

No. 14535

# Supreme Court of Illinois

Board of Education

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vs.

Greenebaum et al

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71641  7



SUPREME COURT.

STATE OF ILLINOIS.

APRIL TERM, A. D. 1863.

ABSTRACT.

THE BOARD OF EDUCATION OF THE  
STATE OF ILLINOIS, and others,

*Plaintiffs in Error.*

vs.

GREENEBAUM & SONS,

*Defendants in Error.*

This was a proceeding for a Mechanics lien by the Defendants in error against the Plaintiffs in error, at the September Term, 1861, of the McLean Circuit Court.

Page 1. Petition states that on the 3rd day of March, 1860, Defendants in error entered into a written contract with the Board of Education of the State of Illinois, by the name and style of "The State Board of Education of Illinois." That said contract was executed on the part of said Board of Education by four persons called the Building Committee of said Board of Education.

Page 2nd. That said Board of Education was the equitable owner of certain lands and buildings.

That Defendants in error were to do the plastering and plumber's work on the Normal University building by the first day of July, 1860.

Page 3rd. That by said contract Defendants were to be paid for plastering, per yard, 28 $\frac{1}{2}$  cents per yard, and for plumber's work \$2800, all of which was to be paid on 1st day of March, 1861.

Page 8rd. That Defendants performed the work according to contract, and have not been paid. And pray for a Mechanics' lien and that the property be sold, &c.

Page 9. At the December Term, 1861, of said Court, Plaintiffs in error filed a demurrer to said petition, general and special.

Page 10.



Demurrer overruled by the Court.

Pages 11 and 12. Plaintiffs in error then filed their answer denying all the allegations of the Petition. Defendants filed a general replication to the answer. The cause was heard by the Court.

Pages 14 and 15. The decree recites: That the petitioners having introduced their oral, documentary, and record evidence, and the Court being fully advised in the premises finds, &c., (going on to recite substantially in accordance with the allegations of the petition.)

Page 16. The Court finds that the said Board of Education of the State of Illinois is indebted to the Defendants in error in the sum of \$8,293<sup>00</sup>/<sub>100</sub>. That the said Defendants have a Mechanics' lien on the property.

Page 17. That in default of payment by the 1st day of Feb., 1863, the property be sold, &c.

Page 18. Afterwards, at the same Term of said Court, the Plaintiffs in

and 30. error filed a certificate of all the evidence in the cause, which was duly certified by the Court and made a part of the record in the case.

Page 18. OWEN T. REEVES, testified in substance That he wrote the bond between Pike and the said Board of Education. That he could not find the bond. Did not know where it was.

Page 19. That he wrote a deed from Pike to the said Board of Education. That he gave the deed to Hovey, who returned it to him.

Much of the evidence of Reeves is hearsay, which was objected to by Plaintiffs.

Pages 19, 20, 21 and 22. The next evidence offered was claimed by Defendants in error to be the proceedings of the said Board of Education, consisting mostly of resolutions (all of which was objected to as not having been shown to be the proceedings of the said Board.)

Page 22. Testimony of G. P. RANDALL.

The contract with Greenebaum & Sons handed to him.

This signature is Greenebaum's.

I recognize Moulton's signature. I should think it was Denio's. I should have no doubt it was Hovey's. JOHN M. SCOTT testified, I think that is Post's signature. Have seen him write his name.

Page 22. The contract was then offered in evidence. Objected to by Plaintiffs in error  
The contract is as follows :

Page 23. This agreement made and entered into this third day of March, A. D., 1860, by and between Greenebaum & Sons, of Chicago, of the first part, and the State Board of Education of Illinois of the second part, Witnesseth as follows, to-wit: That the party of the first part agrees to do all the plasterer's work for the State Normal University now building at Bloomington, said work to include the lathing and three coat work plastering, (the last coat to be hard finish), and all to be done as per directions of the architect. There

are to be black-boards in several of the rooms the cost of which is to be included in the price per yard for the common work, which price is to be twenty-eight and six-tenths (28 $\frac{6}{10}$ ) cents, and one half the openings to be measured. The party of the second part is to furnish sand for said work delivered at the building, but nothing else. The party of the first part also agrees to do all of the plumber's work as set forth in an appendix to the original specification and plans accompanying the same, and bearing date March 1st, 1860. The plasterer's work to be completed on or before the 15th day of June next, and the plumber's work as fast as the building shall be ready for the same, and all to be completed on or before the 1st day of July next, and all according to plans and specifications made for the same by G. P. Randall, architect, which plans and specifications are signed by the said Randall, and dated at Chicago, March 1st, 1860, and subject to the following conditions:— That all the work shall be executed in the best and most workmanlike manner, and agreeably to such directions as shall be given from time to time by the said architect or his clerk of the works, or by such other person as may be employed by the party of the second part to superintend these works, and said work shall be executed to the full and entire satisfaction of the said architect or clerk or superintendent without reference thereon to any other person. That should the party of the second part or their architect deem it proper or necessary in the execution of the work to make\* any alterations which shall increase or diminish the expense, or otherwise, however, such alterations shall not vitiate or annul the contract hereby entered into, but the value of the work so added or omitted shall be agreed upon by the parties to this contract and added to or deducted from the sums hereinafter mentioned, as the case may be. If said parties cannot agree as to the amount so to be added or deducted the same shall be referred to the architect, whose decision in the case shall be final. It is furthermore understood and agreed that no alterations or changes from the plans and specifications are to be made except by the consent or direction, in writing, of the party of the second part through the architect or clerk of the works. The party of the first part further covenants and agrees to and with the party of the second part, that in the execution of the several works to be performed no improper materials shall be used, but that all of the materials of every kind shall fully answer the requirements of the specifications, or if not particularly specified, shall be suitable to the place where used, and shall be subject to the approbation of the architect or his clerk of the works, before being put into the building, and furthermore, it shall be the architect's right and duty to reject any of the said materials which he shall think unfit for the work, and he may if he thinks proper order the same to be removed from the premises, and if said order

is not immediately complied with he may remove the same at the contractor's expense. The whole of the work shall be carried on regularly, so as to give the necessary time for each part to harden. In case the architect shall think that this is not sufficiently attended to he may order more men to be employed on the works, and if he shall think the work proceeding unnecessarily too fast he may direct a less number of men to be employed. Should the weather be unusually wet or so cold and frosty that the work cannot be done in a proper manner or with a due regard to durability and strength then the architect may order the work to be suspended altogether, until a more suitable season,\* in which case the contractor is to protect the several parts of the works so that they shall not be injured by the weather. No part of the works shall be sub-contracted without the written consent of the party of the second part or his architect, and it is hereby furthermore provided and agreed that should any circumstances arise to prevent the contractor from proceeding with the work agreeably to the terms and conditions of this contract, that the party of the second part may then in such case with the approbation and consent of the architect have power to take the work out of the contractor's hands and employ other workmen to complete the several unfinished works, and deduct the expense from any money that may be due and owing the said contractor on account of the works.

\*Page 25.

In consideration of the faithful performance by the party of the first part of the agreement hereinbefore stated and according to the several conditions thereto annexed, the party of the second part agrees to pay the party of the first part on the certificates of the architect, as follows, to-wit:

For the plastering including the black-boards the sum of twenty-eight and six-tenths cents per yard, to be measured by the architect, and paid for on the first day of March, 1861. The certificates to be given from time to time as the work progresses and all of them to bear interest at ten per cent. per annum until paid, and to mature on the first day of March, 1861. For the plumber's work the party of the second part agrees to pay the party of the first part on the certificates of the architect the sum of twenty-eight hundred dollars, to be paid on the 1st day of March, 1861, the certificates to be given from time to time as the work progresses and all to bear interest at ten per cent. per annum until paid.

GREENEBAUM & SONS.

C. B. DENIO,  
J. S. POST,  
C. E. HOVEY,  
S. W. MOULTON,

} Building Commit-  
tee of State Board  
of Education.

Contract objected to by Defendants and reasons given.

Page 26. G. P. RANDALL recalled. Am architect mentioned in the contract. The work was done in a satisfactory manner and approved by me. The accounts were audited by building committee. I issued certificates to Greenebaum & Sons. Do not know whether the work was done in contract time, it was done in about that time. Had a conversation with Moulton and others of the building committee. Have a general impression the work was done satisfactorily. Cant say how I got the impression. I issued the certificates.

Page 27. Certificates offered in evidence and objected to.

Page 28. The Certificates were signed by G. P. Randall and in favor of  
Page 29. Greenebaum & Sons, for the aggregate amount of \$7,188<sup>00</sup>, all objected to by Plaintiffs in error.

Page 29. O. T. REEVES testified, That he knows the ground on which the Normal University is built. It is part of the same mentioned in the Bond. The building is located on land mentioned in the bill.

Page 29 and 30. JOHN E. McCLUN testified, That he had some conversation with Hovey and other members of the Board about the contract with Greenebaum & Sons. It seemed to be satisfactory. Never heard anything said of the contract at any session of the Board.

This is the substance of the whole testimony.

PERKINS BASS,  
*Attorney for Plaintiffs in Error.*

The following Errors are assigned by the Plaintiffs in Error :

- 1st. The decree should have been rendered against the Defendants in Error, and the bill dismissed.
- 2d. The demurrer to the petition should have been sustained by the Court, for the reasons therein specified.
- 3d. The evidence was insufficient to sustain the decree or the allegations in the petition.
- 4th. The contract was not properly made and executed.
- 5th. No sufficient proof of the execution of the contract.
- 6th. The decree does not show what the proof was.
- 7th. Proceedings for Mechanic's lien will not lie in this case against the corporation.

SUPREME COURT OF ILLINOIS,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

The Board of Education of the State of Illinois, }  
vs. } Error to McLean.  
Isaac Greenebaum, et al.

POINTS AND ARGUMENT FOR THE DEFENDANTS IN ERROR.  
BY W. C. GOUDY.

I.

The demurrer to the Petition was properly overruled.

The only reasons urged by the Plaintiffs in Error in support of the demurrer are as follows, to wit:

1. It does not appear by the Petition that the persons who signed the contract were authorized to sign the same.

I answer that the objection is not founded in fact, because the petition (bottom 1st p. Record) says: "Petitioners further show

2. It does not appear by the Petition that the persons who signed the contract were the agents, and authorized under the seal of the corporation to act for it.

3. That the Board of Education cannot appoint or act by an agent.

I understand these two objections to be in substance the same, and the position is taken that the corporation cannot appoint or act by an agent, or, if it can, the authority can only be conferred by the use of the *seal*.

Justice Skinner says: "The old doctrine that corporations can only be bound by acts under their corporate seal, has long been exploded;" and the business of corporations is carried on through their officers, agents and servants, through whom they speak and act.

*C. B. & Q. R. R. vs Coleman*, 18 Ill., 299.

## II.

The evidence sustains the petition.

The allegations of the petition are clear and distinct, and the recitals in the decree are equally certain as to the facts proved.

