

14515

No. _____

Supreme Court of Illinois

North Presbyterian Church

vs.

Jevne et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 75

North

Pres. of

Chancery

1863

Chancery

Chancery

1855

2

And afterwards there was filed
in the office of the Clerk
aforesaid a Certain Publication
Notice and Certificate thereto
attached which are in the
words and figures following
to wit:

State of Illinois
Cook County ss.

(58)

Superior Court of
Chicago. October Term 1861.

Charles Ragling

North Presbyterian Church
of Chicago.. George F Lee &
Wesley Munger

Petition for Mechanics Lien
Affidavit of the non residence
of George F Lee one of the de-
fendants above named. Having
been filed in the office of
the Clerk of said Superior Court

of Chicago. Notice is hereby
given to the said George F.
Lee that the Petitioner filed his
Petition in said Court on the
27th day of September 1861. and
that a Summons was issued
out of said Court against
said defendants, returnable
on the first Monday of
October 1861. as is by law required.

(59) Now, unless you the said
George F Lee shall personally
be and appear before said
Superior Court of Chicago of
Cook County, on the first day
of the term thereof, to be holden
at Chicago in said County
on the first Monday of November
1861 and plead answer and
demur to the said petitioners
petition, the same and the
matters and things therein
charged and stated, will be
taken as Confessed, and a
decree entered against you
according to the prayer of said
petition
Waller Kimball Clerk
Merray Anthony & Co
Compt Solrs.

(60)
This certifies that a notice of
which the annexed slip is a
true copy was published for
four successive weeks, to wit:
twenty four times in the daily
edition of the Chicago Post
a newspaper published in the
City of Chicago and of general
circulation throughout Cook
County and State of Illinois
and that the date of the first
paper containing the same
was the 11th day of October
1861 and that the date of
the last paper containing
the same was the 12th day of
November. A.D. 1861 and that
we have received six dollars
for publishing the same.
Dated Chicago this 12th day
of Nov 1861.

Edw H Sheehan
H A Eastman
Audre Matthews

} Publishers

and afterwards to wit, on
the twenty fifth day of January
in the year AD Eighteen hundred
and Sixty two there was filed
in the office of the Clerk of said
a Certain Stipulation in the
words and figures following
to wit:

Charles Daegling Mechanics Lien
The North Presbyterian
Church of Chicago George
H Lee, & Wesley Manger

(61) It is stipulated and agreed
by and between the parties in this
Case if the testimony is Compelling
that the North Presbyterian Church
paid in Cash to the several
Mechanics Contractors, builders
& material men engaged &
furnishing material and doing
work in the erection of the
Church Edifice in said
Complainants said several
bills mentioned. The aggregate
sum of Twenty six thousand

four Hundred dollars
Scats McAllister & Sewell
Solicitors for Defendants
Henry Anthony & Walt.
Solicitors for Daegling

(62) And afterwards to wit, on the
sixth day of June in the year
aforesaid there was filed in the
office of the clerk aforesaid
a certain other stipulation in
the words and figures following
to wit.

State of Illinois
Cook County ss
Superior Court of
Chicago

Otto Jerne et al
"The North Presbyterian
Church of Chicago et al
Charles Daegling

"
Jerne.

(63) It is hereby stipulated and agreed that the decree and order of Court in said above two cases, which is entered of Record as of the sixth day of January A D 1862, was so entered of that date by mistake of the clerk of said Court. The same having been made and directed to be entered by the Court on the tenth day of February A D 1862.

It is hereby further stipulated and agreed that the said decree and order so entered as aforesaid shall be considered treated and regarded as properly entered on the tenth day of February A D 1862 and that this stipulation shall be entered of record and form a part of the records of,

Said Causes.
Chicago 6th June, 1862

Sanford B Perry atty
for Jerne et al.
Kerrey Anthony & Galt
attys for Daegling
Scates M. Miller & Sewell
Attys for Deft;

(64)

State of Illinois
Cook County ss.

I Thomas B. Carter
Clerk, of the Superior Court of Chicago
within and for said County, and
State aforesaid, do hereby Certify
the above and foregoing to be a
full true and complete Transcript
of all the papers on file, and of
all orders and decrees entered
of Record in said Court in a
Certain Consolidated Case wherein
Otto Levine, Peter M. Almin and
Charles Daegling, were plaintiffs
and The North Presbyterian Church
(65) of Chicago, George Lee & Wesley
Munger defendants.

In testimony whereof I hereunto set
my hand and affix the seal of
said Court at Chicago in said
County, this 7th day of June
A.D. 1862.

Thomas B. Carter
Clerk

Supreme Court of Illinois
Third Grand Division
April Term AD 1863.

(66) And the said North Presbyterian
Church of Chicago, by Scates McAllister
& Jewett, its Counsel, comes &
says that in the Record & proceedings
and in the rendition of the decree in
the above Causes manifested
error hath intervened, and for
special assignment sets forth
and shows the following grounds

First The Court erred in rendering
a decree for the sale of the
Church edifice alone

Second The Court ought to have rendered
a decree for the sale of the lots &
building together - and also for
the division & application of the
proceeds to the members
and to petitioners, in proportion
to their rights

Third The Court erred in rendering
a decree for the petitioners - &
against the plaintiffs in error for
the costs in the said Saeghing's

Case

Fourth The Court erred in refusing to
in pine into the amount paid
on the Materials & Building
& adding that Amount to the
value of the lots in favor of the
incumbrancer in the dis-
tribution of the proceeds of
the whole premises

Fifth The Court erred in rendering
a decree for the petitioners
below.

Wherefore for the
errors aforesaid and other
errors apparent upon the face
of the record & proceedings, the
Said North Presbyterian
Church pray that the said
decree may be reversed,
annulled & for nothing returned
and that it recover its
reasonable costs

Scates McAllister & Jewett
Counsel for Plaintiff in error

And now ~~comes the testimony~~
~~there~~ of the defts herein and
says that in the records & proceedings
aforesaid & in the rendition of judgment
& entry of said decree there is no error.
Henry Anthony & Galt attys for
Defendants

TIME FOR COMMENCING AND FINISHING

The various kinds of work required in building the proposed

Church Edifice

are hereunto appended for the better understanding of each separate contractor; so that each can see what time he or they are allowed to do their portion of the work, in connection with each other, and each contractor or contractors will be separately responsible for the faithful performance of their particular contracts, and liable for the conditions and penalties mentioned therein.

Also, for the various conditions of this time spent, so far as they may be found liable for delays, or want of proper care and attention, as hereinafter provided.

The times stipulated hereafter for finishing the various works are for the entire completion of the building. But the Trustees of Society will expect the basement portion of the building finished so as to allow them to occupy the same on or before Sept 15 1860 if possible

Trustees

Possession of ground.

Owner to give possession of the ground on or before the

day of

and the contractor or

Masonry.

contractors for the Masonry, agrees to build the walls and chimneys, ready for roof, on or before

August 15 1860

and fully complete the plastering

Plastering.

and cornice of the building within *thirty* days after the time stipulated for the carpenters to have the building ready for lathing. And must complete the whole job of masonry, including the setting of all steps, coping, and laying flagging walks, etc., etc., on or before *October 1 1860*

Cut Stone.

Contractors for the Stone Cutting will be strictly held to deliver upon the ground, ready to go into the building, all the stone, of every description, that may be required by the specifications. The cellar and basement on or before *May 31 1860*

And for other partitions of the building as fast as the progress of the masonry may require them. All of which must be delivered at the place of building from time to time, to accommodate the party that is to set them, as far as possible.

And fully complete the delivering of all the stone, of every kind and quality called for by the contract, on or before *July 15 1860*

Carpentry.

The contractors for the Carpenter and Joiner work and materials, will be strictly held to have upon the ground, ready to go into the building at such times as the progress of the other portion of the *building* may require, all lumber, joists, bond timbers, centering for arches, window and door frames, and all other materials necessary, so that in no case the masonry or other portions of *Mechanical work* may not be hindered for want of the same. And must put on and fix a floor of joists *so as to allow the mason to continue work without delay* within *twenty* days after the walls are ready for the timbers, and must put on the roof within *twenty* days after the walls are built up to the required height,

Lay such floors as are required to furrer and partition the *entire building* ready for lathing, within *thirty* days after the walls are made ready for the roof. And must fully complete all portions of the *basement on or before Oct 1 1860* as called for in the specifications and contract for the carpenter and joiner work, *and the main*

audience room together with all parts of the Carpenter and joiner work on or before Nov 1 1860 and further maintain the work so as to allow the painting etc done at the same time

Cast and wrought iron work.

Contractors for the Cast and Wrought Iron Work will be strictly held to deliver all the iron work of each and every kind called for in the specifications and plans for the basement of the building, as the progress of the work may require them, and must fully complete each and every portion called for by the contract, on or before *May 20th 1860* and for the first story on or before *August 15th 1860* For all the other portions of the

Plumbing, gas-fitting, furnace or steam, bells and speaking tubes.

The Contractors for the Plumbing, Gas-fitting, Furnace or Steam-fitting, Bell-hanging, and Speaking Tubes, will each be strictly held to have at the place of building, ready to be put up, all requisite materials, at such times as the progress of the different kinds of mechanical work may require them, so that other portions of the building may not be delayed for want of the same, beyond a reasonable time for putting in their requisite works, as called for in their separate contracts; each of which will be required to work into the times stipulated for the Carpenter, Joiner, and Mason Contractors to finish their contracts. And the plumbing to be completed on or before *Sept 1st 1860*
Gas-fitting " " *" 15 1860*
Furnace or steam on or before *Oct 1st 1860*
Bell-hanging, etc. " "

Painting and glazing.

The Contractors for Painting, Glazing, and such other work as may be included in their contract, must be done as the progress of the building may require it. All priming to be put on close after the joiner work, both outside and inside. The glazing of the windows must be made ready for the building, so as to shut up the same on or before *October 1st 1860* and fully complete

the painting and glazing of all parts of the building on or before Nov 1st 1860

Trustees

In case the ~~Owner~~ *Trustees* should not make contracts for all of the foregoing mechanical works, so as to have all parts work on together, then said ~~Owner~~ *Trustees* must take the responsibility, and provide the requisite deficiency, or hold himself accountable for all delays and damages caused in consequence, to any of the different Contractors, provided, also, that nothing herein contained shall extend the time for finishing the various contracts, beyond the time allowed in this time sheet.

