

No. 12922

# Supreme Court of Illinois

Nibbe

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vs.

Brauhn

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# S U P R E M E C O U R T ,

APRIL TERM, A. D. 1860.

HENRY NIBBE,

V. S.

FREDERICK BRAUHN.

APPEAL FROM

Cook County Circuit.

MECHANIC'S LIEN.

## ABSTRACT OF RECORD.

On the fifth day of June, A. D. 1858, Brauhn filed his petition to enforce a mechanic's lien against said Nibbe.

3        The petition alleges that on the 18th of March, 1857, the parties entered into  
a contract in writing, by which Brauhn was to build a house for Nibbe and have  
the same completed on or before first of June, 1857; and Nibbe was to pay for the  
8        same \$1935 as follows, viz: \$200 as soon as Brauhn should have brought the bricks  
for the foundation and the timber for the house into the lot; \$400 when the roof  
was put on; "Six hundred dollars (provided the house is built in accordance with  
the specifications, and finished and delivered as above mentioned, on or before the  
first day of ~~September~~ <sup>June</sup>, 1857), \$600 on the first day of September, 1857, and the  
balance, \$735, June 1st, 1858, with interest at ten per cent. per annum since June  
first, 1857.

4        The petition also alleges, that on or about the said 18th of March, 1857, Brauhn  
did, in accordance with the provisions of the contract, enter upon the erection of the



5 house, and that while laying the foundation Nibbe stated to Brauhn that "he  
wanted to have certain alterations made in the structure of said house, materially  
different from the specifications and plans above referred to, and that he wished to  
have the size of the house increased ;" and that Brauhn " did then and there agree  
to finish and construct a house upon said premises in accordance with the wishes  
of said Nibbe, and to make it so far different from the original plan as was then by  
said Nibbe desired. In consideration whereof, said Nibbe did then and there agree  
to pay unto Brauhn one hundred dollars over and above the price mentioned in said  
contract, payable upon the completion of said house and the acceptance thereof by  
said Nibbe. That at the time of the above mentioned alteration of the original  
contract nothing was said about the time in which the said house was to be finished,  
nor was anything said about any alteration of the terms of payment; but said  
Nibbe was to pay your petitioner one hundred dollars additional on the completion  
of the work." That Brauhn did thereupon build the house in all respects in con-  
6 formity with the wishes and requirements of said Nibbe in the premises, and under  
the immediate direction of said Nibbe, and that on or about the first day of Sep-  
tember, A. D. 1857. said Brauhn had the said house fully completed and finished  
and made delivery thereof to said Nibbe, who then and there accepted the same  
and declared himself in all respects and fully satisfied with the same." That  
Brauhn has received \$1200, and that there remains unpaid \$835, and that he has  
a lien therefor in the premises which he prays may be enforced, &c.

10 The answer of Nibbe admits the making of the agreement of 18th March ;  
and, also, the subsequent agreement mentioned in the petition, but denies per-  
formance on the part of Brauhn.

15 A replication was filed, and on the 7th May, 1859, cause was tried and the jury  
17 found for the petitioner damages \$898, and defendant moved for a new trial and the  
19, 20 Court decided to grant new trial unless petitioner took judgment for only \$725. to  
which he consented, and judgment was entered accordingly. And it was also de-  
creed, that all the right, title, claim and demand which the said defendant, on the  
eighth day of March, 1857, had in and to the premises, and the buildings thereon de-  
21 scribed in the petition, should be sold by the Master in Chancery to pay the debt  
and costs. From which judgment and decree, Nibbe took an appeal to this Court.

And the said appellant assigns the following as grounds of error appearing up-  
on the record, in this cause :

( 3 )

1. It appears from the statements contained in the petition, that the mechanic had not any lien, and no decree should have been entered in his favor.

2. The decree gives a lien from March 8, 1857, and the work was not completed until the first of September, 1857.

3. The said decree is erroneous and contrary to law.

FARWELL, SMITH & THOMAS,

*Attorneys for Appellants*



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Supreme Court

Henry Stobbe

by  
Frederick Bramham

Abstract of Record

Filed Apr 18, 1860

L. L. Larned

Clerk



# S U P R E M E C O U R T ,

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FARWELL, SMITH & THOMAS,

*Attorneys for Appellants*



115  
Supreme Court

Henry Tibbe  
vs

Fredrick P. Mankin

Abstract Record

Filed Apr 18, 1860

L. Leland

Clerk



Jameson & Morse, Printers, 14 La Salle Street, Chicago.

# SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

HENRY NIBBE	}	<i>Appeal from Cook County Circuit.</i> <i>Mechanic's Lien.</i>
vs.		
FREDERICK BRAUHN.		

APPELLANT'S POINTS.

## I.

It appears from the statements made in the Petition that the mechanic had not a lien under the statute, for it appears that no time was mentioned within which the work was to be done.

*Cook vs. Heald*, 21 Ill., 425.

*Cook vs. Vreeland*, 21 Ill., 431.

*Senior vs. Brebnor*, 22 Ill., 252.

In the contract as first made, the time of completion was fixed, to wit: June 1st, A. D. 1857. But it seems that soon after the work was commenced, a new contract was made, which provided for a house larger and materially different from the one first contracted for, and Brauhn was to receive one hundred dollars more than the price mentioned in the first contract. What this second or amended contract was, is not stated. But the Petition says, "that nothing was said about the time in which



the house was to be finished." Why was this statement made? To get rid of that provision in the original contract which required, as a condition precedent to payment, that the job should be completed by the 1st June. This was necessary, for if the provision in the original contract as to the time of the completion of the job remained in force, the Petitioner could not recover, for the Petition states that the job was not complete until the 1st of September, 1857.

What does the Petitioner now claim, in view of the recent decisions on this subject? Does he claim that the new contract did not alter the old contract as to the time of completion? Then upon his own showing he cannot recover, for he says he did not complete the work until the 1st of September. The condition precedent was not performed. Does he claim that upon making the new contract he was not bound by the provisions of the old contract as to the time of completion? Then the work was done without any time agreed upon, and he has no lien under the statute.

It does not appear what the proof was on the trial; nor is it important. The proof must follow the allegations in the Petition. If the Petitioner does not set up facts which entitle him to a decree, no amount of proof will entitle him to it.

## II.

The decree professes to give a lien from the eighth day of March, 1857, which is ten days before the contract was made. The lien given by the statute attaches from only the completion of the work.

*Williams vs. Chapman*, 17 Ill., 423.

For this reason also the decree is erroneous.

FARWELL, SMITH & THOMAS,  
*Att'ys for Appellants.*



Supreme Court

Henry Ribbe  
Appellant

vs

Friedrich Brauch  
Appellee

Appellants Points

Filed May 2, 1860  
L. L. Lamer

1292 <sup>clear</sup>

Donnell Smith  
Thomas  
attys



Jameson & Morse, Printers, 14 La Salle Street, Chicago.

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113-  
Supreme Court

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appellant

by  
Friedrich Brauer  
appellee

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appellants (ants)

12922

Filed May 2, 1860

- L. Deland  
clerk

Dornell Smith  
per Thomas  
attorney