If any doubt exists as to whether the statements of the petition are proved, it is to be found in the evidence preserved by the certificate of the Judge. This certificate seems to contain the brief minutes taken at the trial, without filling up the skeleton sentences, which are doubtless those taken by the Court and delivered to some clerk to copy, who has done so *verbatim et literatim*. Yet enough appears to sustain every conclusion of the decree.

Owen T. Reeves testified (see pp. 18, 19, 29 and 30) that the plaintiffs in Error held a bond for a deed from Meshack Pike, for the land described in the petition, which was lost, and that the Normal University building, on which the work by defendants in Error was done, was built on that tract of land.

The contract was introduced, and proved the allegations as set forth in the petition. (Record, p. 23.)

The proceedings of the corporation were introduced, and such parts as were relevant, read, which proved that the persons who executed the contract were appointed a building committee (Record, page 21 and 22), and authorized to contract for the erection of the building (Record pp. 19, 20, 21 and 22), and an admission that the work had been performed and was in possession of the corporation. (Record, p. 29.)

G. P. Randall, the architect, testified to the performance and acceptance of the work, and the sum due, as shown by his certificates. (Record, pp. 26, 27, and 28.)

J. E. McClure proved the admissions of the building committee, that the work was well done, &c.

This fully makes out the material averments of the bill.

### III.

The point of plaintiffs in Error that the contract is invalid because entered into by them in a name different from the true one, is not tenable.

The true name is "The Board of Education of the State of Illinois," and the contract was entered into in the name of "the State Board of Education of Illinois;" the words are simply transposed, but the same in substance.

Where a corporate name consists of several descriptive words, the transposition of them, or the omission of some of them, if it be in substance the same, does not vitiate the contract.

*Ang. & Ames on Corp., Sec. 99.*

*Newport Mech. Man. Co. vs. Starbird, 10 N. H., 123.*

Where a deed or contract is made by a corporation in a name other than the true one, the party may sue the corporation by the true name, averring that the deed or contract was made by the name used.

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### IV.

The plaintiffs in Error complain that error was committed in admitting evidence.

It is sufficient to say as to these that *no exception* was taken to the decision of the Court on any one of these questions, and therefore such decisions cannot now be assigned for error.

*Gibbons vs. Johnson, 3 Scam., 63.*

*Pattee vs. McWorter, 13 Ills., 455.*

Besides, the objections are all of the character that must be specifically made, so that the party may obviate them, and if not made, are waived.

*Sergeant vs. Kellogg, et al., 5 Gilm., 281.*

*Stokes, et al. vs. Kane, 4 Scam., 167.*

## V.

The lien will be enforced against the plaintiffs in Error, and the Normal University is not a State Institution nor its property vested in the State.

This depends on the construction of the several acts of the Legislature creating and aiding this Institution.

The corporation was created by act passed Feb., 1857.  
*Laws 1857, p. 298.*

It is an eleemosynary corporation for instructing in the art of teaching. Certain persons are created a corporate body. The State applied the interest on the University and Seminary fund, which the State held as a trustee, to be applied to some institution of learning, to the University, to aid in its maintenance. Sec. 8. It was provided that no part of the interest should be used for sites or buildings. Sec. 8. The institution was to be located where the best inducements were held out for the *establishment and maintenance* of the University. Sec. 5.

As a matter of State history, as shown by the Legislative reports, pledges were made by the citizens of McLean County of property and funds to the amount of \$160,000, for the purposes of site and building.

The corporation possessed all the powers of any corporation for an institution of learning, and differed from ordinary colleges only in the fact that the State applied the trust fund in its control for part maintenance; and for the purpose of seeing to its faithful application, required a report to be made to the Legislature, and provided for the appointment of the Trustees by the Governor, to be confirmed by the Senate; and to ensure the faithful use of the fund for the object indicated, provided for the free tuition of a certain number of pupils.

As a matter of public history, the pupils pay for everything else than tuition, and those not entitled by the act to gratuitous instruction, pay the whole expense. The income derived from the students is greater than the interest received from the State.

It is not recognized as a State Institution, such as the hospital for the Insane. The Legislature has never made an appropriation from the Treasury, but has always refused to do so.

The property is vested in the corporation, who have power to take and hold it. The State has no title or interest.

The Act of 1861 (Laws of 1861, p. 147), does not appropriate money from the treasury. It simply takes the remainder of University fund not before applied to this University, and appropriates it in discharge of the trust, to the Normal University, and to protect from loss, restrained, by way of condition, the sale of the property from creating any liability thereafter against the State.

The lien of defendants in error was created before the passage of this act, and therefore it could not affect their rights.

The corporation had the power to contract indebtedness, and it would be monstrous to hold that there is no means of subjecting its property to sale for its payment. It is not like the case of a municipal corporation, where there is a taxing power, and its exercise can be compelled by mandamus. There the creditor has a distinct remedy. In this case, unless the creditor can sue, obtain judgment and sell the property, he is without remedy.

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Error to McLean

Points & Arguments  
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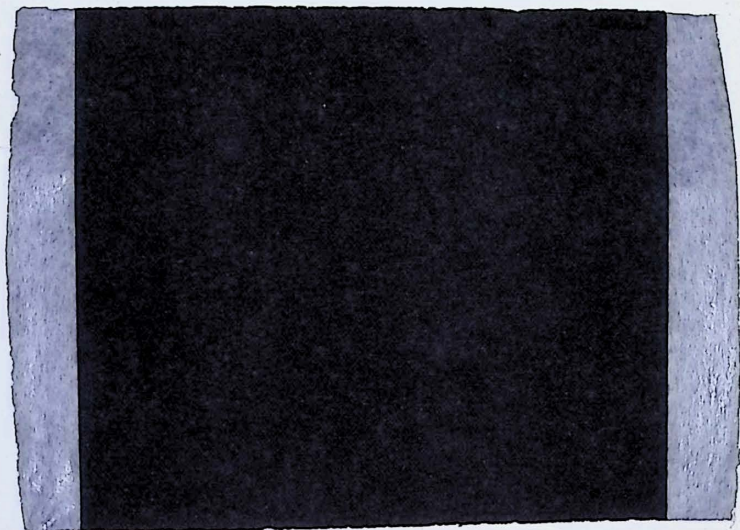
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*Stokes, et al. vs. Kane, 4 Scam., 167.*

V.

The lien will be enforced against the plaintiffs in Error, and





W. C. GOUDY,  
*for Defts. in Error.*

Supreme Court of  
Illinois.

(The 160)

Reported

The Board of Education  
of the State of Illinois,  
vs  $\Sigma$

Isaac Heimbauer  
et al.

Error to McLean

Points & Arguments  
for the Defendants in  
Error.

Filed May 30. 1864

L. Leland  
Clerk

W. C. Goudy  
for Defts in Error

I wrote to Goudy  
Sept 18-66 to  
see if I could  
get abstract

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1  
Pleas continued and held at the Court House in Bloomington in and for the County of McLean in the State of Illinois before the Hon- Circuit Court of the Eighth Judicial Circuit of said State in a certain cause wherein Greenabaum & Sons were complainants, and The Board of Education of the State of Illinois & others were Defendants.

State of Illinois }  
McLean County } Be it remembered, that heretofore, to wit, on the 2<sup>d</sup> day of July A. D. 1861 came Isaac Greenabaum, Michael Greenabaum & Jacob Greenabaum of the firm of Greenabaum & Sons by Bogg & Reeves their attorneys, and filed in the office of the Clerk of the Circuit Court of said County, their Petition for a Mechanics Lien, and an affidavit, which Petition and affidavit were in words and figures as follows, to wit.

Petition

State of Illinois } To the September Term 1861, of the Circuit  
McLean County } Court, in and for said County.

Humblly petition - Sheweth unto your Honor, your petitioners Isaac Greenabaum, Michael Greenabaum, & Jacob Greenabaum, that they constitute the firm of Greenabaum & Sons, and that under their said firm name of Greenabaum and Sons, they did on the 3<sup>d</sup> day of March 1860, enter into a written contract with the Board of Education of the State of Illinois (by the name and style of "The State Board of Education of Illinois" a copy of which said contract is herewith filed marked "A" and petitioner pray that said copy of said contract may be taken and considered as a part of this Petition.

Petitioners further shew that said contract was executed on the part of said Board of Education by G. B. Denis, J. S. Post, G. E. Berry &

+

L. W. Moulton the Building Committee of said Board who had full power to make said contract.

Petitioners further show that said Board of Education of the State of Illinois, were at the time of making said contract with Petitioners the equitable owners of a tract of ground on which the Normal University referred to in said contract, is built, and was then building, by virtue of a Bond for a Deed executed by one Meshach Pike to said Board of Education of the State of Illinois, which said tract of land is described as follows, to wit: Commencing at a point 20 rods east of the State road leading from Bloomington south, which is an extension of main Street north, on the center the south line of the South East quarter of the North West quarter of Section 28, T. 24, N. R. 3, E. running thence South, parallel with said State road about 147 rods, to the north side of the St. Louis, Alton & Chicago Railroad, thence along the north side of said railroad in a north easterly direction about 60 rods, thence north about 110 rods, thence west to the east side of said State road, thence South 11 rods, thence East 20 rods, said area to contain 50 1/2 acres, & if said boundaries do not include 5 1/4 acres, then said number of acres to be made up from the north and east sides.

Petitioners further show that they bound themselves (as by an inspection of the Contract will more fully appear) to furnish all the material, (except the item of sand) for the plastering of said Normal University building, and to do the plastering and plumbus work on said building and finish the same by the first day of July 1860, the work to be done in accordance with plans and specifications for the same made by E. P. Randall Architect for said building, said work to be executed in the best and most workmanlike manner agreeably to such directions as should be given by said architect, his clerk of the work, or such other person as the Board of Education might employ to superintend said work. The said Board of Education also reserved the right to themselves to direct through their

3

Architect, the rapidity or slowness with which the work should be done, and to suspend the same, if in the opinion of the architect the season should not be a proper one in which to finish said work. In consideration of the faithful performance on the part of petitioners of said contract, the said Board of Education undertake and agreed to pay petitioners on the Certificates of the architect, for the plastering work, at the rate of twenty eight & six tenths cents per yard, the plastering to be measured by the architect, the payments to be made on the first day of march 1861, the certificates of said architect to be given from time to time as the work progressed, and all of said certificates to draw interest at the rate of ten per cent per annum until paid = For the Plumbers work the said Board of Education agreed to pay petitioners, on the Certificates of the architect the sum of twenty eight hundred Dollars, to be paid on the first day of march 1861. The certificate for the Plumbers work to be given by said architect as the work progressed, and to draw interest at the rate of ten per cent per annum until paid.

Petitioners further show, that they proceeded under said contract and executed said contract on their part, under the direction of the architect, and fully and to the satisfaction of the said architect, performed the work and labor and furnished the materials as by said contract they agreed to do, within the time specified in said contract.