Damages.

Should any of the Contractors feel aggrieved, for the want of proper attention by any of the other contractors to their respective portions of work, they shall report the same to the Superintendent, and prove to him any damage they may have sustained at the time, and such Memorandums or Decisions as the Superintendent may make as to Damages or Delays, shall be binding upon the parties against whom it is alleged, and the amount reserved by the ~~Owner~~ *Trustees* from the contract price of such accused party, and paid over to the injured party, which amount is not to interfere with the damages stipulated for non-fulfillment of contract in point of time, that may be due or recoverable by the ~~Owner~~ *Trustees* from any of the Contractors that may prove to be in default. And in order to secure the execution of the work, in the manner and at the times hereinbefore specified, it is hereby distinctly declared and set forth, that the damages arising from non-fulfillment of any of the separate contracts, as regards time, shall be a fair rent of the premises for each and every day the work remains unfinished at the time or times provided above, which sum of damages shall be deducted from the contract price of the Contractor or Contractors in default, as before stated.

These articles of agreement made and entered into this twenty first day of May A D 1860 between Chas Daegling of first part. Building Contractor of the City of Chicago and the North Presbyterian Church of Chicago by its Trustees, being the party of the second part.

42) Witnesseth that the said Chas Daegling or his executors, Administrators and assigns for and in Consideration of the payment hereinafter to be made to him, does on his part Contract and agree to build, finish and complete in a Careful Skillful and workmanlike manner to the full and complete satisfaction of W Boyington architect and Superintendent and by and at the times mentioned in the foregoing specifications, the entire mason work of a Brick Church Edifice that the said N Pr Church are about to have erected on the corner of Walcott and Ill street, as aforesaid so as fully to carry out the design of said work, as it is set forth in the foregoing Specification and

(43)
The plans and drawings therein
Especially referred to, said Specifications
plans and drawings being hereby
declared part and parcel of this
Contract. And the said North
Presbyterian Church by their trustees
for and in Consideration of the said
Chas Daegling or his legal repre-
sentative furnishing all materials
and fully and faithfully executing
the aforesaid work so as fully
to carry out the design for the
same as set forth by the speci-
fications, and according to the true
spirit meaning and intent thereof,
and to the full and complete sat-
isfaction of W Boyington, ^{architect &} Superintendent
as aforesaid, and at the time
mentioned in the foregoing Specifications
do hereby agree to pay the said
Chas Daegling the sum of Eight
thousand and four Hundred Dollars
\$8400.00

The payments are to be made
as follows. As the work progresses,
the Superintendent is to make out
estimates of the work done and
materials furnished and wrought

in to the building and give
Certificates of eighty five (85) per
Cent of said Estimates which
Certificates are to be paid at
sight. The balance fifteen per
Cent is to be paid at sight
when the Contract is completed
and accepted.

Provided the said Superintendent
shall Certify in writing that he
is entitled thereto.

In Witness whereof the parties
herto have set their hands the
day and year first above written.
Chas Daegling

Wm Wanger.

James B. Haller

Enos Ayres

Henry G. Miller

} Trustees.

And afterwards to wit. on the
same day and year aforesaid
there issued out of the Clerk's
office aforesaid a certain
Summons in the words and
figures following to wit.

State of Illinois
County of Cook ss

The People of the
State of Illinois to the Sheriff of said
County. Greeting.

(445) We Command you
that you summon North Pres-
byterian Church, of Chicago George
F. Lee, and Wesley Munger,
if they shall be found in your
County, personally to be and
appear before the Superior Court
of Chicago, of said County of
Cook, on the first day of the
next term thereof, to be holden
at the Court House in the
City of Chicago, in said County
on the first Monday of October

next, to answer unto Charles
Daigling in his Certain Petition
for Mechanic Lien filed in the
said Court.

And have you then and
then this writ, with an endorse-
ment thereon, in what manner
you shall have executed the
same

Witness Walter Kimball
Clerk of our said Court,
and the seal thereof,
at Chicago, aforesaid
this 27th day of September
A D 1861.

Walter Kimball Clerk

Sheriff's return on said Summons.

Served by reading this writ to the
within named defendant Wesley Mungler
Also served the North Presbyterian
Church of Chicago by reading and
delivering a copy thereof to Walter B
Scates having are the President of the
Board of Trustees of said Church this
27th day of September 1861. The other

Defendant George F Lee not found
in my County
Anthony C. Hering Sheriff
by John A. Nelson Deputy.

And afterwards to wit, on the Seventh
day of October in the year afore-
said the Defendants by their attorneys
filed in the office of the Clerk
aforesaid this Certain Demanded
Petition in the words and figures
following, to wit:

(47)
State of Illinois
Cook County ss

Of the October Term of
the Superior Court of A.D. 1861
Charles Daugling
The North Presbyterian Church
of Chicago & Meloy Minger
impleaded with Geo F Lee.
Bill for
Mechanics
Lien

And the said Defendants The
North Presbyterian Church of Chicago
and Wesley Munger impleaded
&c by Scates McAllister & Sweet
their attorneys come and defend
the wrong and injury when &c
and for plea say actio non
because they say that the said
Petition and the matters and
things therein set forth & alleged
by said plaintiff are not
sufficient in law, and the
said Defendants are not bound
to answer the same.

(48) Wherefore they pray judgment
whether the said plaintiff shall
further prosecute &c & that they
recover Costs.

Scates McAllister & Sweet
Attys for Defs.

And afterwards to wit, on the
Ninth day of October in the year
aforesaid there was filed in the
office of the Clerk aforesaid
a certain affidavit of non
residence in the words and
figures following. to wit:

The Superior Court of Chicago
Of the October Term 1861,

(49)

Charles Daegling

North Presbyterian
Church of Chicago George
F Lee & Wesley Munger

State of Illinois
Cook County ss.

Azariah Thalt
of Chicago in said State & County
being first duly sworn doth
depose and say, that he is one
of the Attorneys for Charles

Daingling. the Petitioner that
George F. Lee one of the said
Defendants, is a now resident
of the State of Illinois and a
President as this deponent is
informed and believes of the State
of Pennsylvania further saith
Not.

Subscribed & Aganah T Galt
sworn to before me
this 9th day of
October 1861.
Walter Kimball Clerk

And afterwards to wit, on the fifteenth
day of November in the year aforesaid
said day being one of the days
of the November Term of said
Court, the following among other
proceedings were had in said
Court and entered of Record
to wit:

Charles Daegling

Mechs Linn

North Presbyterian
Church, George F Lee &
Wesley Munger

This day comes
the said Petitioner by Henry Anthony
& Galt his attorneys and the said
North Presbyterian Church and Wesley
Munger impleaded with George F Lee
defendants in above cause by Scates
McAllister & Smith their attorneys also
come and this cause coming
on to be heard upon the demand
of the said defendants North Presbyterian
(5) Church and Wesley Munger impleaded re
to the petition filed in this cause and
counsel being heard and the Court
being fully advised in the premises
overrules the demand finding the
petition sufficient the demand
not being a sufficient answer thereto.

And afterwards to wit on the
Sixth day of December in the year
aforesaid there was filed in the
office of the Clerk aforesaid
a certain answer in the words
and figures following to wit:

(52) The joint and several answer
of the North Presbyterian Church
of Chicago, Wesley Munger
and George F. Lee to the Petition
of Charles Dargling for a
Mechanics Lien -

These defendants saving and
reserving to themselves all, and all
manner of Exceptions to the manifold
errors and inconsistencies in the
Petition contained, for answer therunto,
or to so much thereof as is ma-
terial for them to answer unto,
answering say that True it is
that the North Presbyterian Church
of Chicago entered into the Contract

with the said Petitioner as such mechanics to perform the works and furnish the materials as set forth in the Petition, and that the said Petitioners performed and fulfilled the said Contract on their part.

(53) These respondents further answering state that the amount claimed by the said Petitioner remains due and unpaid. They further state that the said Church being owner of the lots five and six in block twelve in King's Addition to the City of Chicago, and desiring to erect a new Church edifice on lots five and six in Block sixteen in said addition belonging to or claimed by James Johnston Jr. the said Church agreed to make an Exchange of said lots with said Johnston - and in order to enable the said Church to build and erect such new Church edifice, it became and was necessary to borrow the sum of twelve thousand dollars.

Respondent further states that the Church was unable upon

its own Credit to borrow such sum, without the individual liability of the said defendant Munger and others.

(54) Respondents further state that it was then agreed by and between the said Church and the said Respondent Munger and others that the title of the said lots five and six in Block Sixteen aforesaid, should be conveyed to them or either of them, to enable them to mortgage the said lots to secure the payment of such loan of twelve thousand dollars. And they say that in pursuance of said agreement the title was conveyed to W. Munger by a trustee, who sold the said premises under a deed of trust on default in payment of interest due.

Respondents further aver and show that the said defendant Munger and others in pursuance of said agreement with the defendant the North Presbyterian Church, made a loan of the

respondent Lee of twelve thousand dollars for five years at ten per cent per annum interest, which said said sum was paid over to the said Church and by said Church paid out to workmen and Contractors on said Church edifice together with other large sums of money raised by subscription for that purpose, including this Complainant who received the greater part of the amount due him under his said Contract.

(55) Respondents further say that the said Defendant Munger with E. J. Madsen and C. H. McCormick the others upon whose Credit the loan was made executed a Mortgage on said lots to the said Defendant Lee dated the 1st of May or June 1880 to secure the payment of said loan of twelve thousand dollars and interest - which is now a subsisting, valid and prior incumbrance on said lots.

(56)

Respondents state to the Court that large sums of money to wit: on or about the aggregate sum of twenty thousand dollars was raised was raised by said Church by means of said loan from defendant Lee, and said Subscriptions, and paid to the Contractors who engaged to erect said Church edifice including Complainant, and they submit that the value of payments so made by and out of the very money loaned by said defendant Lee and said Subscriptions ought to be added to the value of said lots and secured to said Lee in case this Hon Court should be of opinion that Complainant has a right to a Mechanic's Lien upon said premises.

