the reasons assigned therefor is as follows to wit:

|                                                                                                                        |                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| " State of Illinois<br>County of Peoria }<br>Horace G. Anderson<br>John C. Proctor<br>vs<br>William Brady impleaded &c | In the Circuit Court<br>of the November Term A.D. 1857<br><br>Mechanics Lien<br>Motion to vacate decree &c |
|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|



In testimony whereof I have  
hereunto set my hand and affixed  
the seal of the said Court at my  
office in Peoria this 18th day of  
February in the year 1866.  
Emory D. Swan, clerk

State of Illinois

In the Supreme Court at  
Ottawa, Of the April  
Term A.D. 1860.

William Brady }  
v. } Error to  
Horace G. Anderson } Peoria.  
John C. Proctor }

Assignment of Errors -

And hereupon comes  
the said William Brady,  
by Charles C. Burrey his attorney,  
and says that in the record  
and proceedings aforesaid, and  
also in the rendition of the  
judgment aforesaid there is  
manifest error in this, to wit,



First:

The contract on which the proceedings below were instituted, is not within the statute, and no lien could attach thereon. It doth not appear that by the provisions of the contract, any time was stipulated, either for the furnishing of the materials, or for the payment of the money.

Second:

It manifestly appears by said petition that even if any lien ever attached as charged therein, the same was afterwards discharged by the voluntary act of the petitioners, in taking the promissory note set out therein.

Third:

The evidence given for the petitioners upon the trial below, is altogether insufficient to warrant any verdict or decree in favor of said petitioners. It neither established the contract alleged in the petition nor does it show that any contract whatever, was ever



made between the petitioners and the defendant, touching the premises against which the lien is claimed. The verdict and decree ought to have been according to the answer of the defendant.

Fourth.

The amount for which the verdict and judgment are given, is enormously excessive, and manifestly against the evidence in the case.

Fifth:

The decree made by the court is not warranted, either by the pleadings or by the evidence in the case. It doth not show that the facts essential to the jurisdiction of the court, were anywise established before it, nor are the proceedings authorized and directed by said decree, according to the provisions of the statute.

Sixth;



The judgment and decree of the court below, and the proceedings aforesaid had therein, are otherwise manifestly informal, irregular and against the law of the land.

Wherefore the said William Brady prays that the judgment and decree aforesaid of the said Circuit Court, for the errors aforesaid, and for other errors apparent in the record and proceedings aforesaid, may be reversed annulled, and altogether held for nothing, and that he the said William Brady may be restored to all things which he hath lost by occasion of the said decree, &c.

Charles C. Bowney  
attorney for  
William Brady  
plaintiff in  
error

Jordan vs Error.



And hereupon come  
the said Horace G. Anderson  
and John C. Proctor, by Henry  
Grove their attorney and  
say that there is no error either  
in the record and proceedings  
aforesaid, or in the matters  
aforesaid, above assigned for  
error; and the said Horace G.  
Anderson and John C. Proctor,  
pray that the said Supreme  
Court may proceed and exam-  
-ine, as well the record and  
proceedings aforesaid as the  
matters aforesaid above assigned  
for error, and that the judgment  
and decree aforesaid, in favor  
aforesaid given, may be in all  
things affirmed &c.  
J. Grove  
Att'y for Defs  
vs. Error

Let the writ of error be made a su-  
-peredeas in this case upon plain-  
-tiffs entering into bond in the penal  
sum of one thousand dollars, with  
Smith & Co security conditioned ac-  
cording to law. Mar 21 1861

P. H. Walker pro.  
sup. court



In the Supreme Court

William Brady

v.

Anderson et al.

Error to Record

Record, Errors & Finder—

Order of Supersedeas

Filed April 2, 1860  
L. Letland  
Clerk

Charles C. Bonney  
attorney for Plaintiff