Petitioners further show that the said architect, S. P. Randall, measured said plastering work, and accepted the same, and gave petitioners his certificates for both plastering and plumbers work as provided by said contract, addressed to the said Board of Education, by the name and style of State Board of Education.

Petitioners further show that there still remain due and unpaid the sum of \$ — exclusive of interest. Petitioners herewith file copies of the certificates of said architect, which petitioners still hold

4 and which are unpaid; marked "B." "C." "D." "E." "F." "G." & "H." and pray that the same may be considered a part of this Petition.

Petitioners further show that the sums stated in said Certificate of said architect, together with the interest thereon are long since due and still unpaid. Petitioners further aver that under said contract they are entitled to a mechanics Lien upon the premises herein before described.

Petitioners further show that Meshach Pike, Joseph Parkinson & John E. McColun, claim some interest in said premises, but petitioners insist that the rights of the said last mentioned parties are subject to Petitioners mechanics Lien.

Petitioners therefore pray the said Board of Education of the State of Illinois, Meshach Pike, Joseph Parkinson, John E. McColun, may be made parties defendant to this petition & may be summoned to answer this petition upon their oaths, and that upon final hearing of this petition, your Honor will decree that Petitioners are entitled to the lien provided by the Statute of said State of Illinois for mechanics, and persons furnishing materials for the erection of buildings - upon said premises above described and that your Honor will enforce such lien in favor of Petitioners against said premises in the manner and form provided by law, and that your Honor will grant such other and further relief in the premises as to you Honor shall seem meet and right, and petitioners will ever pray.

By Hogg & Rivers, Solrs.

Jacob Greenbaum,

Michael Greenbaum &

Lucas Greenbaum

Partners under firm name of  
Greenbaum & Sons.

Affidavit.

Isaac Greenbaum, Michael Greenbaum  
& Jacob Greenbaum, partners under firm  
name of Greenbaum & Sons.

The State Board of Education of the State of Illinois  
Meshach Pike, Joseph Parkinson & John E. McColin.

Petition for  
mechanic lien.

Orin T. Rivers jr.

Being first duly sworn, on his oath says that Joseph Parkinson, one of the  
Defendants in the above entitled cause is not a resident of the State of  
Illinois

O. T. Rivers, Sr.

Subscribed & sworn to before me

July 2<sup>d</sup> 1861. W. McCallough, Clerk

By L. Rivers, Deputy

And thereupon there issued out of said Clerk's office, a writ of Summons  
in a robe and figures as follows, to wit.

State of Illinois }  
McLean County } The People of the State of Illinois  
To the Sheriff of said County - Greeting-

We command you to summon the Board of Education of  
the State of Illinois, Meshach Pike, Joseph Parkinson & John E. McColin  
if to be found in your County, personally to be and appear before the Circuit  
Court of said County of McLean on the first day of the next term thereof  
to be holden at the Court House on the first Monday in the month  
of September next, to answer to a certain Petition filed in our said  
Circuit Court against them by Isaac Greenbaum, Michael  
Greenbaum & Jacob Greenbaum of the firm of Greenbaum & Sons for

6 a mechanics Lien. and further to do and receive what shall then and there by our said Court be adjudged against them. And this they are in no wise to omit. And have you then and there this writ and make return thereon in what manner you execute the same.

Witness W<sup>m</sup>. McCallough, Clerk of said Circuit Court and the seal thereof hereto affixed at Bloomington this 2<sup>d</sup> day of July, in the year of our Lord One Thousand Eight Hundred and Sixty one. W<sup>m</sup>. McCallough, Clerk  
137 S. B. W. Deputy

Which Summons was returned into said Clerk's office enclosed as follows to wit.

The within named Board of Education, Meschack Pike, Joseph Parkinson, & John E. McClain, not found in my County Aug. 31<sup>st</sup> 1861.

Free. Ret. 10

John L. Routh, Sheriff.

And at the September Term of said Circuit Court A. D. 1861, this cause was continued, and afterwards, to wit, on the 9<sup>th</sup> day of September A. D. 1861 an alias writ of Summons was issued in this cause in words and figures as follows, to wit.

State of Illinois }  
McLean County } The People of the State of Illinois  
To the Sheriff of said County - Greeting.

We command you to summon the Board of Education of the State of Illinois, Meschack Pike, Joseph Parkinson & John E. McClain if found in your County, personally to appear before the Circuit Court of said County of McLean on the first day of the next term thereof to be holden at the Court House in Bloomington on the first Monday in the month of December next to answer the

7 Petition of Isaac Greenbaum, Michael Greenbaum & Jacob Greenbaum  
of the firm of Greenbaum & Sons, for a mechanics Lien. and have  
you then and there this writ, and make return thereon in what manner you  
execute the same.

Witness W<sup>m</sup> McCullough, Clerk of said Circuit Court and the  
Seal thereof hereto affixed at Blomington this 9<sup>th</sup> day of  
September A. D. 1861. W<sup>m</sup> McCullough, Clerk  
By L. Burr, Deputy

Which said Summons was returned into said Clerks office, endorsed as  
follows, to wit.

I have on this 28<sup>th</sup> day of September A. D. 1861, executed  
the within writ by delivering a true copy of the same to the within named  
Moshach Pike. Fees. 65 ct. John S. Rutt, Sheriff.

The President of the within named Board of Education of  
the State of Illinois, not residing, nor being found in my County I have  
on this 11<sup>th</sup> day of November A. D. 1861, duly executed the within writ  
by delivering a true copy of the same to Charles W. Boldt, the Treasurer  
and agent of said Board of Education, and by also reading the within  
writ to John C. McClan on this 11<sup>th</sup> day of November, A. D. 1861  
Fees. S. & Ret. \$1.10 copy 50 mileage 10 = \$1.70

John S. Rutt, Sheriff.

And afterwards, at the December Term of said Court, to wit, on the 5<sup>th</sup>  
day of December A. D. 1861, the following order was made in this  
cause, by said Court, to wit.

Greenbaum &amp; Sons.

vs

For mechanics Lien.

The Board of Education of the State of Ill. et al

This day, on motion of the said Petitioners by their attorneys. leave is granted the Sheriff of this County to amend his return upon the writ of Summons issued in this cause.

And afterwards at said December Term to wit. on the 4<sup>th</sup> day of December A. D. 1861. further order was made in this cause as follows. to wit.

Greenbaum &amp; Sons.

vs

For a mechanics Lien.

The Board of Education of the State of Illinois &amp; others

This day, on motion of the said Defendants by their attorneys, the general rule to answer at this term is extended in this cause to the third monday in this month.

And afterwards, on the 6<sup>th</sup> day of December, A. D. 1861. further proceedings were had in this cause before said Court as appears of record in words and figures as follows. to wit.

Greenbaum &amp; Sons.

vs

For mechanics Lien.

The Board of Education of the State of Illinois &amp; others.

And now at this day come the said Petitioners by their attorneys, and make due proof to the Court here that due notice of the pendency of this proceeding has been given to Joseph

9

Parkinson, a non-resident Defendant in this cause, by publication according to the Statute. And now said Petitioners dismiss this Petition as to John E. McBlain one of the Defendants herein.

And thereupon on the 16<sup>th</sup> day of December A. D. 1861. came the Board of Education of the State of Illinois by their attorneys and filed herein a Demurrer to the Petition in this cause, which Demurrer was in words and figures as follows, to wit.

Greenbaum & Sons

vs.

The Board of Education of the State of Illinois

The Demurrer of the Board of Education of the State of Illinois to the Bill of Petition of Greenbaum & Sons. This Defendant, by protestation, not confessing or acknowledging all or any of the matters & things in the said petitioned Bill to be true in such manner and form as the same are therein set forth & alleged doth demur thereto, & says that the said Petition & the matters and things therein set forth, are not sufficient for the Petitioners to have or maintain his aforesaid action against this Defendant & that the Defendant is not bound to answer the same. Wherefore he demands judgment whether he shall be compelled to make any further answer to this Bill or any of the matters and things therein contained & prays to be hence dismissed with his reasonable costs in this behalf sustained.

And the said Defendant states and shows to the Court here the following causes of demurrer to the said Petition, that is to say.

1<sup>st</sup> Because it does not appear in & by said Petition that the said G. B. Denis, J. S. Post, G. E. Boory, I. W. McArthur, who sign, or pretended to sign said contract were duly authorized to act on said

10 matter for & in behalf of said Defendant.

2<sup>d</sup> Because it does not appear in & by said Petition that said Denis Post. Hovey & Moulton. were the agents of this Defendant authorized under the seal of this Defendant to act for Defendant.

3<sup>d</sup> Because this Defendant cannot act by an agent. Wherefore the Defendant Demands judgment of this Court whether he shall be compelled to make any further answer to said Bill or any of the matters and things therein contained & prays to be hence dismissed with his reasonable costs in this behalf sustained.

Hatch & Prince.

Deft. attys.

And afterwards at said December term. to wit. on the 31<sup>st</sup> day of December 1861 said Demurer came on to be heard and the following order was made thereon by said Court. to wit

Greenbaum & Sew.

For Mechl. Lin.

The Board of Education of the State of Illinois & others.

And now at this day come the parties hereto by their attorneys. and the Board of Education of the State of Illinois having filed its demurer to the complainants Bill. and the same now coming on to be heard. is argued by counsel. And the Court having heard said Demurer. and being now fully advised in the premises doth consider that the same be overruled.

And thereupon on said 31<sup>st</sup> day of December. A. D. 1861. came the Board of Education of the State of Illinois. and filed its answer in this

11 case, which said answer was in words and figures as follows, to wit.

The separate answer of the Board of Education of the State of Illinois on behalf of the Defendants to the Bill of Complaint exhibited against it and Meshach Pike, Joseph Parkinson & John E. McClan.

This Defendant reserving to itself all right of exception to said Bill of Complaint for answer thereto, saith, that it denies that petitioners by the name & style of Greenclawm and Sons, did on the 3<sup>d</sup> day of March 1869 enter into a contract in writing with this Defendant by the name and style of the State Board of Education of Illinois. And it denies that G. B. Denis, J. S. Post, G. E. Hoory, & S. W. Moulton, by the whom the contract in Petitioners Bill mentioned purports to be signed, were or either of them, authorized by this Defendant to enter into said contract and bind this Defendant. And it denies that said Denis, Post, Hoory and Moulton, were ever authorized to act as a Building Committee for this defendant. And it also denies that Denis, Post, Hoory and Moulton, ever had power to enter into said contract and bind this Defendant.

It denies that at the time of the making such pretended contract this Defendant was the equitable owner or the owner in any other respect of the tract of ground on which the Normal University is built, by virtue of a bond for a deed from Meshach Pike to this Defendant.

Defendant is ignorant, and therefore call for proof whether the Petitioners bound themselves to furnish all the materials except sand for the plastering of said Normal University building, and to do all the plastering and plumbers work on said building & to finish the same by the first day of July 1869, the work to be done in accordance with plans and specifications for the same made by G. P. Randall Architect for said building and according to the orders of said

Architect, his clerk or the agent of this Defendant, the Defendant reserving the right to direct the rapidity or slowness of the work.