And these defendants having fully answered pray to be dismissed hence with their reasonable costs &c without this that there is any matter or thing

W B Scates of ^{cc} Solicitors for defendants.
counsel

W B Scates Treasurer of the North
Presbyterian Church of Chicago &
Wesley Manger. being first duly
sworn depose and say that
they have read the foregoing
answer, and are acquainted
with the contents of the same.
and that they believe the facts
therein set forth are true
and further say not.

W B Scates.

Wesley Manger

Subscribed and
sworn to before me
this 18th day of
November 1861.

Obadiah Jackson Jr.

Notary Public

(57)
(seal)
It is hereby stipulated and
agreed by Complainant to waive
a sworn answer by Geo F Lee
Hervey Anthony & Galb
Solicitors for Petitioner

The Clerk will make the list of work in this
 case a Repetitious band being paid acc-
 ording to law in the sum of two thousand
 dollars with Elisha S. Wadsworth & Sarah Brose Secrecy
 July 16. 1862 Sidney Preser

127
 Clerk of, 75

Almon's shal

N. S. Church
 shal

Township

Free July 28 1862

of the
 Clerk

Free 14.70

Cash 50

15.20

Paid by Indigent

S. A. Barker Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Sixth day of January in the year of our Lord One Thousand Eight Hundred and Sixty and Sixty and of the Independence of the United States of America the Eighty Ninth

Present, The Honorable John McWilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins and Judges.

Grant Gordonick

Charles Haven Prosecuting Attorney.

Arthur C. Waring Sheriff of Cook County.

Attest, W. B. Carter Clerk.

1) It is remembered that herefor
to wit on the Twelfth day of August in the year
of our Lord One thousand Eight Hundred and
Sixty one. Otto Jerve and Peter McAlmuni
by Sanford B. Perry their Attorney filed in the
office of the Clerk of the Superior Court of Chicago
this Certain Petition in words and figures following
to wit

State of Illinois }
Cook County }

Superior Court of Chancery
September Term A.D. 1861

Otto Jerne &
Peter McAlmini }

^{vs}
The North Presbyterian
Church of Chicago }

Petition for Quick Sale

To the Hon the Judges of
Said Court

(2)

Your Petitioners Otto Jerne and
Peter McAlmini, of the County of Cook, Co-
partners in business under the name and style of
Jerne & Almini respectfully represent:

That on or about the first day of
December A.D. 1860, The North Presbyterian Church
of Chicago, of said County, a Religious Society
duly incorporated, was the owner of Certain tracts
or parcels of land situated in Chicago, in said
County of Cook, described as follows, viz, Lots
five (5) and six (6) in Block Seventh (7) in King's
Addition to Chicago which said two lots of land were
and are used and occupied by said defendant as
one lot of land for Church or Religious purposes.

That Your petitioners at said time, to
wit, on the first day of December A.D. 1860 Contracted
and agreed with said defendant, the owner of said
lots of land to do, and perform Certain work and

labor upon a Catholic building or Church edifice which
said defendant was then constructing upon said
lots of land which work was to be done on the inside
of said building and was as follows, to wit, to force
the Recess, to Color the Ceiling and to Color the Walls
and Block off the same: That in and by the said
Contract, Your petitioners agreed to do and perform
said work and labor, within a reasonable time
thereafter, and as soon as it could be conveniently
done, to the satisfaction of William W. Doughton
the Architect and Superintendent of said building
employed by said defendant

(3) That the said defendant promised
and agreed to pay Your petitioners for the work and
labor aforesaid, to be done and performed by
them, the sum of Three hundred dollars; and to
pay the same in the manner and at the times
following to wit: the sum of one hundred and
fifty dollars, one half thereof in Cash, when
said work and labor should be completed by
Your petitioners; and the sum of one hundred and
fifty dollars, the other half thereof, in three months
from the time when said work and labor should
be so completed as aforesaid

And Your petitioners aver that
they did and performed the work and labor
aforesaid, within a proper and reasonable time
and in a proper and workmanlike manner, and
that the same was so done & completed, and

accepted by the said Jointure Superintendent
and Architect, on the second day of February
A.D. 1861 as per his Certificate a Copy of which
is as follows

Chicago Feb 2 1861
North Park Church
To the Jointure Superintendent
of the North Park Church
of Chicago
\$300 -

And Your petitioners further aver that by the terms
of said Contract and the Completion of said
work and labor, the said defendant became liable
to pay to Your petitioners the sum of \$150 on the
second day of February A.D. 1861, and the
further sum of \$150 on the second day of May
A.D. 1861

And Your petitioners further say that
the defendant has paid them the sum first due
that is, the Amount due on the 2nd day of
February A.D. 1861

And Your petitioners further aver that
it appears from the Records of deeds and Mortgages
in said Cook County that one George F. Lee holds a
Mortgage lien upon lots of land above described by
virtue of a mortgage which purports to have been
executed to him on the 3rd day of July A.D. 1860.
but Your petitioners aver that the said Lee has no
lien upon said premises or the improvements thereon

(4)
And Your petitioners further say that the defendant has not paid them the sum of \$150 on the 2nd day of February A.D. 1861 nor any part thereof although they requested which sum is now wholly & justly due from defendant

(5)
as against Your Petitioners

* Whereupon Your Petitioners say
that by means of said premises, and by force
of the Statute in such Cases made and provided,
they have, and ought to have a lien upon the
land above described, and upon the buildings
erected thereon, and the appurtenances thereto, as
security for the payment of their said claim

* And they therefore pray judgment
against the said North Presbyterian Church of Chicago
for their said claim and demand and costs of
suit, and that their said claim may be decreed
to be a lien upon the premises aforesaid and that
a sale of said premises may be ordered by the
Court according to the provisions of the Statute in
such Cases made and provided, and the proceeds
thereof applied to the payment of Your Petitioners
said claim and the costs of this suit, and for
such other and further relief as the Court shall
deem fit and proper to grant.

And Your Petitioners further pray
that the said North Presbyterian Church of
Chicago and the said George H. Lee and Wesley
Munger may be duly summoned to answer
the Petition

Samuel O. Perry
Sol for Petitioners

* And Your Petitioners further say that they are informed that one Wesley Munger claims to have
some interest in the land and premises above mentioned, but Your Petitioners deny that
said Munger has any interest in said premises (or that he has any interest of any kind in the
the same) and that for the use and benefit of said North Presbyterian Church of Chicago

3
State of Illinois }
Cook County } p

Peter Mc Almini on oath deposes
and says that he is one of the petitioners above
named. That he has read the above petition and
that the same is true of his own knowledge except
such matters as are stated in information & as to those
he believes it to be true

Peter Mc Almini

{ Subscribed & sworn to before me
This 12th day of August A.D.
1861 Walter Kimball Clerk

(6)

And on the twelfth day of August in the year aforesaid
And afterwards to wit, then opened out of the office
of the Clerk aforesaid the People's writ of summons
which with the Sheriff's return thereto endorsed is
in words and figures following to wit

State of Illinois }
County of Cook } p

The People of the State of Illinois
To the Sheriff of Said County - Greeting:

We Command You that You summon the
North Presbyterian Church of Chicago. George
N Lee and Wesley Menger. if they shall be found
in Your County. personally to be and appear before
the Superior Court of Chicago of Said Cook County, on
the first day of the next term thereof, to be holden

at the Court House in Chicago in said Cook County
on the first Monday of September next to answer
unto Otto Jerne & Peter M Almini in their Certain
Petition for Writs of Habeas Corpus filed in said Court
And have you then this writ with an endorsement
thereon in what manner you shall have executed the
same

C
H
L

Witness Walter Kimball Clerk of said
said Court and the Seal thereof at Chicago
afore said, this 12th day of August A.D. 1861
Walter Kimball
Clerk

The within named defendants not found in my County
this 21st day of Aug^r 1861

Anthony C. Strong Sheriff
by John A. Nelson Deputy

(7)
And afterwards to wit on the second day of
September in the Year aforesaid there issued out
of the office of the Clerk aforesaid a Certain
Writ. which said Writ with the Sheriff return
thereon endorsed is in words and figures following to wit

State of Illinois
County of Cook

The People of the State of Illinois
To the Sheriff of said County - Greeting:
We Command You, as we have before Comanded
You, that you summon The North Presbyterian Church

of Chicago. George H Lee. and Wesley Prunger
of they shall be found in your County, personally
to be and appear before the Superior Court of Chicago
of said Cook County, on the first day of the next
term thereof to be holden at the Court House in Chicago
in said Cook County, on the first Monday of October
next to answer unto Otto Jerome and Peter
McAlmuni in their Cautious Petition for Reformation
Served filed in said Court

And have you there this writ with an endorsement
therein in what manner you shall have
executed the same

Witness Walter Kimball Clerk
of said Court and the seal thereof
at Chicago aforesaid this second day
of September A.D. 1861
Walter Kimball

Attest

Served by reading this writ to the within named defend-
ant Wesley Prunger this 9th day of September 1861
and the North Presbyterian Church of Chicago by reading
and delivering a Copy thereof to Walter B. Seate
some one the President of the Board of Trustees and
Treasurer of the said North Presbyterian Church
of Chicago - the 10th day of September 1861. the
said Defendant not found in my County

Anthony Obering Sheriff
by John A Nelson Deputy

(8)

And afterwards to wit on the Tenth day of
September in the Year aforesaid. Peter M.
Alumini filed in the office of the Clerk aforesaid
his Oath and affidavit of Non residence in words
and figures following to wit:

State of Illinois }
Cook County }
Superior Court of Chicago
Otto Jevne et al
v
The North West Church
of Chicago et al } Pet Much Lien

(9)
Peter M. Alumini one
of Said Petitioners, on oath deposes and says
that George H. Sw. as he is informed is not a
resident of Said State, but is a resident of Phila-
delphia in the State of Pennsylvania, that the
Sheriff of Said County has been unable to find
said Sw. to serve upon him the summons issued
in said Case

Peter M. Alumini
Subscribed & Sworn to
before me this 10th day
of September A.D. 1861
Walter Kimball
Clerk

And afterwards to wit on the Seventh day
of September in the Year aforesaid - The Defendants

5

by Scates McAllister & Jewett their attorneys
filed herein this Certain Demurrer in
words and figures following to wit:

State of Illinois }
Cook County } p

Of the September Term of the
Superior Court of Chicago, A.D. 1861

North Presbyterian Church }
of Chicago et al } Mechanics Lien
v }
O'Jerve et al }

(10)

And the said
Defendant the North Presbyterian Church of
Chicago, and Wesleyan Manager defendants
impleaded &c by Scates McAllister & Jewett
their Attorney Come and defend the wrong
& injury when &c And say that the said plain-
tiff their said actions to have and maintain
ought not because they say that the said
petition and the matters & things therein alleged
& set forth are not sufficient in law and that
these defendants are not bound to answer the same
wherefore they pray judgment &c

Scates McAllister & Jewett
Attys for Defs

And afterwards to wit on the fourth day of November
in the Year aforesaid The Complainants or Plaintiffs
in the Case by Sanford O'Perry their Solicitor

filed herein a Certain Publication Notice and
Certificate in words and figures following to wit,

Notice

State of Illinois
County of Cook SS

Superior Court of Chicago
September Term 1861

Otto Jerns and Peter M Almini }
The North Presbyterian Church } Petition for
of Chicago - George R Lu and } Mechanics
Truly Manager } Lien

(11)
Affidavit of the
now residence of George R Lu one of the defendants
above named having been filed in the office of
the Clerk of said Superior Court of Chicago.
Notice is hereby given to the said George R Lu that
the petitioner filed this petition for Mechanics Lien
in said Court on the 13th day of August 1861
and that a summons thereupon issued out of said
Court against said defendant returnable on the
first Monday of September (1861) as by law required
And afterwards an alias summons issued out
of said Court against said defendant returnable
on the first Monday of October 1861

Now therefore, unless you the said George
R Lu shall personally be and appear before said
Superior Court of Chicago of Cook County on the
first day of the next term thereof to be holden at
Chicago in said County on the first Monday of October

4

1861 and plead Answer or Demurr to the said
petitioners Petition. The same and the matters and
things therein charged and stated will be taken
as confessed, and a decree entered against you
according to the prayer of said petition.
Walter Kimball Clerk
Samford B Perry Comptroller

L10-28t

(12)
This is to Certify. That the grouped notice was
published in the Chicago Journal, a public
newspaper printed in the City of Chicago
County of Cook and State of Illinois 30 times
to wit. for five successive weeks, as follows:

The first insertion on the 10th day
of September 1861 in Vol 20 no 208 &
the last insertion on the 10th day of October
A D 1861 of said paper

Dated at Chicago Nov 1861
John S Wilson

Publisher Chicago Evening
Journal
by J. H. W.

And afterwards to wit on the tenth day of
January A D 1862 the Defendants
by their Counsel & Agents have attorney filed
herein their Certain Answer in words and
figures following to wit,

9

The joint and several answer of the North
Presbyterian Church of Chicago - Wesley Mun-
ger, Cyrus H. McCormick, Elisha S. Wadsworth,
and George F. Lee. to the Petition of Otto Leone
and Peter M. Almini for a Mechanic's Lien.

Otto Leone
& Peter Almini

vs
N. Presbyterian Church
W. Munger, C. H. McCormick,
E. S. Wadsworth &
George F. Lee

(13)

These defendants saving and
reserving to themselves all, and all manner of excep-
tions to the manifold errors and inconsistencies the
Petition contained for answer thereunto, or to so
much thereof as is material for them to answer unto,
answering say that true it is that the North
Presbyterian Church of Chicago entered into the
contract with the said petitioners as such mechanics
to perform the work and find the materials as
set forth in the petition and that the said petition-
ers performed and fulfilled the said contract on
their part -

These respondents further answering
state that the amount claimed by the said
petitioners remains due and unpaid. They further
state that the said Church, being owner of the

Lots five and six in Block twelve in King's addition to the City of Chicago, and desiring to erect a new Church edifice on lots five and six in Block 16 in said addition belonging or claimed by Wm D. Johnston Jr - the said church agreed to exchange said lots with said Johnston - and in order to enable the said church to build and erect such Church edifice, it became and was necessary to borrow the sum of twelve thousand dollars.

Respondents further state that the Church was unable upon its own credit to borrow the said sum - without the individual liability of the said defendants Munger with E. S. Wadsworth and C. C. McCormick.

(14) Respondents further state that it was then agreed by and between the said Church and the said McCormick, Munger and Wadsworth, that the title of the Lots five and six in Block sixteen aforesaid should be conveyed to them or either of them, to enable them to mortgage the said lots to secure the payments of such loan of twelve thousand dollars - and they say that in pursuance of said agreement the title was conveyed to W. Munger by a Trustee who sold the said premises under a deed of Trust on default in payment of interest due.

Respondents further aver and show that the said Munger, Wadsworth and Mc

McCormick in pursuance of said agreement with the defendant The North Presbyterian Church made a loan of the respondent Lee of twelve thousand dollars for five years at ten per cent per annum interest, which said sum was paid over to the said church and by said church paid out to workmen and contractors on said church edifice together with other large sums of money raised by subscription for that purpose including these complainants - who received the greater part of the amount due them under their said contract.

(15)

Respondents further say that the said Munger Wadsworth and McCormick executed a mortgage on the said Lot to the said defendant Lee, dated the day of May or June 1860 to secure the payment of said loan of twelve thousand dollars and interest - which is now a subsisting valid and prior incumbrance on said lot.

Respondents state to the court that large sums of money, to wit - on or about the aggregate sum of twenty thousand dollars was raised by said church by means of said loan from defendant Lee, and said subscriptions - and paid to the contractors who agreed to erect said church edifice, including complainants and they submit that the value of said payments so made by and out of the very money loaned by said defendant Lee, and said subscription ought to be added to the value of said Lot and secured to the

said Lee in case this Hon^{ble} Court should be of opinion that complainants have a right to a Mechanics lien upon said premises.

And these defendants having fully answered &c pray to be dismissed with their reasonable costs &c

Scates, McAllister & Jewett
Solicitors for Defendants.

W B Scates
of counsel.

W. B. Scates Treasurer of the North Presbyterian Church of Chicago, & Wesley Munger.

being first duly sworn depose and say that they have read the foregoing answer and are acquainted with the same - and that they believe the matters therein contained are true & further say not

W. B. Scates
Wesley Munger

(16)
Subscribed & sworn
to before me this 18th
day of November A.D. 1861

Obadiah Jackson Jr
Notary Public.

It is stipulated by Petitioners to waive a sworn answer by George F Lee.

Solicitor for Petitioners.

And afterwards, to wit: on the 6th day of
January A.D. 1862. this day being one of
the Days of the Day Term of said Court
the following among other proceedings
were had and entered of record in said
Court's books:

(17) Charles Daegling
^{or} Decree in Mech. Lien
North Presbyterian Church of Chicago
Wm. Mangler ^{vs} George F. Lee
The Court ^{and} Peter M. Almini

^{or} Decree
The North Presbyterian Church of Chicago
Wm. Mangler ^{vs} George F. Lee

The said cause of Charles Daegling
as the said Defendants being called for
trial came on to be heard on the Sixth day
of January A.D. 1862. by the Court a
Duty having been raised, upon the petition
and answer filed herein, and the proofs
offered and submitted the petitioner ap-
pearing by his solicitors Horsey, Anthony
& Galt. And the defendants appearing by their
solicitors, Scates, McAllister & Smith.
And it appearing that the said petitioner

(18)
Charles Daughling has a just and valid claim
against the said North Presbyterian Church of
Chicago, as alleged in his said petition to the
amount of Seven hundred and thirty eight
dollars and ninety seven cents for work and
labor by him done and performed at the request
of the said North Presbyterian Church of Chi-
cago upon a certain building or church edifice
then being erected by the said North Presbyterian
Church of Chicago upon Lots five and six in
Block Sixteen in Kinzie's Addition to Chicago,
which said sum of money was due and pay-
able at the time of filing his said petition
herein, and the said cause of Otto Jerne
and Peter W. Almini being called for trial
came on to be heard on the seventh day
of February A.D. 1862. by the Court,
a jury being impaneled upon the petition and
answer filed herein, and the proof offered
and submitted the Petitioners appearing
by their Solicitors Sanford S. Perry and
the Defendants appearing by their Solicitors
Staten, McMiller & Denck.

And it appearing that the Petitioners Otto
Jerne et al have a just and valid claim
against the said North Presbyterian Church
of Chicago as alleged in their petition to the
amount of One hundred and fifty dollars
for work and labor by them done and performed
at the request of the said North Presbyterian

Church of Chicago, upon a certain building
or church edifice then being erected by the
said North Presbyterian Church of Chicago
upon lots five and six in Block sixteen in
Kings addition to Chicago. which said last
sum of money was due and payable at the
time of filing their said petition herein:
And the said Court on motion of the said
Defendants ordered the said Charles Daegling
to be made a party to the proceeding of the said
Otto Jorne and Peter M Almini as the said
Defendants and that a joint decree be entered
against the said defendants for the sum so
found to be due as aforesaid to the said
Charles Daegling and to the said Otto Jorne
and Almini:

(19)

And it appearing further to the said Court
that the record title to said premises stand
in said Wesley Munger, and that the whole
consideration and purchase money therefor
was paid by the said North Presbyterian
Church of Chicago for whose use and
benefit the said lots of land were purchased
and are held, and that said North Presbyterian
Church of Chicago at the time the contracts of
said Daegling & Jorne & Almini for said work
and labor and material were made was and
now is the owner of said lots of land: the
said work and labor and material was done
and performed with the knowledge and consent

of the said Wesley Munger, who was one of the Corporate members of said Church; and that said several sums of money are a first and proper lien upon said building, and upon the interest of said North Presbyterian Church of Chicago and said Wesley Munger in said two Lots of land:

And it further appearing that said Wesley Munger by a Mortgage deed duly executed & delivered dated 3^d July A.D. 1860. Conveyed said two lots of land in Mortgage to said George D. Lee, by the consent and at the request of said North Presbyterian Church of Chicago to secure the payment of Three Thousand Dollars borrowed of said Lee for the use of said North Presbyterian Church of Chicago, which mortgage was executed and delivered before the erection of the said building on said premises, and before the making of the contracts for the labor, work and materials of the said several petitioners.