Respondent denies that it promised to pay on the first day of March 1861, on the certificates of the Architect for the Plastering work at the rate of twenty eight & six tenths cents per yard, the plastering to be measured by the architect: Respondent also denies that it agreed to pay on the first day of March 1861, the sum of \$2800, for the plumbers work.

This Respondent denies that Petitioners proceeded under said pretended contract and executed the same under the direction and to the satisfaction of said architect, or performed the work and labor & furnished the materials as by said pretended contract agreed, within the time therein specified. This Respondent also denies that said S. P. Randall measured said plastering work as by said pretended contract, agreed and accepted the same and gave petitioners his certificates addressed to this defendant by the name and style of the State Board of Education, and that any such certificates remain due & unpaid.

This Defendant denies that petitioners are entitled to a mechanics Lien on said premises & is ignorant whether John E. McClun, Meshach Pike & Joseph Parkinson claim any interest in said premises.

And now having fully answered the Petitioners Bill this respondent hence to be discharged with his reasonable costs in this behalf expended &c.

In testimony whereof the said Board of Education of the State of Illinois has herunto set its hand & caused its corporate seal to be affixed this 27<sup>th</sup> day of December 1861.

The Board of Education of the State of Illinois

By N. Bateman.

Secy. of said board

13

And thereupon afterwards, on the 2<sup>d</sup> day of January A. D. 1862  
came the Petitioners and filed herein their Replication to the answer of  
said Defendant, which replication was in words and figures as follows:  
to wit.

The Replication of Isaac Sunabaum, Michael Sunabaum  
and Jacob Sunabaum to the answer of the Board of Education of  
the State of Illinois to the Petition exhibited against the said Board  
of Education and others by their repliants.

These repliants saying &c. says that the said answer  
of said Board of Education of the State of Illinois is uncertain, vague  
and untrue, and the Petition of these repliants is true, as they will  
maintain and prove in such time and manner as this Court shall direct.  
wherefore &c.

Wm. H. Begg & Assoc.  
for Sunabaum & Co.

And afterwards, at said Decembar Term to wit on the 7<sup>th</sup> day of January  
A. D. 1862. Present.

Hon. Chas. Emerson, Judge of the 1<sup>st</sup> Judicial  
Circuit of Illinois, Presiding  
Wm. M. Sullivan, Clerk.  
Geo. L. Root, Sheriff.

This cause came on for hearing and final Decree was rendered  
herein as appears of record in words and figures as follows, to wit

Isaac Sunabaum Michael Sunabaum & Jacob Sunabaum  
parties under the firm name of Sunabaum & Co.

Attorney for a  
Michael Sun.

The Board of Education of the State of Illinois  
Nehemiah Pike John S. McAllen & Joseph Parkins

And now at this day come the parties to this proceeding by their attorneys, and it appearing to the Court from the Summons issued herein to the Sheriff of McLean County, and the return thereon, that the Defendants, the Board of Education of the State of Illinois and Meshach Pike, have been regularly and duly served with process herein, at least ten days before the first day of the present term of this Court, and that Joseph Parkinson, one of the Defendants was not found, and it further appearing to the Court here from affidavit on file that said Defendant Joseph Parkinson is not a resident of the State of Illinois, and that due notice of the pendency of this proceeding has been given by publication for at least four successive weeks in accordance with the Statute, by notice in the weekly Pantagraph, a public newspaper, printed and published in McLean County Illinois, the first insertion of said notice being on the 3<sup>d</sup> day of July 1861, at least sixty days prior to the first day of the present term of this Court, and the last on the 24<sup>th</sup> day of July, 1861. And the Petitioners dismiss their Petition as to the said John E. McCallum, and the said Defendants having been ruled to answer, and the Board of Education of the State of Illinois having filed their answer, and the Petitioners having filed a replication to the answer of said Board of Education, and the said Meshach Pike and Joseph Parkinson having failed to answer, they were then three times solemnly called, came not, but herein wholly made default, and the Petitioners petition is taken for confessed as against the said Meshach Pike & Joseph Parkinson. And now this cause coming on for trial on the Petition & exhibits filed therein, answer of the said Board of Education of the State of Illinois, replication thereto, and the default of said Pike & Parkinson, and a day in this cause being waived by the parties, this cause is submitted to the Court for trial without the intervention of a Jury, and the Petitioners having introduced their oral documentary & recent evidence and the Court being fully advised

15 in the premises finds that the Defendant. The Board of Education  
+ of the State of Illinois, were at the time of making the contract referred  
to in the Complainants Petition and still are the equitable owners of the  
following described real estate, in McLean County Illinois, which they  
held and hold under a title bond from Meschach Pike, to wit.

Commencing at a point 20 rods east of the State road leading  
from Bloomington north, which is an extension of main street north,  
on the South line of the South East quarter of the North West quarter of  
Section 28. Twp 24. N. R. 2. East, running thence South Parallel with  
said State road about 147 rods to the north side of the St. Louis, Alton &  
Chicago Railroad, thence along said railroad in a Southwesterly direction  
about 60 rods, thence north about 100 rods, thence west to the East side of  
said State road, thence South 14 rods, thence East 20 rods, said area to  
contain 56 1/2 acres, and if said boundary do not include 56 1/2 acres, then  
said number of acres to be made up from the north & East sides.

That the contract set out in Complainants Petition and filed therein  
as an exhibit was entered into by Greenbaum & sons of the first part,  
+ and "The State Board of Education of Illinois" of the second part, and  
by them executed by C. R. Davis, J. S. Post, G. E. Henry & S. W. Moulton,  
Building Committee of the State Board of Education as the same appears  
by said contract. That said Davis, Post, Henry & Moulton were appointed  
to act as such Building Committee on the 1<sup>st</sup> day of July, 1859, to serve one  
year, as appears from the resolution of said Board to wit, the Board of Ed-  
ucation of the State of Illinois, passed at a regular meeting of said Board  
held on the 1<sup>st</sup> day of July, 1859, and recorded in the record of the proceedings  
of said Board, that said Davis, Post, Henry and S. W. Moulton  
were appointed such Building Committee with full power to execute  
effect the following resolution of said Board of Education, to wit.

Resolved that a building large enough to accommodate from three to five

Hundred normal students, three stories high exclusive of basement  
to be erected for the use of the Normal University, the basement to be of stone  
the remainder of brick, faced with "lathing and pressed brick" which  
resolution was entered on the minutes of said board. That in pursuance  
of the power vested in them by said resolution of said board of Education  
the said Denis, Post, Barry & Moulton, made the said contract in the  
Complainants petition set forth & filed therewith - with Petitioners. That  
said contract was made by said building committee between two sessions of the  
said board of education, and after the resolution and action of said board  
appointing said building committee as above stated. That in pursuance  
of said contract, Complainants did do the plastering work and plumbers  
work on the Normal University building, within the time specified in said  
contract, and to the satisfaction of L. P. Randall the architect of said  
Normal University. That the said L. P. Randall architect measured said  
work and gave to Petitioners certificates of the amount due petitioners on  
said contract. That the amount stated in said certificates, was and still  
is due to petitioners on their said contract. The Court further finds that  
several members of the said board of Education, out of session, have expressed  
themselves highly satisfied with said contract, and the time of payment of  
said contract. The Court further finds that the said work done under the  
said contract by petitioners was done on the Normal University Building  
which said Normal University Building is located on the premises herein  
before described. The Court further finds that the Defendant the  
Board of Education of the State of Illinois is justly indebted on said  
contract for work done and materials furnished under the same to com-  
plainants in the sum of Eight Thousand Two Hundred and twenty three  
& three Dollars. (\$8223.10), and that the complainants are entitled  
to have and maintain a mechanic lien on said premises for said sum of  
money. It is therefore ordered, adjudged and decreed by the Court here

17 that said Defendant, the Board of Education of the State of Illinois pay to said Complainants the said sum of Eight Thousand Two Hundred and Ninety three & Four Dollars (\$8293.10) with interest thereon and the costs of this proceeding by the 1<sup>st</sup> day of February A. D. 1863. and in default thereof that said premises, and all right and interest of said Defendants therein be sold at public sale at the Door of the Court House in the County of McLean and State of Illinois absolutely and without redemption to the highest bidder for cash in hand. Ordered further that the master in Chancery of McLean County aforesaid execute the decree, that previous to making the sale of said premises, but not till after default in payment as aforesaid, the said master shall give notice of the time, place and terms of sale, together with a description of the premises to be sold for at least thirty days by publication for three successive weeks in some public newspaper published in said County of McLean, or if there be no newspaper published in said County of McLean, then in the nearest public newspaper, and also by posting up notices in three public places in the City of Bloomington. Ordered further that said master make report to the next term of this Court after said sale, and that he be allowed the sum of fifteen Dollars for his services herein to be taxed as costs. Ordered further on making such sale in the manner herein provided, the said master in Chancery shall execute and deliver to the purchaser or purchasers a deed for said premises, and that the said Board of Education of the State of Illinois or those claiming under them, on the execution and delivery of aforesaid and under possession thereof to such person or persons receiving said Deed. Ordered further that this cause stand continued.

And after said, a writ on the 10<sup>th</sup> day of January A. D. 1863, came the Board of Education of the State of Illinois, and filed in this cause a certificate of the evidence used on the trial of this cause, which being

state was in words and figures as follows, to wit.

Greenebaum Sons

Petition for a mechanic's lien.

The Board of Education of the State of  
Illinois & others

J. Charles Emerson presiding

Judge of this Court do hereby certify that at the trial of the above cause at the McLean County Circuit Court, January 1863, the following evidence was introduced, to wit.

Testimony of Owen T. Pierce, Jr.

+ The Bond was originally by me. It was kept in a safe in my office. The last I saw it was about two months ago. It was kept in the nominal custody of Judge McBlain. I had control of the safe & carried the key. I had it at the time I wrote the petition. I searched in the safe within two weeks & not finding it. I spoke to Judge McBlain about it. I made a careful search in the safe among the papers where it is usually kept. After I made the search I spoke to McBlain about it. McBlain said he had not taken it from the safe. He said if it was not there he did not know where it was (objected to by Deft) Judge McBlain had been treasurer & had charge of the papers, but was not Treasurer at the time I made application. Mr. Bolde who was treasurer at that time, told me that none of the papers had been delivered to him (objected to) - I wrote the Bond under the direction of Judge McBlain & after it was executed by Pike I put it up among the papers. The safe belongs to Judge McBlain. I carry the key. He cannot get in without coming to me. I do not advise or look on matters that he puts there or takes out. Mr. Morgan keeps papers there but has no access there except by my consent.

I thought Mr. Orme had the paper. I applied to him to see if he had it. He said never had had it. I have no recollection of ever giving it to Orme. I do not know but that McBlun has it except from what he says - I wrote a deed from Pike to the Board at the request of McBlun & Hovey. I gave it to Mr. Pike to execute it, & it was returned to me as it is now by Mr. Hovey. - I told McBlun about it. When Hovey returned the deed he told me he wanted the boundaries changed & wanted me to hold the deed until I could see Pike. He wanted change if he could get. McBlun spoke to me frequently about deed. (all testimony about deed objected to) Deed introduced. (objcted to)  
 Proceedings of Board of Education, introduced.