It is therefore ordered, adjudged & decreed that said petitioners have judgment against the said North Presbyterian Church of Chicago for the sum of Eight Hundred and Eighty eight Dollars and ninety seven cents said sum of being made up of the two several sums of One hundred and fifty dollars found to be due the said Otto Dodge & Peter M. Almini, and the sum of Seven hundred and thirty eight

Dollars and ninety seven cents as their damages.
And that said North Presbyterian Church of
Chicago pay the costs in the proceeding in the
case of Charles Daubing vs the said defendants
and the case of C. H. Devens et al vs the said
defendants, and the costs of this proceeding.
Since the order of the Court consolidating the
said two suits, and that the petitioners have
execution therefor. And that the said judgment
of Eight hundred and eighty eight Dollars
and ninety seven cents be and stand as a
first lien upon the building and Church edifice
erected and being upon said two lots of land
(21) and also upon the said two lots of land to the
extent of the interest and equity of redemption
of the said North Presbyterian Church of Chicago
and said Wesley Munger therein, subject however
to the Mortgage executed by said Munger
to said Lee, which is hereby declared to be
a first lien on said Lots exclusive of the
buildings thereon and is hereby established
and protected as such first lien.

And it is further ordered, adjudged and
decreed, that unless the said defendants, the
North Presbyterian Church of Chicago
shall within One hundred and twenty days
from the entering of this Decree of record
pay to the said petitioners the judgment herein
decree and entered, the said building and
Church edifice erected and standing on said

(22)
lots of land, all the interest and equity of
redemption of the said North Presbyterian Church
of Chicago, and of the said Wesley Munger
as aforesaid in and to the ~~the~~ said two lots of
land be sold to satisfy said judgment, and
that said petitioners have special execution
therefor against said premises for the sale
thereof, and the proceeds of such sale be
paid into Court subject to the further order
thereof, to be distributed according to law
among and between the said petitioners
And it is further ordered, adjudged and
decree, that if the proceeds of such sale
which under any future order of this Court
may come to the hands of the petitioners, shall
not be sufficient to pay and satisfy said
judgment: that then an execution shall issue
in favor of said petitioners against the said
North Presbyterian Church of Chicago for
the amount of said judgment with a credit
of the amount actually received from the
proceeds of said sale.

And afterwards to wit on the Tenth day of
January in the Year of our Lord One Thousand
Eight hundred and Sixty two the Complainants
filed herein this Counter Replication in words
and figures following to wit

In Chancery In the Superior Court of Chicago
January Term A.D. 1862
The Replication of Otto Jerno and Peter Malinski
Complainants to the writ & several answers of
The South Presbyterian Church George P. Lee
Wesley Springer et als

(23)

Then Replicants saying
and averring to themselves, all and all manner
of advantage of captions, which may be had
and refer to the manifold errors, inaccuracies and
insufficiencies of the answer of the said defendants
for replicating thereto. First, that they do, and
will ever maintain, and prove this said Bill to be
true certain and sufficient in the law to be answered
unto by the said defendant, and that the answer
of the said defendants is very inaccurate and
insufficient in the law, to be replied unto by the
replicants, without this that that any other matter
or thing in the said answer contained material or
effectual in the law to be replied unto, and not
herein and hereby fully and sufficiently replied unto
excepted, or avoided, traversed, or denied, is true
all which matters and things these replicants
do hereby do aver maintain and prove as this

Honorable Court shall direct, and humbly
pray, as in and by the said Bill thereunto
already prayed

Samuel D. Perry
Comptroller

And afterwards to wit on the twenty fifth day
of January in the year aforesaid, there was
filed in the office of the Clerk aforesaid a certain
Statement. in words and figures as follows,
to wit,

(24)

Superior Court of Chicago
January Term 1862

Otto Jerome et al
vs.
North Presbyterian Church
of Chicago et als. } Petⁿ for Mech Lien

(25) I hereby agree that the defendants
have witnesses in Court who would swear if the
testimony is competent for any purpose, that
the North Presbyterian Church of Chicago, one of
the defendants herein, paid in cash to the several
Mechanics, Contractors, builders, & material men
engaged & furnishing materials and doing work
in the erection of the Church Edifice in said
Complainant's said bill or petition mentioned,
the aggregate sum of Twenty six thousand and
four hundred dollars.

Samford B. Perry.
Atty Sol for Petitioners

I reserve the right to object to the Competency
of the above

Samford B. Perry
Atty Sol for Petⁿ

Seaton McAllister & Jewett Solicitors
for Defendants.

And afterwards, to wit on the 7th day of Feb
ruary in the year of our Lord A.D. 1862, said
day being one of the days of the Jan'y Term
of said Court, the following among other
proceedings were had entered of record upon
Court, to wit:

Of the Court And
Peter M. Almini

^{or} Petition in Mch's Lien
The North Presbyterian
Church of Chicago
George S. Duvalley Manager

(26)
This day comes said Plaintiffs by
Stanford C. Perry their attorney and the
said Defendants by Scates McAllister &
Demest their attorneys also come, and the
cause coming on now to be heard upon the de-
murrer to the petition filed by said De-
fendants, and counsel being heard thereon and
the Court being fully advised in the premises
finds the petition sufficient, the demurrer is
therefore hereby overruled, and the cause being
heard upon the petition, answer thereto replication to
answer and proof, by agreement the cause is
now submitted to the Court for trial and
to be heard under advisement of the Court.

The Superior Court of Chicago
Of the October Term, 1861
To the Honorable, the Chief Justice and
Justices of the Superior Court of Chicago

Your Petitioner Charles Daegling
would respectfully represent unto
your Honors that he is a Mechanic,
to wit: a house builder and mason
living in the City of Chicago, in the
County of Cook and State of Illinois.

(27)
Your Petitioner would further
represent unto your Honors that
on the twenty-first day of May A.D.
1860 the North Presbyterian Church
of Chicago, a religious Corporation,
existing under and by virtue of the
laws of the State of Illinois, was the
owner of lots five (5) and six (6) in
Block Sixteen (16) in King's Addition
to Chicago, and that the said two
lots were used by the said Church
for the purpose of erecting a Church
upon the same, as one lot.

Your Petitioner would further
represent unto your Honors that on
the said twenty-first day of May
A.D. 1860 he made an agreement in

(28)

writing with the said North Presbyterian Church of Chicago, in and by which said agreement your Petitioner agreed, for and in Consideration of certain sums of money to be paid him by the said North Presbyterian Church of Chicago, in said agreement mentioned, to build finish and complete in a Careful, Skillful and Workmanlike manner, to the full and complete satisfaction of Mr Boyington, Architect and Superintendant and by and at the times mentioned in the specification attached to the said agreement, the entire Mason work of a Brick Church edifice, that the said North Presbyterian Church were about to erect on the Corner of Wolcott and Illinois Streets in the City of Chicago and which by a subsequent change of plan was erected on the said lots five (5) and six (6) on the Corner of Cap and Indiana Streets above mentioned, and that the said Mason work was to carry out the design as is set forth in the said Specification attached to the said agreement and the plans and drawings

therein specially referred to which were made a part of the said agreement.

(29) Your Petitioner would further represent that the said North Presbyterian Church, in and by said agreement, agreed, in consideration that your Petitioner would perform the work hereinbefore mentioned, to pay your Petitioner the sum of Eight thousand four hundred Dollars in the manner following, as the work progressed. The Superintendent was to make out estimates of the work done and materials furnished and unsought into the building and give Certificates of eighty five per cent of said estimates, which Certificates were to be paid at sight - the balance of fifteen per cent was to be paid at sight when the Contract should be completed and accepted - provided the said Superintendent should certify in writing that your Petitioner was entitled thereto - which said agreement and the specification thereto attached is annexed to this Petition Marked Exhibit "A" which your

Petitioner prays may be taken as a part of this his Petition.

Your Petitioner would further represent unto your Honors, that after the Execution of said agreement by your petitioner and the said Church and before the time mentioned for the Completion of said Church, to wit. on the same day and year aforesaid. your Petitioner entered upon the performance of the said agreement and did then and there proceed to furnish the materials and build and erect the entire Mason work of the Brick Church Edifice on the said premises to wit: lots five and six in Block Sixteen King's Addition to Chicago, of the dimension, fashion, Construction, Materials and finish in all respects as mentioned and described in the said agreements in writing and the specifications thereto annexed and the plans therein referred to, to the full and entire Satisfaction of the said Mr. Boyington the Architect and Superintendent of the said building.

Your Petitioner would further

represent unto your Honors.
that by the Specification annexed
to and made a part of the said
agreement, your Petitioner was required
to finish the whole of said job of
Masonry on or before the first of
October 1860, but by a subsequent
agreement the time for the completion
of said Mason work was extended
and your Petitioner finished the
said Mason work within the Extended
time and within one year from the
Commencement of the said work -
(31) and that the said Superintendent Mr
H Boyington on the part of the said
North Presbyterian Church approved
and accepted the said Mason work
so done by your Petitioner for the
said North Presbyterian Church.

And your Petitioner would further
represent unto your Honors that
there is a balance due your
Petitioner from the said North
Presbyterian Church for the said
Mason work so done by your
Petitioner as aforesaid for the
said North Presbyterian Church,
amounting to the sum of Seven

Hundred and five dollars and
seventeen Cents, which the said
Superintendent W. Boyington has Certified
in writing to be due your Petitioner
for labor and Materials furnished
the said North Presbyterian Church
for the erection of their said Church
edifice, which said labor was performed
upon and the Materials furnished
for and put in and upon the said
Church Edifice erected upon the
aforesaid lots by the said North
Presbyterian Church, -

(32) And your Petitioner further
shows that the said North Presbyterian
Church of Chicago, although often
requested so to do, has not paid
to your petitioner the said sum of
Seven Hundred and five dollars
and seventeen Cents so due to your
Petitioner as aforesaid, or any
part thereof, but on the contrary
thereof has neglected and refused
to pay the same, and the same
remains due and unpaid -

Wherefore your Petitioner prays
judgment against the said
North Presbyterian Church of Chicago

for the said sum of Seven Hundred
and five dollars and five cents
so due your petitioner as aforesaid
with interest from the date when
the said Superintendent Certified in
writing the said amount to be due
your Petitioner and that the said
judgment may be a lien upon
the said lots hereinbefore described
with the Church Edifice thereon
erected, pursuant to the Statute
in such Case made and provided,
and for such other and further
relief as to your Honors shall seem
meet.