Springfield May 4<sup>th</sup> 1857.

On motion of Mr. Hovey, committees were appointed on the following subjects. Committee on rules & regulations, Committee on course of study & text books, Committee on Location, Committee on buildings &c.

The following gentlemen were appointed on the above committees

Committee on buildings. G. B. Denio, Galena, F. Moseley, Chicago  
 S. W. Moulton Shelbyville.

On motion Mr. Cox was added to the committee on buildings

Pioria May 7<sup>th</sup> 1857.

Mr. Wilkins, on motion was added to the building committee

On motion Mr. Hovey was added to the committee on buildings

Bloomington June 23<sup>rd</sup> 1857.

Resolved that a building large enough to accommodate from three to five hundred normal students, three stories high, exclusive of basement, be erected for the use of the Normal University, the basement to be of stone the remainder of brick, faced with cherry-red pressed brick.

Resolved - that S. W. Moulton, G. B. Denio, Geo. P. Cox, F. W. Edwards, W. A. Powell, D. Wilkins and G. C. Hovey be a building committee

No proof that the provisions are here a debt

with full power to carry the above resolution into effect.

The Building Committee of the State Board of Education met in Bloomington July 14<sup>th</sup> 1857, according to a previous arrangement.

Present, Messrs. <sup>Moulton</sup> Denio, Berry and Wilkins. The meeting was called to order by S. W. Moulton, Esq. Chairman of the Committee & D. Wilkins was appointed Secretary.

Mr. Denio moved that the plan of a building presented by Mr. Randall Architect of Chicago, be adopted. The motion prevailed.

The following resolutions were concurred in.

Resolved, that the Architect proceed to make out the Specifications for the Normal University Building, but these specifications shall not be considered adopted by this Committee till they have been approved by Mr. Denio.

Resolved, that the Committee reserve to themselves the right to accept any proposal, whether the lowest or not, or reject all the proposals.

Board met at Bloomington August 18<sup>th</sup> 1857

On motion, the following resolutions were adopted.

Resolved - That S. W. Moulton & C. B. Denio be authorized to enter into a written agreement, either with T. B. Soper, or Mortimer & Selig closing a contract for the building of the State Normal University at Bloomington Illinois, giving them the option to accept on behalf of the Board the bid of either of said parties for the construction of said university building, upon such terms as to payments as said Committee may agree upon with either of said parties =

April 25<sup>th</sup> 1859, The Board of Education of the State of Illinois by a written agreement annul with Mortimer & Selig, annul and rescind the contract made with them for the erection of the Normal University Building. This agreement is entered at length in the minutes of the Board.

Extract from Contract made between Samuel D. Rounds of the first part, & The Board of Education of the State of Illinois of the second part.

27

"And it is further provided, that should any circumstances arise to prevent the contractor from proceeding with the work according to the terms and conditions of this contract, the party of the second part may then have power to take the work out of the Contractors hands, employ other workmen to complete the unfinished works and deduct the expense from any amount that may be due said Contractor, and may also hold said Contractor and his sureties responsible on their bond."

The contract from which the above is an extract is dated April 30<sup>th</sup> 1859, and is entered in full on the minutes of the Board.

At a meeting of the Board in Bloomington July 1<sup>st</sup> 1859.

Resolved - That the standing committees of the Board shall be composed of the following

1<sup>st</sup> Building Committee - 7 members.

Mr. Wells moved that the number of members on the Building Committee be reduced from seven to five. The motion was adopted.

The President, Mr. Moulton announced the Standing Committees as follows,

Building Committee, Messrs. Denis, Post, Powell, Shannon & Avery.

On motion of Mr. Powell it was

Resolved - That the Building Committee be authorized to use any of the assets belonging to the Board of Education which may be found available in the further construction of the Normal University building.

The following was presented by Mr. Batenan and unanimously passed -

Resolved - That the Board express its satisfaction with the prudence and energy manifested by the Building Committee of last year in removing obstacles, and providing ways and means for the prompt and vigorous

22. prosecution of the work upon the Normal School University building.

On motion of Mr. Seavey, the President - Mr. S. W. Moulton was added to the Building Committee.

At a meeting of the Board in Bloomington Decr. 23<sup>d</sup> 1859.  
Mr. Seavey offered the following resolution.

Resolved - That a Committee of three members of this Board be appointed for the purpose of obtaining a loan of money necessary to the prosecution of the work on the Normal University building, and that they have power to use for this purpose any of the assets or property of the Board of Education.

The Chair appointed as the Committee called for by this Resolution. Messrs. Moulton, Demio & Bateman.

At a meeting of the Board in Bloomington June 27. 1860  
Mr. Demio offered the following.

Resolved - That the Building Committee be authorized to settle with Mr. Rounds when his work is completed according to contract.

The resolution was unanimously adopted.

The foregoing Proceedings of the Board of Education are all extracts  
+ from their records. (all objected to)

George P. Randall. Sworn.

Contract with Greenbaum & Sons handed to G. P. Randall.

His signature is Greenbaum. I usually met with Board of Edu-  
+ - cation. I recognize Moulton's signature - I should think it was  
Demio's - I should have no doubt that it was Seavey's.

John M. Scott. Sworn. & the Contract handed to him.  
I think that is Post's signature. I have seen him write his name.

The Contract was then offered in evidence, and said Contract  
is in words and figures as follows, to wit

This agreement made and entered into this third day of March, A.D. 1869 by and between Greenbaum Sons, of Chicago of the first part, and the State Board of Education of Illinois of the second part, witnesseth as follows to wit, That the party of the first part agrees to do all the plasterers work for the State Normal University, new building at Bloomington; said work to include the lathing and three coat work plastering (the last coat to be hard finish) and all to be done as per directions of the architect. There are to be Black Boards in several of the rooms, the cost of which is to be included in the price per yard for the common work, which price is to be Twenty eight and six tenths (28 & 6/10) cents, and one half the openings to be measured. The party of the second part is to furnish sand for said work delivered at the building, but nothing else. The party of the first part also agrees to do all of the Plumbers work, as set forth in an appendix to the original specification and plans accompanying the same and bearing date March 1<sup>st</sup> 1869. The plasterers work to be completed on or before the fifteenth day of June next, and the plumbers work as fast as the building shall be ready for the same, and all to be completed on or before the first day of July next, and all according to plans and specifications made for the same by L. P. Randall, architect, which plans and specifications as signed by the said Randall, and dated at Chicago, March 1, 1869, and subject to the following.

Conditions, That all the work shall be executed in the best and most workmanlike manner, and agreeably to such directions as shall be given from time to time by the said architect or his clerk of the works, or by such other person as may be employed by the party of the second part to superintend these works, and said work shall be executed to the full and entire satisfaction of the said architect or clerk or superintendent, without reference thereon to any other person. That should the party of the second part or their architect deem it proper or necessary in the execution of the work to make any

alterations which shall increase or diminish the expense, or otherwise however, such alterations shall not vitiate or annul the contract hereby entered into, but the value of the work so added or omitted shall be agreed upon by the parties to this contract, and added to, or deducted from the sums hereinafter mentioned, as the case may be. If said parties cannot agree as to the amount so to be added or deducted, the same shall be referred to the architect, whose decision in the case shall be final. It is further more understood and agreed that no alterations or changes from the plans and specifications are to be made except by the consent or direction in writing of the party of the second part through the architect or clerk of the works.

The party of the first part further covenants and agrees to and with the party of the second part, that in the execution of the several works to be performed, no improper materials shall be used, but that all of the materials of every kind shall fully answer the requirements of the specifications, or if not particularly specified, shall be suitable to the place where used: and shall be subject to the approbation of the architect or his clerk of the works, before being put into the building, and furthermore it shall be the architect's right and duty to reject any of the said materials which he shall think unfit for the work, and he may, if he thinks proper, order the same to be removed from the premises, and if said order is not immediately complied with, he may remove the same at the contractor's expense.

The whole of the work shall be carried on regularly, so as to give the necessary time for each part to harden. It case the architect shall think that this is not sufficiently attended to, he may order more men to be employed on the works, and if he shall think the work proceeding unnecessarily to fast he may direct a less number of men to be employed, should the weather be unusually wet, or so cold and frosty that the work cannot be done in a proper manner, or with a due regard to durability and strength, then the architect may order the work to be suspended altogether until a more suitable season.

in which case the contractor is to protect the several parts of the works so that they shall not be injured by the weather.

No part of the work shall be sub-contracted, without the written consent of the party of the second part or his architect. And it is hereby further provided and agreed, that should any circumstances arise to prevent the contractor from proceeding with the work agreeably to the terms and conditions of this contract, that the party of the second part may then in such case, with the approbation and consent of the architect, have power to take the work out of the contractors hands, employ other workmen to complete the several unfinished works, and deduct the expense from any money that may be due and owing to said contractor on account of the work.

In consideration of the faithful performance by the party of the first part, of the agreement herein before stated, and according to the several conditions thereto annexed, the party of the second part, agrees to pay the party of the first part on the certificate of the architect as follows, to wit,

For the plastering including the black boards, the sum of twenty eight & six tenths cents per yard, to be measured by the architect, and paid for on the first day of March 1861. The certificate to be given from time to time as the work progresses, and all of them to bear interest at ten per cent per annum, until paid, and to mature on the first day of March, 1861.

For the plumbers work, the party of the second part, agrees to pay the party of the first part, on the certificate of the architect the sum of twenty eight hundred Dollars, to be paid on the 1<sup>st</sup> day of March, 1861, the certificate to be given from time to time as the work progresses, and all to bear interest at ten per cent per annum until paid.

Greenbaum Sons,

C. B. Denio } Building Committee  
J. S. Post } of State Board  
G. C. Henry } of Education  
S. W. Moulton }

(Contract objected to by Defendant, because not sufficiently authenticated & because the Building Committee had no authority to bind the Board and that it is not proved that they are a Building Committee, that it is not the act of the Board, that they had no authority or power to act as a Building Committee)

Testimony of E. P. Randall.

I am architect mentioned in the Contract. The work was done in a satisfactory manner - work was approved by me. The accounts were audited by Building Committee. I issued Certificate to Greenbaum & Sons. (Conversations objected to) Think I had a conversation with Mr. Moulton who I think was acting as chairman of Building Committee - at a meeting of the Board. I looked over the accounts with Moulton, & I think one or <sup>others</sup> two of the Board - Think this conversation was in Moulton's room in the Nicolls House. The name of this Certificate was due Greenbaum & Sons.

Do not know whether it was done within contract time. It was about that time - The settlement was made in July. The work was done before the Settlement. The conversation may have been with the Building Committee. My impression is that Moulton was acting one of the Building Committee; at time of conversation I think 3 or four were present. If it was at a meeting of Board I think ~~or~~ think I consulted with Moulton & others as the Building Committee & not as the Board of Education.