33
And your Petitioner would
further represent that one George
F Lee claims to have an interest
in said lots above described as
Mortgage under a Mortgage made
by said North Presbyterian Church
on the third day of July 1860,
but your Petitioner avers that what
ever interest the said Lee has in the
said lots, does not effect your
Petitioner's right to a lien on the
said Church Edifice and the
interest of the said Church in the

said lots. And your Petitioner prays that the said George F Lee may be made a party defendant to this Petition.

And your Petitioner would further represent that Wesley Munger claims to have some interest in said lots. of the Extent and Character of the said Mungers Claim. your Petitioner is not fully informed. and prays that the said Wesley Munger may be made a party defendant to this Petition.

34 May it please your Honors & grant unto your Petitioner the writ of Subpoena issuing out of and under the seal of this Honorable Court to be directed to the said North Presbyterian Church of Chicago George F Lee and Wesley Munger Commanding them and each of them. by a certain day and under a certain penalty therein to be inserted to be and appear before this Honorable Court and show and there to answer the premises and further to stand to and abide by such order

therein as your Honors shall direct.

And your Petitioner shall ever pray &c

Chas Daegling

Kerry Anthony &
Galt! Solicitors for
Petitioner.

State of Illinois

35 Cook County ss

On this 24th day of September 1861 before me personally appeared the above named Charles Daegling and made oath that he has read the above Petition subscribed by him and knows the Contents thereof and that the same is true of his own knowledge. Except as to the matters which are therein stated to be on his information or belief, and as to those matters, he believes it to be true.

Walter Kimball

Clerk

Exhibit. A

Specifications,

Of the Materials and Works necessary in *building a new*
Brick Church Edifice that the Society of the
North Presbyterian Church are about to have built
on the Corner of Wolcott & Illinois Sts.
According to the accompanying Plans, Elevations, Sections and detailed Drawings, as furnished by
WM. W. BOYINGTON, Architect.

These Plans, etc., referred to herein, consist of the following drawings, viz:—

Plan of Cellar and Foundations,

“ “ Basement,

“ “ Principal Story,

“ “ Second “

“ “ ~~Third~~ “

“ “ ~~Fourth~~ “

“ “ ~~Fifth~~ “

“ “ ~~Sixth~~ “

Attic and Roof

Elevation of Principal Front,

Elevation, *opposite*

Longitudinal Section,

Transverse Section,

36
The drawings, and such writing, Interlineations, Figures and Details, as may be upon them, are to be considered a part of, and as illustrating these specifications. In the Plans, *Blue* designates Stone; *Red*, Brick; *Yellow*, Wood; which is to be the standing guide for the different contractors to execute from. Contractors are requested and expected to carefully examine the contents of these Specifications, the *printed* portion as well as the *written*, as *every word* of the printed is to remain in full force, unless it is erased.

DUTIES OF CONTRACTOR: He shall be held strictly to execute such *Work*, and to use such *Materials* as hereinafter described, and in all cases where the drawings are figured, the figures must be taken by him as the given dimensions, without reference to what they may measure according to the scale. He will be further held to submit as to the character of the *Materials* used, and the *Work* done, to the judgment of the Superintendent, and to procure from him all necessary interpretation of the *Designs* and *Plans*, and all necessary certificates regarding his payments on the contract; also for all additions or deductions which may result from changes of *Designs* or *Plans*.

All payments made on work during its progress, on account of the Contract or extra work, shall in no case be construed as an acceptance of the work executed; but the contractors shall be liable to all the conditions of the contract until the work is finished and completed. The contractor must have some competent person on the work to receive instructions and see when his particular work is required—sub-contractors will not be recognized.

The Contractor, his Foreman or Clerk, being bound, in all cases, to remove all improper *Work* or *Materials* upon being directed so to do, by the Superintendent, at any time, and all times, within forty-eight hours after receiving written notice to that effect from the Superintendent.

But if the *Contractor*, after having been directed as above to remove the same, should refuse or neglect so to do, he shall not only suffer a deduction from the *Contract Price* of the *Difference* in value of proper and improper work and *Materials*, but shall, also, be *liable* for all *Damages* of whatever nature or kind that may result from such cause. The above provisions to apply in the same way to all *Materials* or *Work* *Used, Made, or Fixed*, without the knowledge of the Superintendent, and not approved by him; the *Owner*, under direction of the Superintendent, shall be at liberty, if in his judgment the case requires, to replace the same, and make good every part, at the cost and charges of the Contractor.

In case of delay, by the Contractor, in providing and delivering the requisite materials, or in the advancement of the *Buildings*, or *Works*, or of a deficiency of workmen, or for misconduct, inattention or inability, the *Owner* shall be at liberty (after the Superintendent has given to or left for the Contractor with his Foreman or Clerk, three days' notice in writing) to provide, at the expense of the Contractor, all such materials, and employ such number of workmen, at such wages as the Superintendent shall think proper, and the cost and charges incurred shall be retained out of the Contract amount, and paid by a reservation from the estimates from time to time, or amounts thereof which may be due, or recoverable as liquidated damages.

THE OWNER reserves the right, by conferring with the Architect, to alter or modify the *Design*, and to add to or diminish from the contract price, the Architect to be at liberty to make any alteration in the Plan, Form, Construction, Detail or Execution, described by the Drawings and Specifications, without invalidating or rendering void the Contract; and in case of any difference in expense, an addition to or abatement from the said contract amount, shall be made in the ratio or proportion such work may bear to the whole contract works agreed to be performed; and the same to be determined as before mentioned. The *owner* being bound, in all cases, to recognize the acts of his Superintendent, not only as regards extra work, but also as to the sufficiency of the *Design*, *Materials* and *Workmanship*.

SUPERINTENDENT AND HIS DUTIES. Wm. W. BOYINGTON, Architect, is declared to be Superintendent of the work for the owner; his duties will consist in giving, on *Demand*, such interpretations, either in language, writing or drawing, as in his judgment the nature of the work may require, having particular care that any and all work done, and *Material* used for the work, be such as is hereinafter described; in giving, on demand, any certificates that the Contractor may be entitled to, and in settling all deductions of, or additions to the contract price, which may grow out of alterations of the *Designs*, or changes of *Plans*, after the same is under contract, also, determining the amount of damages which may accrue from any cause, and particularly to decide upon the fitness of all material used, and work done.

It is not incumbent upon the Superintendent to notify the Contractor to attend to, and have in readiness his own work, and the requisite materials, at such times as the progress of the building may require them, if the Contractor does not attend to his part of the work, and have his portion of the materials and work in readiness as it may be wanted to work into the building, he will be held accountable for all *Delays* and *Damages* in consequence of any such neglect.

All the *Designs*, *Plans*, *Details*, *Elevations* and *Sections* of each and every kind, that the Contractor may have received, must be *preserved*, and returned to the Architect before the final certificate is given, and the *Owner*, or his legally authorized Agent or Agents, *Hons* or *Assigns*, must be notified by the Contractor that he is ready to have a settlement, so that if the *Owner* or parties in interest have any bills to file in, or statements to make, he or they can do so before the Superintendent makes his final certificate or adjustment between the parties.

The Superintendent's opinion, certificate, report and decision, on all matters, to be binding and conclusive.

DIMENSIONS of the building as represented by, and figured on the Drawings:

HEIGHTS—		feet,	inches, between timbers.	<i>only under</i>	
Cellar Story to be	6			<i>as per section in figures</i>	<i>substitute</i>
Basement Story to be	12		3		
Principal " "	"	"	"	"	"
Second " "	"	"	"	"	"
Third " "	"	"	"	"	"
Fourth " "	"	"	"	"	"
Fifth " "	"	"	"	"	"
Sixth " "	"	"	"	"	"

This Building is to be erected *in the most thorough and workmanlike manner in all parts—*

and must be finished throughout as hereinafter described, and anything shown by the **DRAWINGS** and not hereinafter particularly reserved or described, which is necessary to complete the *Masonry and Plastering* work of the building, is to be done at the cost of the contractor, notwithstanding such omission.

persons in estimating will calculate for building the tower of brick up as high as shown on side elevation which is to include the belfry in forming the octagon form, the square Card must be taken to secure good offsets, a sufficient distance down across the angles and must build in all bond and floor timbers in the tower as may be furnished by the Carpenters, also to build in bond timbers or large plank thirty five feet long between the large centre door, and window in front, as well as over other large circular openings in any part of the building.

In building up the walls of the tower where the same join the side and front walls of the church care must be taken to keep the walls entirely separate by a free and easy space or groove as shown on plans.

EXCAVATIONS.

Excavate the ground for the basement or cellars according to the area of the plans and sections, and to the depth requisite to bring the top of the principal joists inches above the established grade of sidewalk. [See Sections.]

Remove from time to time all soil, stone and other rubbish that accumulates in and about the building. The same to be ~~carried to~~

left about the walls of the building. There will be a full cellar under the front vestibule which must be excavated as low as the walls will allow

Dig trenches for the footings of all walls and piers in cellars or basement inches lower than the level of the basement or cellar floors, and of the requisite width. + depth as per section

Dig trenches for all ~~cisterns, vaults for water closets, door steps, outside cellar way doors, piers for piazzas, areas and street walls,~~ as per plans and sections.

In digging the trenches and building the walls the plans and sections will be the guide but should it be found that the given dimensions do not reach hard clay. Then all extra depths of digging & walling will be allowed to the Contractor as provided for alterations.

RUBBLE STONE WORK.

Lay the foundations or footings of all walls with stone not less than 10 inches. thick (except where otherwise specified or shown on plans or sections) well settled in the earth with a heavy instrument of wood, and laid in good Cement mortar.

The footing stone for the main tower will be 12" stone laid in one length across the foundation and as wide as the stone can be secured and handled. The second course will be in two widths well fitted together, and the third course in one width well and thoroughly fitted together by pointing off the beds or edges if required to secure a good bearing and close fitting.

Build the walls with suitable quarry stone, flat, bedded, and of nearly equal thickness. The wall to be carried up to the water table, of the thickness marked on plans and sections, laid in good Cement mortar, well bedded, bonded and faced on both sides. Make the sides and top perfectly straight and level.

The Cement used must be the best a Fresh Water lime mixed in proportions of one part of the water lime to two parts of clear sharp sand and coarse sand well mixed together before setting.