Majority of Board was not present. It was at this conversation that the final auditing of accounts was made. (Objected to stating authority of Building Committee) The Board of Education could not have known of the contract of Greenbaum & Sons. At the time of settlement, think Board was in session. Cannot state anything definite that was said, but think it, the work, was spoken of & was satisfactory. I have general impressions. I can't swear to any action & sayings by the Board in session. It is my general impression gathered either from talk in the Board or outside that it was rather

factory. The work done by Greenbaum & Sons, was done on the Normal University building in accordance with the Contract dated March 3<sup>d</sup>. 1860. made by Greenbaum & Sons, with Building Committee. That the work was done in a satisfactory manner & accepted by me as Architect of the Board of Education. I issued the certificates of certificates offered in evidence as follows.

\$2000.

Chicago, May 8<sup>th</sup> 1860

State Board of Education of Illinois

This is to certify that there is due to Greenbaum Sons the sum of Two Thousand Dollars, and interest at ten per cent. per annum, till paid, for Labor and materials furnished you building at Bloomington as per contract. This certificate matures on the first day of March, 1861

Yours respectfully,

E. P. Randall, Architect &amp; Superintendent

\$1000

Chicago June 28<sup>th</sup> 1860

State Board of Education of Ill.

This is to certify that there is due to Greenbaum Sons the sum of One Thousand Dollars, and interest at ten per cent till paid for Labor and materials furnished you building at Bloomington as per contract. This certificate matures the first day of March, 1861

Yours respectfully,

E. P. Randall, Architect &amp; Superintendent

\$500.

Chicago June 28<sup>th</sup> 1860

State Board of Education.

This is to certify that there is due to Greenbaum Sons, the sum of Five Hundred Dollars, and interest at ten per cent till paid, for Labor and materials furnished you building in Bloomington as per contract.

This certificate matures on the first day of March, 1861

Yours respectfully

E. P. Randall, Architect &amp; Superintendent

\$800.

Chicago July 9<sup>th</sup> 1860

State Board of Education.

This is to certify that there is due to Greenbaum Sons the sum of Eight Hundred Dollars, and interest at ten per cent till paid, for Labor and materials furnished your Building on Bloomington as per contract.

This certificate matures on the first day of March 1861

Yours Respectfully, G. P. Randall, Architect & Superintendent.

\$1000

Chicago July 9<sup>th</sup> 1860

State Board of Education.

This is to certify that there is due to Greenbaum Sons, the sum of One Thousand Dollars, and interest at ten per cent till paid, for Labor and materials furnished your Building in Bloomington as per contract.

This certificate matures on the first day of March 1861

Yours respectfully, G. P. Randall, Architect & Superintendent

\$450.

Chicago August 1<sup>st</sup> 1860

State Board of Education of Illinois

This is to certify that there is due to Greenbaum Sons the sum of Four Hundred Fifty Dollars, and interest at ten per cent per annum, for Labor and materials furnished your Building at Bloomington as per contract

This certificate matures on the first day of March A. D. 1861

Yours respectfully, G. P. Randall, Architect & Superintendent.

\$1438<sup>72</sup>Chicago, August 1<sup>st</sup> 1860

State Board of Education of Illinois

This is to certify that there is due Greenbaum Sons the sum of Fourteen Hundred Thirty eight <sup>72</sup> Dollars, and interest at ten per cent per annum for Labor and materials furnished your Building at Bloomington as per contract.

This certificate matures on the first day of March, A. D. 1861  
 Yours respectfully, G. P. Randall Architect & Superintendent.  
 (Certificates objected to by Defct.)

This work was done on Normal University Building at North  
 Bloomington.

O. T. Peever, Jr. Sworn.

I know the ground on which the Normal University Building is built.  
 It is part of same mentioned in the Bond. I never surveyed the land, but  
 I know from my knowledge of the land in the neighborhood that the building  
 is located on the land mentioned in the Bill.

Extracts from the records of the Board of Education, read in  
 evidence, as follows.

"The Board at this time desire to present to the Legislature the  
 present condition of the affairs of the corporation.

The university building is now substantially completed, and we may  
 say without hesitation, it is the very best building of the kind in America  
 and perhaps in the world. It is perfect and harmonious in all its parts,  
 and most admirably adapted to accomplish the ends for which it was  
 intended. The execution of the work in accordance with the plans of  
 its architect has been most faithfully performed and in the very best  
 and most workmanlike manner."

At a meeting of the Board in Bloomington, July 17, 1857

Extract from the Treasurer's Report, dated June 30, 1857.

"The Land belonging to the institution consists of 160 acres donated  
 by Messrs Pike & Payne, Judge Davis & E. W. Baker, upon which the  
 buildings are now being erected" &c.

Testimony of John E. McClure.

I have never heard any thing said about this contract at any session  
 of the board. I have had conversations with Mr. Barry & other

members of the board at different times. All I know in regard to the contract made between Mr. Greenbaum & the Building Committee of the Board of Education for the plastering of the Normal University is what I incidentally heard from time to time from Mr. Barry & other members of the board, the import of which was that they had been very fortunate in obtaining a contract for the job on very favorable terms, as the parties were able and willing to await the action of the Legislature to get their pay. I do not remember to have heard any thing from the board in session in regard to it amounting to a decisive action, though my recollection is that from all the members of the board whom I have heard express themselves a general feeling of gratification was expressed that a contract had been made by the Building Committee so favorable to the interests of the University.

It was also proved by A. J. Reese that the Board of Education of the State of Illinois, held, at the time of the filing of the Petition a bond for a Deed of the premises in the bill described, executed by Meshach Pike to said board, which bond had been lost.

The above <sup>was</sup> all the evidence used in the case.

Charles Emerson.

State of Illinois }  
 McLean County }  
 I, Wm. McCullough, Clerk of the Circuit Court in  
 and for said County do certify that the foregoing is a true and complete  
 transcript of the records and files of my office pertaining to a certain cause  
 wherein Isaac Greenbaum & others were complainants & the Board of Education  
 of the State of Illinois & others were Defendants

Given under my hand & seal of office at Bloomington  
 this 19<sup>th</sup> day of June, A.D. 1862

Wm. McCullough, Clerk  
 by Luman Ross Deputy.



Board of Education of the State of Illinois et al  
Plaintiffs in Error

vs  
Greenbaum & Sons  
Defendants in Error

The following Errors are assigned by the Plaintiffs in Error:

1st. The decree should have been rendered against the Defendants in Error, and the bill dismissed.

2d. The demurrer to the petition should have been sustained by the Court, for the reasons therein specified.

3d. The evidence was insufficient to sustain the decree or the allegations in the petition.

4th. The contract was not properly made and executed.

5th. No sufficient proof of the execution of the contract.

6th. The decree does not show what the proof was.

7th. Proceedings for Mechanic's lien will not lie in this case against the corporation.

Perkins Bass,

And the Defts in Error  
say there is no such error

M. C. Gouddy

Defts atty

160 ... 127

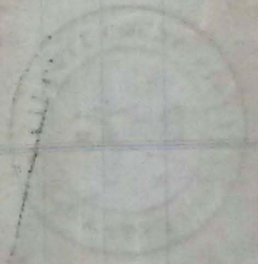
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Board of Education of State of Ill.

Isaac Greenbaum & others

Transcript of Record.

Filed Apl. 4. 1863  
L. Seland  
Clk.



Transcript of Record #11.57

The following Errors are assigned by the Plaintiffs in Error :

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4th. The contract was not properly made and executed.

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7th. Proceedings for Mechanic's lien will not lie in this case against the corporation.

*R. K. Bass,*  
*Atty. for Plaintiffs in error.*

# SUPREME COURT.

STATE OF ILLINOIS.

APRIL TERM, A. D. 1863.

## ABSTRACT.

THE BOARD OF EDUCATION OF THE  
STATE OF ILLINOIS, and others,

*Plaintiffs in Error.*

*vs.*

GREENEBAUM & SONS,

*Defendants in Error.*

This was a proceeding for a Mechanics lien by the Defendants in error against the Plaintiffs in error, at the September Term, 1861, of the McLean Circuit Court.

Page 1. Petition states that on the 3rd day of March, 1860, Defendants in error entered into a written contract with the Board of Education of the State of Illinois, by the name and style of "The State Board of Education of Illinois." That said contract was executed on the part of said Board of Education by four persons called the Building Committee of said Board of Education.

Page 2nd. That said Board of Education was the equitable owner of certain lands and buildings.

That Defendants in error were to do the plastering and plumber's work on the Normal University building by the first day of July, 1860.

Page 3rd. That by said contract Defendants were to be paid for plastering, per yard, 28 $\frac{1}{2}$  cents per yard, and for plumber's work \$2800, all of which was to be paid on 1st day of March, 1861.

Page 8rd. That Defendants performed the work according to contract, and have not been paid. And pray for a Mechanics' lien and that the property be sold, &c.

Page 9. At the December Term, 1861, of said Court, Plaintiffs in error filed a demurrer to said petition, general and special.

1st. Because it does not appear by said petition that the persons who signed the contract were authorized by the said Board of Education to sign the same.

Page 10. 2nd. That it does not appear from the petition that the persons who signed the contract were the agents of the said Board of Education and authorized under the seal of said Board to act for them.

3rd. That the said Board of Education cannot act by an agent.

Demurrer overruled by the Court.

Pages 11 and 12. Plaintiffs in error then filed their answer denying all the allegations of the Petition. Defendants filed a general replication to the answer. The cause was heard by the Court.

Pages 14 and 15. The decree recites: That the petitioners having introduced their oral, documentary, and record evidence, and the Court being fully advised in the premises finds, &c., (going on to recite substantially in accordance with the allegations of the petition.)

Page 16. The Court finds that the said Board of Education of the State of Illinois is indebted to the Defendants in error in the sum of \$8,293<sup>10</sup>/<sub>100</sub>. That the said Defendants have a Mechanics' lien on the property.

Page 17. That in default of payment by the 1st day of Feb., 1863, the property be sold, &c.

Page 18. Afterwards, at the same Term of said Court, the Plaintiffs in

and 30. error filed a certificate of all the evidence in the cause, which was duly certified by the Court and made a part of the record in the case.

Page 18. OWEN T. REEVES, testified in substance That he wrote the bond between Pike and the said Board of Education. That he could not find the bond. Did not know where it was.

Page 19. That he wrote a deed from Pike to the said Board of Education. That he gave the deed to Hovey, who returned it to him.

Much of the evidence of Reeves is hearsay, which was objected to by Plaintiffs.

Pages 19, 20, 21 and 22. The next evidence offered was claimed by Defendants in error to be the proceedings of the said Board of Education, consisting mostly of resolutions (all of which was objected to as not having been shown to be the proceedings of the said Board.)

Page 22. Testimony of G. P. RANDALL.

The contract with Greenebaum & Sons handed to him.