Build all walls and piers in cellars, foundations for chimneys and ~~cisterns~~, and all walls for outside cellar way doors, ~~piers for piazzas, areas for cellar windows, areas for front and rear of building, and such street walls as shown on plans, as per plans and sections,~~ all well laid with suitable stone, in good Cement mortar.

as before described. The Cement mortar will be used to within one foot of the surface of grade as it will be about the building and all above will be good lime, quick lime mortar.

All proper holes left in walls for drains, gas or water pipes, as directed or shown on plans and sections. Build all ventilating flues under the floors where marked on plans & sections and up as high as may be required to put in cast iron registers above around the registers must be furnished by the Mason Contractor.

IRON ANCHORS.

Furnish and fix anchors to each pier, also one in every ten feet of blank or dead wall, carefully and properly placed in the stone and brick work, well secured to the timbers and joists of each story and roof. Those for stone or iron lintels or caps to be extra strong, and long enough to reach on to the second joists.

Iron straps, $\frac{3}{8}$ " by 2" inches wide, and not less than twenty inches long, properly fastened with four large spikes to the timbers and joists, where the same meet on division walls. Anchors for the ~~ashlar and other face~~ stone work will be $\frac{1}{2}$ x 1 of sufficient length to reach through the wall and turn down on the inside, and fitted into the stone with care.

and of sufficient number to secure every part and position of the stone work

CUT STONE SETTING.

The Contractor for the Masonry must set all wrought stone of every description, including window caps, sills, corbels, cornices, ornaments, steps, ~~stone railings, stone brackets, stone balcony floors,~~ pedestals and brackets, and wall coping of every kind. All to be delivered on the ground at the building, with all the necessary lewisings, fitting and drilling for anchors, by the Contractor for Stone Cutting.

After the stone are delivered, the Contractor for the Masonry must take care and become responsible for any damage done to them until the building is fully completed and accepted. *And in setting the stone, care must be taken not to allow any poor stone to be set in the walls, although the Stone Cutter may have delivered -*

BRICK WORK.

All the brick used in the walls, to be good, hard, well-burned bricks. They must be laid wet, if laid in warm, dry weather, with flushed solid joints, leaving no interstices or empty spaces in the walls. If laid in damp or freezing weather the brick must be kept dry. For thickness of walls see plans and sections.

Build brick discharging arches to take the weight of walls from the lintels, over all doors, windows and other openings in walls. ~~Turn timber arches for the support of all hearths at the time the chimneys are built.~~

Hollow walls *See the Ordinance* *After the plans* *will be noticed at the* *front* *Prescribed* *front* ~~All the walls for the different portions of the building will be laid hollow and of such thickness and forms as shown on plans Section & elevations~~

The brick work shall be well bedded and flushed up, tied in every course, and worked in sound and regular bond. Fill in and back-close with sound brick and good mortar at the back of all ashlar or facing stone-work, and point up close to all sills, copings, casings and projections. Bed carefully and solidly all window and door frames, and underpin all sills with suitable mortar after the walls are built up. Provide the needful materials of every description, and cover the work from the weather at all necessary times, find all the scaffolding necessary for the performance of the work, and remove the same when the work is completed. Attend the other mechanics when required to back-in and fill up properly behind their work. All brick for facing the exterior walls and chimney-tops must be of the very best assorted, hard burned bricks, the joints neatly struck.

The front and side facing the street will be *Penney's pressed brick will selected even color and the points laid* *Close and neatly back pointed with white mortar. The returns on* *the corners from the streets will be same kind of press brick back* *the size of some pilaster and on the entire side of small tower, all* *Common brick for the other portions of the exterior walls be select* *Even color of red brick. The window caps on one side will be* *formed with brick back of Garrett.*

Build all chimneys as per plans, and in no case allow less than six inches of brickwork between timbers, or any wood and the smoke flues. All flues to be smoothly plastered on the inside. Furnish and put in all stove-pipe receivers, with tin stoppers, as directed. ~~All openings for fire grates to be arched with good brick. Seasoned lath to be worked in the joints of the brick at every twelfth course, quite round the inside of all outside walls. The Contractor must in all cases where fire walls are built above the roof, lay in pieces of 2 by 4 inches, as furnished, so that the bottom of piece will be flush with top of roof board.~~

Contractor must execute all masonry, and furnish materials necessary for setting coal grates, hot air furnaces, steam boilers, and cooling ranges.

Cornices *Octagon* *Corners* *Except the upper members which will be made of wood* *mouldings. All octagon forms of brick work must be made either by* *moulding the brick for the purpose or by neatly cutting and* *rubbing them into proper shape*

LATH AND PLASTERING.

(39) All laths used for the building must be good No. 1 pine lath, free from red knots or bark, and all well seasoned before putting on. In lathing care must be taken to break joints at least every 18 inches, and no lath put nearer together than $\frac{3}{8}$ on the ceilings, and but very little closer on the walls. There must not be any lathing through the angles, from one room to another. All corners must be made solid before lathing. Should the Lathers find any that are not properly secured, they must not lath until it is made permanent by the Carpenters.

In preparing the brown mortar, nothing but the best clear, sharp sand, live quick lime and good hair, well picked apart, to be used, which will be mixed by slacking and straining the lime, working in as much sand, and such portion of hair as can be used and enable the plasterers to put the same on the walls and ceilings.

All jambs must be made plumb and square, and all corners and angles true.

All the main *Walls must be plastered upon the brick. The* *Tower & Garret will be plastered up as high as the tops* *of the second story windows and a suitable distance* *above for a finish. The entire plastering will be two* *thorough coats of plastering. The finishing coat will* *be plaster paris hard finish with white Michigan sand* *worked in with the putty and all thoroughly worked* *down and neatly polished. All the walls and* *ceilings of the basement and audience room* *will be plastered as above.*

The mason must clear out all boards, planks, horses, ladders, mortar, dirt, and all other loose rubbish from all rooms in the several stories, and carry off such rubbish as particularly belonging to or made by the masons, on completion of his contract, and point up all damaged places made by other mechanics, without extra charge, which must be done by a careful and skillful workman.

SUPREME COURT,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1862. }

NORTH PRESBYTERIAN CHURCH
OF CHICAGO, (Impleaded with others)

vs.

OTTO JEVNE, PETER ALMINI, AND
CHARLES DAEGLING.

ERROR TO
SUPERIOR COURT, CHICAGO.

ABSTRACT OF RECORD.

Rec. pp. JEVNE & ALMINI filed a petition for a mechanic's lien on the lots five
2, 3, 4 and six in block 16, Kinzie's Addition to Chicago, and the church edifice
thereon, for the sum of one hundred and fifty dollars, stating that George
5 F. Lee and Wesley Munger claim to have some interest. They pray
judgment, and that a lien upon the premises be declared, and that they
be sold to pay their indebtedness.

13 Defendants all answer, admitting facts stated in petition, and amount
14 of debt due. But they state that the said church being owner of other
lots exchanged them for these, and in order to erect a church edifice were

15 compelled to borrow, to wit, \$12,000, which the church could not get without the individual liability of said Munger and C. H. McCormick and E. S. Wadsworth. And, in order to obtain it, an agreement was made with them to give their names individually with a mortgage on these lots, and secure themselves by taking the title to them. Said premises were accordingly mortgaged to said Lee on a loan by him of \$12,000, and a conveyance made to said W. Munger.

It further states, that about \$20,000 in cash was paid to the workmen and materials used for work, and materials in building said church, including the money loaned by said Lee, and including these petitioners in part for work done by them.

They insist that the value paid on the work and materials ought to be added to the naked value of the lots in favor of the defendant Lee, in the distribution of the proceeds of the sales of the premises.

27 to 34 Charles Daegling filed his petition also for a mechanic's lien on same premises for a balance due to him for mason work on said church, of \$705, and prays a mechanic's lien, and judgment, and sale of the premises.

52 to 57 The answer admits the amount claimed, to be due. And sets up the same defense, in all respects, as that to Jevne & Almini's petition.

17 to 22 These causes were consolidated. A decree was rendered for \$150 in favor of Jevne & Almini, and for \$738.97 and costs.

The court also decreed these sums to be liens, and that the house erected on said lots be sold, and proceeds applied to pay these debts and costs.

The following is the decree in extenso :

17 “ The cause of Charles Daegling vs. the said defendants, being called for trial, came on to be heard on the sixth day of January, 1862, by the

court, a jury having been waived, upon the petition and answer filed herein, and the proofs offered and submitted, the petitioner appearing by his solicitors, Hervey, Anthony & Galt, and the defendants appearing by their solicitors, Scates, McAllister & Jewett.

And it appearing that the said petitioner, Charles Daegling, has a just and valid claim against the said North Presbyterian Church of Chicago, as alleged in his said petition, to the amount of seven hundred and thirty-eight dollars and ninety-seven cents, for work and labor by him done and performed, at the request of the said North Presbyterian Church of Chicago, upon a certain building, or church edifice, then being erected by the said North Presbyterian Church of Chicago upon lots five and six, in block sixteen, in Kinzie's Addition to Chicago, which said sum of money was due and payable at the time of filing his said petition herein; and the said cause of Otto Jevne and Peter M. Almini, being called for trial, came on to be heard on the seventh day of February, A. D. 1862, by the court, a jury being waived upon the petition and answer filed herein, and the proofs offered and submitted, the petitioners appearing by their solicitor, Sandford B. Perry, and the defendants appearing by their solicitors, Scates, McAllister & Jewett.

And it appearing that the petitioners, Otto Jevne *et al.*, have a just and valid claim against the said North Presbyterian Church of Chicago, as alleged in this petition, to the amount of one hundred and fifty dollars, for work and labor by them done and performed, at the request of the said North Presbyterian Church of Chicago, upon a certain building, or church edifice, then being erected by the said North Presbyterian Church of Chicago, upon lots five and six, in block sixteen, in Kinzie's Addition to Chicago, which said last sum of money was due and payable at the time of filing their said petition herein.

And the said court, on motion of the said defendants, ordered the said Charles Daegling to be made a party to the proceeding of the said Otto Jevne and Peter M. Almini, vs. the said defendants, and that a joint decree be entered against the said defendants for the sum so found to be due, as aforesaid, to the said Charles Daegling, and to the said Jevne and Almini.