This signature is Greenebaum's.

I recognize Moulton's signature. I should think it was Denio's. I should have no doubt it was Hovey's. JOHN M. SCOTT testified, I think that is Post's signature. Have seen him write his name.

Page 22. The contract was then offered in evidence. Objected to by Plaintiffs in error  
The contract is as follows :

Page 23. This agreement made and entered into this third day of March, A. D., 1860, by and between Greenebaum & Sons, of Chicago, of the first part, and the State Board of Education of Illinois of the second part, Witnesseth as follows, to-wit: That the party of the first part agrees to do all the plasterer's work for the State Normal University now building at Bloomington, said work to include the lathing and three coat work plastering, (the last coat to be hard finish), and all to be done as per directions of the architect. There

are to be black-boards in several of the rooms the cost of which is to be included in the price per yard for the common work, which price is to be twenty-eight and six-tenths (28<sup>6</sup>/<sub>10</sub>) cents, and one half the openings to be measured. The party of the second part is to furnish sand for said work delivered at the building, but nothing else. The party of the first part also agrees to do all of the plumber's work as set forth in an appendix to the original specification and plans accompanying the same, and bearing date March 1st, 1860. The plasterer's work to be completed on or before the 15th day of June next, and the plumber's work as fast as the building shall be ready for the same, and all to be completed on or before the 1st day of July next, and all according to plans and specifications made for the same by G. P. Randall, architect, which plans and specifications are signed by the said Randall, and dated at Chicago, March 1st, 1860, and subject to the following conditions:— That all the work shall be executed in the best and most workmanlike manner, and agreeably to such directions as shall be given from time to time by the said architect or his clerk of the works, or by such other person as may be employed by the party of the second part to superintend these works, and said work shall be executed to the full and entire satisfaction of the said architect or clerk or superintendent without reference thereon to any other person. That should the party of the second part or their architect deem it proper or necessary in the execution of the work to make\* any alterations which shall increase or diminish the expense, or otherwise, however, such alterations shall not vitiate or annul the contract hereby entered into, but the value of the work so added or omitted shall be agreed upon by the parties to this contract and added to or deducted from the sums hereinafter mentioned, as the case may be. If said parties cannot agree as to the amount so to be added or deducted the same shall be referred to the architect, whose decision in the case shall be final. It is furthermore understood and agreed that no alterations or changes from the plans and specifications are to be made except by the consent or direction, in writing, of the party of the second part through the architect or clerk of the works. The party of the first part further covenants and agrees to and with the party of the second part, that in the execution of the several works to be performed no improper materials shall be used, but that all of the materials of every kind shall fully answer the requirements of the specifications, or if not particularly specified, shall be suitable to the place where used, and shall be subject to the approbation of the architect or his clerk of the works, before being put into the building, and furthermore, it shall be the architect's right and duty to reject any of the said materials which he shall think unfit for the work, and he may if he thinks proper order the same to be removed from the premises, and if said order

\*Page 24.

is not immediately complied with he may remove the same at the contractor's expense. The whole of the work shall be carried on regularly, so as to give the necessary time for each part to harden. In case the architect shall think that this is not sufficiently attended to he may order more men to be employed on the works, and if he shall think the work proceeding unnecessarily too fast he may direct a less number of men to be employed. Should the weather be unusually wet or so cold and frosty that the work cannot be done in a proper manner or with a due regard to durability and strength then the architect may order the work to be suspended altogether, until a more suitable season,\* in which case the contractor is to protect the several parts of the works so that they shall not be injured by the weather. No part of the works shall be sub-contracted without the written consent of the party of the second part or his architect, and it is hereby furthermore provided and agreed that should any circumstances arise to prevent the contractor from proceeding with the work agreeably to the terms and conditions of this contract, that the party of the second part may then in such case with the approbation and consent of the architect have power to take the work out of the contractor's hands and employ other workmen to complete the several unfinished works, and deduct the expense from any money that may be due and owing the said contractor on account of the works.

\*Page 25.

In consideration of the faithful performance by the party of the first part of the agreement hereinbefore stated and according to the several conditions thereto annexed, the party of the second part agrees to pay the party of the first part on the certificates of the architect, as follows, to-wit:

For the plastering including the black-boards the sum of twenty-eight and six-tenths cents per yard, to be measured by the architect, and paid for on the first day of March, 1861. The certificates to be given from time to time as the work progresses and all of them to bear interest at ten per cent. per annum until paid, and to mature on the first day of March, 1861. For the plumber's work the party of the second part agrees to pay the party of the first part on the certificates of the architect the sum of twenty-eight hundred dollars, to be paid on the 1st day of March, 1861, the certificates to be given from time to time as the work progresses and all to bear interest at ten per cent. per annum until paid.

GREENEBAUM & SONS.

C. B. DENIO,	} Building Committee of State Board of Education.
J. S. POST,	
C. E. HOVEY,	
S. W. MOULTON,	

Contract objected to by Defendants and reasons given.

Page 26. G. P. RANDALL recalled. Am architect mentioned in the contract. The work was done in a satisfactory manner and approved by me. The accounts were audited by building committee. I issued certificates to Greenebaum & Sons. Do not know whether the work was done in contract time, it was done in about that time. Had a conversation with Moulton and others of the building committee. Have a general impression the work was done satisfactorily. Cant say how I got the impression. I issued the certificates.

Page 27. Certificates offered in evidence and objected to.

Page 28. The Certificates were signed by G. P. Randall and in favor of  
Page 29. Greenebaum & Sons, for the aggregate amount of \$7,188<sup>88</sup>/<sub>100</sub>, all objected to by Plaintiffs in error.

Page 29. O. T. REEVES testified, That he knows the ground on which the Normal University is built. It is part of the same mentioned in the Bond. The building is located on land mentioned in the bill.

Page 29 and 30. JOHN E. McCLUN testified, That he had some conversation with Hovey and other members of the Board about the contract with Greenebaum & Sons. It seemed to be satisfactory. Never heard anything said of the contract at any session of the Board.

This is the substance of the whole testimony.

PERKINS BASS,  
*Attorney for Plaintiffs in Error.*

The following Errors are assigned by the Plaintiffs in Error :

1st. The decree should have been rendered against the Defendants in Error, and the bill dismissed.

2d. The demurrer to the petition should have been sustained by the Court, for the reasons therein specified.

3d. The evidence was insufficient to sustain the decree or the allegations in the petition.

4th. The contract was not properly made and executed.

5th. No sufficient proof of the execution of the contract.

6th. The decree does not show what the proof was.

7th. Proceedings for Mechanic's lien will not lie in this case against the corporation.



When a deed or contract is made to or with a Corporation by a name varying from the true name, the plaintiffs may sue in their true name averring that the deed or contract was made by the name used in the deed or contract.

Argyll v Ameron Corp. 8 (64) W.

Mayor of Malden v Miller

1 B & A. 699

African Soc. v Vanick & Co 13 Q. B. 39

When a corporate name consists of several descriptive words the transposition of them, or an interpolation, or omission of some of them, if it be in substance the same does not vitiate a contract,

Argyll v Ameron Corp 899. ~~Case 3~~

Newport Mech. Man. Co. v Starbird

10 N. H. 123

SUPREME COURT OF ILLINOIS,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

The Board of Education of the State of Illinois, }  
vs. } Error to McLean.  
Isaac Greenebaum, et al.

POINTS AND ARGUMENT FOR THE DEFENDANTS IN ERROR.  
BY W. C. GOUDY.

I.

The demurrer to the Petition was properly overruled.

The only reasons urged by the Plaintiffs in Error in support of the demurrer are as follows, to wit:

1. It does not appear by the Petition that the persons who signed the contract were authorized to sign the same.

I answer that the objection is not founded in fact, because the petition (bottom 1st p. Record) says: "Petitioners further show that the said contract was executed on the part of said Board of Education by C. B. Denio, J. S. Post, C. E. Hovey and S. W. Moulton, the Building Committee of said Board, who had full power to make said contract."

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3. That the Board of Education cannot appoint or act by an agent.

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Justice Skinner says: "The old doctrine that corporations can only be bound by acts under their corporate seal, has long been exploded;" and the business of corporations is carried on through their officers, agents and servants, through whom they speak and act.

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The allegations of the petition are clear and distinct, and the recitals in the decree are equally certain as to the facts proved.

If any doubt exists as to whether the statements of the petition are proved, it is to be found in the evidence preserved by the certificate of the Judge. This certificate seems to contain the brief minutes taken at the trial, without filling up the skeleton sentences, which are doubtless those taken by the Court and delivered to some clerk to copy, who has done so *verbatim et literatim*. Yet enough appears to sustain every conclusion of the decree.

Owen T. Reeves testified (see pp. 18, 19, 29 and 30) that the plaintiffs in Error held a bond for a deed from Meshack Pike, for the land described in the petition, which was lost, and that the Normal University building, on which the work by defendants in Error was done, was built on that tract of land.

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The proceedings of the corporation were introduced, and such parts as were relevant, read, which proved that the persons who executed the contract were appointed a building committee (Record, page 21 and 22), and authorized to contract for the erection of the building (Record pp. 19, 20, 21 and 22), and an admission that the work had been performed and was in possession of the corporation. (Record, p. 29.)

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This fully makes out the material averments of the bill.

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Where a corporate name consists of several descriptive words, the transposition of them, or the omission of some of them, if it be in substance the same, does not vitiate the contract.

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Where a deed or contract is made by a corporation in a name other than the true one, the party may sue the corporation by the true name, averring that the deed or contract was made by the name used.

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The plaintiffs in Error complain that error was committed in admitting evidence.

It is sufficient to say as to these that *no exception* was taken to the decision of the Court on any one of these questions, and therefore such decisions cannot now be assigned for error.

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## V.

The lien will be enforced against the plaintiffs in Error, and the Normal University is not a State Institution nor its property vested in the State.

This depends on the construction of the several acts of the Legislature creating and aiding this Institution.

The corporation was created by act passed Feb., 1857.

*Laws 1857, p. 298.*

It is an eleemosynary corporation for instructing in the art of teaching. Certain persons are created a corporate body. The State applied the interest on the University and Seminary fund, which the State held as a trustee, to be applied to some institution of learning, to the University, to aid in its maintenance. Sec. 8. It was provided that no part of the interest should be used for sites or buildings. Sec. 8. The institution was to be located where the best inducements were held out for the *establishment and maintenance* of the University. Sec. 5.

As a matter of State history, as shown by the Legislative reports, pledges were made by the citizens of McLean County of property and funds to the amount of \$160,000, for the purposes of site and building.

The corporation possessed all the powers of any corporation for an institution of learning, and differed from ordinary colleges only in the fact that the State applied the trust fund in its control for part maintenance; and for the purpose of seeing to its faithful application, required a report to be made to the Legislature, and provided for the appointment of the Trustees by the Governor, to be confirmed by the Senate; and to ensure the faithful use of the fund for the object indicated, provided for the free tuition of a certain number of pupils.

As a matter of public history, the pupils pay for everything else than tuition, and those not entitled by the act to gratuitous instruction, pay the whole expense. The income derived from the students is greater than the interest received from the State.

It is not recognized as a State Institution, such as the hospital for the Insane. The Legislature has never made an appropriation from the Treasury, but has always refused to do so.

The property is vested in the corporation, who have power to take and hold it. The State has no title or interest.

The Act of 1861 (Laws of 1861, p. 147), does not appropriate money from the treasury. It simply takes the remainder of University fund not before applied to this University, and appropriates it in discharge of the trust, to the Normal University, and to protect from loss, restrained, by way of condition, the sale of the property from creating any liability thereafter against the State.

The lien of defendants in error was created before the passage of this act, and therefore it could not affect their rights.

The corporation had the power to contract indebtedness, and it would be monstrous to hold that there is no means of subjecting its property to sale for its payment. It is not like the case of a municipal corporation, where there is a taxing power, and its exercise can be compelled by mandamus. There the creditor has a distinct remedy. In this case, unless the creditor can sue, obtain judgment and sell the property, he is without remedy.

W. C. GOUDY,  
*for Defts. in Error.*

Supreme Court of  
Illinois.  
(No 100) - 197

The Board of Education  
of the State of Illinois  
vs

Isaac Greenbaum  
et al.

~~~~~  
Error to McLean  
~~~~~

Points & Arguments for  
the Defts. in Error.  
~~~~~

Filed May 30. 1864  
L. Leland  
Clerk

W. C. Loudy  
for Defts. in Error.

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

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*THE BOARD OF EDUCATION OF THE STATE OF ILLINOIS,  
AND OTHERS, PLAINTIFFS IN ERROR,*

—VS.—

*GREENEBAUM & SONS, DEFENDANTS IN ERROR.*

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## POINTS AND AUTHORITIES OF PLAINTIFFS IN ERROR.

This was a proceeding for Mechanic's lien in McLean Circuit Court, and a decree against Plaintiffs in Error for \$8,292<sup>10</sup>/<sub>100</sub>.

Plaintiffs in Error pray for a supersedeas, and assign the following Errors :

1st. The decree should have been rendered against the Defendant in Error and the bill dismissed.

2d. The demurrer to the petition should have been sustained by the Court, for the reasons specified in same (see Record, pages 9, 10), namely :—1st, Because it does not appear by said petition that the persons who signed the contract were authorized to sign the same. 2d, That it don't appear by the petition that the persons who signed the contract were the agents of the said Board of Education, and authorized, under the seal of the said Board of Education, to act for it. 3d, That the said Board of Education cannot appoint or act by an agent.

3d. The answer denies all the allegations in the petition.

All the evidence in the case was preserved in the certificate of the Court, properly certified, and made a part of the record.

White vs. Morrison, et al., 11 Ill., p. 365.

The evidence and proofs preserved in the record are totally insufficient to sustain the decree or allegations in the petition.

4th. The decree (see pages 14 and 15) recites—"And the petitioner having introduced their oral, documentary and record evidence, and the Court being fully advised in the premises finds," &c., reciting certain things. Now, it nowhere appears that the matters and things recited in the decree, as found by the Court, were proved as facts on the trial of the cause. The most that can be said of it is, that the matters found by the Court were the deductions of the Court. It is clear that the evidence or facts proved in the case are not preserved in the decree at all.

The decree must show what the proof was.

McClay, Admir., et al., vs. Norris, 4 Gil., 370.

White vs. Morrison, et al., 11 Ill., 361.

Ward vs. Owen, et al., 12 Ill., 283.

5th. The Defendants in Error allege, in their petition, that the contract between the parties, and on which suit is brought, was entered into by Plaintiffs in Error by the name and style of "The State Board of Education of Illinois."

The act incorporating the Board of Education of the State of Illinois, was passed February, 1857.

Cook Statutes, 425.

The name given to the corporation is "The Board of Education of the State of Illinois," and provides that, "by that name and style shall have power to contract and be contracted with."

A corporation can have only such name as the legislature gives it, and cannot contract in any other name. A contract in any other name is void.

The petition alleges that the contract was made by four persons, agents of the corporation.

The authority of the agents is not proved, and if it was, they could only contract by the corporate name.

No sufficient proof of the execution of the contract. Mr. Randall, a witness, says (page 22): "This signature is Greenebaum's. I recognize Moulton's signature. I should think it was Denio's. I should have no doubt it was Hovey's." And this is all the proof as to these names. No evidence that he ever saw one of the parties write, or that he was acquainted in any way with their hand writing.

He was incompetent to give an opinion. (See p. 22.)

6th. No proof that the work was done by the time specified in the contract.

7th. No sufficient foundation for the introduction of secondary evidence of the bond, from Pike to the said Board of Education.

The evidence relative to the bond is uncertain and entirely insufficient.

A certain deed was introduced, but it do n't appear what the deed was, or for what purpose introduced.

8th. Much of the testimony of Reeves and Randall is hearsay.

Randall testifies to having heard individual members of the Board make certain statements. This was incompetent testimony.

The action of the Board when convened, can alone bind it.

Extracts of what purported to be proceedings of the Board, were introduced. There is no proof in the record, any where, to show that the extracts were the proceedings of the Board, or that they were from its records. Therefore, these extracts were incompetent.

9th. Mechanics' lien will not lie in this case, for the following reasons:

The Board is a public eleemosynary corporation, founded by the State, and supported by the funds of the State.

The property of the corporation is the property of the State.

Cook Statutes, 425.  
Session Laws of 1861, pages 147-8.

The Trustees have no interest whatever in the property of the corporation. The Trustees are prohibited from receiving anything for their services, except their traveling expenses in attending the meetings of the Board. It is provided by law that such expenses shall be paid out of the funds furnished by the State.

Cook Statutes, 425, Sec. 3rd.

The Act creating the corporation was passed February, 1857.

Cook Statutes, page 425.

It was created for certain public purposes, in which the whole State has an interest; and certain rights are secured to each County in the State.

The Governor, by the advice and consent of the Senate, appoints the Trustees, whose term of office is six years,—and they compose the corporation.

The Superintendent of Public Instruction is ex-officio member of the Board, and Secretary.

By the organic act, it is made the duty of the Board to report to the Legislature the financial condition of the corporation.

Cook's Statutes, p. 425, Sec. 2nd.

The Legislature have the absolute right to repeal or modify the charter.

At the session of the Legislature in 1861 (Session Laws of 1861, p. 148), a large sum of money was appropriated for the use of the Normal University, and entrusted to the Board of Education, to be held or disbursed by it, as trustee or agent for the State. It was at the same time provided in Sec. 3d of the Act (page 148, Session Laws of 1861), that the Trustees should not sell, dispose of, or in any way encumber any of the property of the corporation.

Thus the Legislature have established the fact that the property of the corporation actually belongs to the State.

It manifestly was not the intention of the Legislature that the property held in the name of the Board should be sequestered and sold by creditors or others.

Cook Statutes, p. 425.

Session Laws of 1861, p. 147.

The Legislature strictly prohibits such a disposition of the property acquired by the Board.

Session Laws, 1861, page 148, sec. 3.

“The corporation created by an act entitled an act for the establishment and maintenance of a Normal University, shall have no power to sell or convey any of the property acquired since the passage of said act, nor to encumber said property in any manner whatever.”

This prohibition applies to all the property held by the Board since it could have acquired no property prior to the passage of its organic act. Besides, the very nature of the object to be accomplished as set forth in the act creating the Board and the subsequent amendment thereof, before referred to, renders it absolutely certain that whatever property the Board might acquire, vests in the Board no interest in the property. Therefore, a sale of the property in this proceeding against the Board will convey no title whatever.

The Board is not the owner in the sense contemplated by Statute.

Purple's Statutes, page 720, sec. 1.

The Corporation is a mere Trustee or Agent of the State, to carry out the wishes and intentions of the Legislature. The property of the Corporation can only be used for corporate purposes. None but the legislative power can divert it to any other channel.

City of Chicago vs. Halsey, 25 Ill. Rep., p. 496.

It does not follow that because the Corporation can sue and be sued, that, therefore, a mechanic's lien will lie against the Board, or that the property can be sold on execution. Counties, Municipal Corporations, School Directors may all

sue and be sued, yet their property cannot be sold on execution.

*City of Chicago vs. Halsey, 25 Ill. Rep., p. 595.*

The ground we take is, that the property of the Corporation is the property of the State, devoted to public purposes. That a creditor of the Corporation is a creditor of the State, and only has the same rights as other State creditors.

S. W. MOULTON and

PERKINS BASS,

*Attorneys for Plaintiffs in Error.*

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The Board of Education  
N.S.  
Greenbaugh & Sons

Pliffs.

Points & authorities

Filed April 29 1863  
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SUPREME COURT OF ILLINOIS,  
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W. C. GOUDY,  
*for Defts. in Error.*

Supreme Court of Illinois  
No 160

The Board of Education  
of the State of Illinois

vs

Isaac Grumbaum  
et al

Error to McLean

Points & Arguments  
for the Dept. in Error.

W. C. Loudy  
for Dept. in Error,

STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of McLean County, before the Judge thereof, between Isaac Greenbaum, Michael Greenbaum and Jacob Greenbaum

~~et al.~~ plaintiffs, and Board of Education of the State of Illinois, Mesheack Pike & Joseph Parkinson, et al.

defendants, it is said that manifest error hath intervened, to the injury of the said Board of Education of the State of Illinois, Mesheack Pike & Joseph Parkinson — as we are informed by their

complaints — the record and proceedings of which said judgments we have caused to be brought into our Supreme Courts of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Isaac Greenbaum, Michael Greenbaum, and Jacob Greenbaum

that They be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April

~~inst.~~ to hear the record and proceedings aforesaid, and the errors assigned, if

They shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Isaac Greenbaum,

Michael Greenbaum, & Joseph Greenbaum notice, together with this writ.

Witness, The Hon. John W. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 11<sup>th</sup> day of April in the year of our Lord one Thousand Eight Hundred and Sixty-Three.



S. Deland  
Clerk of the Supreme Court.



130 776.160 197

The Board of Education

vs. et

No.

vs.

Greenbaum & sons,

SCIRE FACIAS.

Filed... April 29 ... A. D. 1863

Deland Clerk.

Send this writ by reading to the within named  
Isaac Greenbaum, Michael Greenbaum and Jacob  
Greenbaum the 7<sup>th</sup> day of April 1863.  
David S. Hammond, Sheriff  
By J. Scadding Deputy

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Albion 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 Albion County, before the Judge thereof, between Isaac Greenbaum, Michael Greenbaum & Jacob Greenbaum

Complainants and The Board of Education of the State of Illinois, Charles Pike & Joseph Parkerson

defendant &c., it is said manifest error hath intervened, to the injury of the aforesaid.

Defendants

as we are informed by their

complaints 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. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourth day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

S. Deland  
Clerk of the Supreme Court.