And it appearing further to the said court, that the record title to said premises stand in said Wesley Munger, and that the whole consideration and purchase money therefor was paid by the said North Presbyterian Church of Chicago, for whose use and benefit the said lots of land were purchased, and are held, and that said North Presbyterian Church of Chicago, at the time the contracts of said Daegling and Jevne and Almini, for said work and labor and material, were made, was, and now is, the owner of said lots of land; the said work and labor and material was done and performed with the knowledge and consent of the said Wesley Munger, who was one of the corporate members of said church; and that the said several sums of money are a just and proper lien upon said building, and upon the interest of said North Presbyterian Church of Chicago, and said Wesley Munger, in said two lots of land.

20

And it further appearing that said Wesley Munger, by a mortgage deed, duly executed and delivered, dated 3d July, A. D. 1860, conveyed said two lots of land in mortgage to said Geo. F. Lee, by the consent, and at the request of said North Presbyterian Church of Chicago, to secure the payment of twelve thousand dollars, borrowed of said Lee for the use of said North Presbyterian Church of Chicago, which mortgage was executed and delivered before the erection of the said buildings on said premises, and before the making of the contracts for the labor, work and material of the said several petitioners.

It is therefore ordered, adjudged and decreed that said petitioners have judgment against the North Presbyterian Church of Chicago for the sum of eight hundred and eighty-eight dollars and ninety-seven cents, said sum being made up of the two several sums of one hundred and fifty dollars, found to be due to the said Otto Jevne and Peter M. Almini, and the sum of seven hundred and thirty-eight dollars and ninety-seven cents, as their damages. And that said North Presbyterian Church of Chicago pay the costs in the proceeding, in the case of Charles Daegling vs. the said defendants, and the case of Otto Jevne *et al.* vs. the said defendants, and the costs of this proceedings since the order of the court consolidating the said two suits, and that the petitioners have execution therefor, and that the said judgment of eight hundred and eighty-eight dollars and ninety-seven cents be, and stand, as a first

21 lien upon the building and church edifice erected, and being upon said two lots of land, and also upon the said two lots of land, to the extent of the interest and equity of redemption of the said North Presbyterian Church of Chicago and said Wesley Munger therein, subject, however, to the mortgage executed by said Munger to said Lee, which is hereby declared to be a first lien on said lots, exclusive of the buildings thereon, and is hereby established and protected as such first lien.

And it is further ordered, adjudged and decreed, that unless the said defendant, the North Presbyterian Church of Chicago, shall, within one hundred and twenty days from the entering of this decree of record, pay to the said petitioners the judgment herein decreed and entered, the said building and church edifice, erected and standing on said lots of land, and all the interest and equity of redemption of the said North Presbyterian Church of Chicago, and of the said Wesley Munger, as aforesaid, in and to the said two lots of land, be sold to satisfy said judgment; and that said petitioners have special execution therefor against said premises, for the sale thereof, and the proceeds of such sale be paid into court, subject to the further order thereof, to be distributed according to law among and between the said petitioners.

22 And it is further ordered, adjudged and decreed, that if the proceeds of such sale, which, under any future order of this court, may come to the hands of the petitioners, shall not be sufficient to pay and satisfy said judgment, that then an execution shall issue, in favor of said petitioners, against the said North Presbyterian Church of Chicago, for the amount of said judgment, with a credit of the amount actually received from the proceeds of said sale.

ASSIGNMENT OF ERRORS.

1. The court erred in rendering a decree for the sale of the house and improvements without the lots.

2. The court erred in refusing to render a decree for the sale of the lots and improvements, and apportioning the proceeds to Lee, adding the value paid on improvements to the value of the lots.

3. The court erred in giving costs to Daegling.
4. The court erred in rendering a decree for the petitioners.
5. The court should have rendered a decree for defendants below.

Plaintiff's Points.

1. Where the mechanic or material-man is paid a part of his labor or materials, or part of the materials and labor is fully paid, and there be a prior incumbrancer, the amounts or values thus paid ought to be added to that of the land, in favor of the incumbrancer, in dividing the proceeds of the sale.

Cook Stat. p. 159, sec. 20.

2. The premises are not susceptible of the division made. The purchaser at this sale cannot enjoy the house without *excluding* the incumbrancer from all that portion of the lots covered by it (and here the building covers both lots); nor can the incumbrancer enjoy his lots without removing the house from them. Thus the interests of the church are sacrificed by a division which destroys the value of the property to be sold.

Cook Stat. p. 158, sec. 14.

3. The statute provides that all persons interested in the premises may, upon application to the court, be made parties.

Cook Stat. p. 158, sec. 10, 11, 12, 15.

Cook Stat. p. 157, sec. 5.

Cook Stat. p. 159, sec. 19 to 23.

All persons claiming debts for materials or labor, should apply to be made parties, after one has sued; and if another suit is brought afterwards, then he should be made to pay his own costs. This rule should have been applied to Daegling.

SCATES, McALLISTER & JEWETT,

For Plaintiff.

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North Presbyterian
Church

Otto Jensen
et al

Abstract

Filed July 21st 1862
L. Leland
Clerk

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

NORTH PRESBYTERIAN CHURCH

—(Impleaded with others,)

versus

OTTO JEVNE, PETER ALMINI
AND CHARLES DAEGLING.

*Error to Supreme Court of
Chicago.*

POINTS AND AUTHORITIES FOR DEFENDANTS IN
ERROR.

It is very difficult to tell exactly what the causes of complaint of the plaintiff in error are, for his objections are so completely answered by the *record*, and the decisions of this court, that it would *seem* to be impossible for any *new* and *original* theories to prevail over the old and well settled doctrines of this court upon the subject of Mechanics' Lien.

1.

In the first place, it has been decided by this court that, "when work is done or materials furnished under the provisions of this law, they become a *part of the land*, and *together* with the ground upon which the improvement is made, form one *entire* thing, that is, real estate; and

however many interests there may be in the land, and by whatever names they may be known, all together constitute the land. The *land* may be sold in this proceeding, the value evolved into money, and the money applied according to the rights of all parties in interest before the court.

The *lien* created by the law is not against the specific *thing furnished* nor necessarily against the *interest* alone in the land of the party for whom they are furnished, but against the land, and should be satisfied out of the same in any manner consistent with the statute and the principles of equity."

Steigleman v. McBride, 17 Ill. 301.

Donaldson v. Holmes, 23 Ill. 87.

II.

The 20th section of the Mechanics' Lien Law determines the rights of mechanics who furnish materials and perform labor upon premises that are *incumbered*; and while a mortgage or "deed of trust constitutes a first lien upon the premises and improvements thereon at the *time* the trust deed was recorded, the *statute* gives the mechanics and material men liens *paramount* to the trust deed upon the improvements made by them upon the premises." And where the owner of the property borrows money, and the *mortgagee* lends money, knowing that the money is to be appropriated in building a building, and as in this case, and the mechanics furnish materials and do the work, it cannot be error to enter a decree ordering a sale of the interest of the owner of the property, or to order a sale of the entire premises which have been improved, to satisfy the lien.

Gaty v. Casey, 15 Ill. 192.

Raymond v. Ewing, 26 Ill. 343.

Smith v. Moore, 26 Ill. 395.

23 Ill. 87.

17 Ill. 301.

Now the decree in this case conforms in every particular to the rules here laid down by the court, and was drawn in accordance with these rules and the suggestions made by the court in the recent cases, as

will be seen by the slightest inspection of the decree set forth in the abstract.

III.

As to the premises not being susceptible of division, and to the exclusion of the *incumbrancer*, etc., which is suggested by the plaintiff in error in his second point, we can only say, that these slight *inconveniences* cannot be remedied by this court, that the law never contemplated that a mechanic should be deprived of his *security* because the property was incumbered, and this contingency is fully answered by the cases already cited.

IV.

As to the point of the defendants paying costs, because separate suits were commenced, we are unable to find anything in the statute *compelling* all parties to unite in a single suit, and if they do choose to commence separate suits, which are afterwards consolidated by order of the court below, as in this case for the purpose of disposing of the whole matter by *one* decree, it is no reason whatever that the plaintiff should pay all the costs.

HERVEY, ANTHONY & GALT,
Attorneys for Defendants in Error.

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North Presb^t Church

vs

Otto Gunnar at als

Points

Filed April 28-1869

L. Leland

Clerk

No 75

Supreme Court
Third Grand
Division. April
Term A.D. 1863

North Presbyterian
Church ^{vs} ^{chgo} Plaintiff in
Error.

Otto Schenck &
Peter Almer &

Charles Dagling
Defendants in Error

It is hereby
stipulated by and between
the parties hereto that
the order of continuance
heretofore made by the court
in this case - be set
aside and that the case
be submitted to the court
upon the printed points
on file in this case
upon both sides -

Scates McAllister & Jewett
Attys for Plffs in error

Hervey Anthony &
Galt attys for
Defendants in error

127 No 75
North Presbyterian
Church
vs

Otto Jernie
Peter Almino &
Charles Dayling

Stipulation to
have order of
continuance set
aside & cause
submitted.

Filed May 12, 1862.
Leland
Clerk.

Supreme Court of Illinois
Third Grand Division
April Term 1863.

North Presbyterian
Church of Chicago
impleaded with others

v8
 Otto Leve
 Peter W. Almini
 & Charles Daigling

Error to Supr. Court
of Chicago

Plaintiff's Rights

1st - When the mechanic or material man is paid a part of his labor or materials - or part of the materials and labor is fully paid and there be a prior incumbrancer, the amounts or values thus paid, ought to be added to that of the Land, in favor of the incumbrancer, in dividing the proceeds of the sale -

Cook Stat. p 159 Sec 20.

2nd - The premises are not susceptible of the division made. The purchaser at this sale cannot enjoy the house without excluding the incumbrances from all that portion of the lots covered by it (and here the building covers both lots) — nor can the incumbrances enjoy his lots without removing the house from them. Thus the interests of the Church are sacrificed by a division which destroys the value of the property to be sold —

Cook Stat. p. 158 Sec. 14

3rd -

The Statute provides that all persons interested in the premises may upon application to the Court be made parties -

Cook Stat. p 158 Sects 10, 11, 12, 15

" " p 157 " 5

" " p 159 " 19 to 23

All persons claiming debts for materials or labor, should apply to be made parties after one has sued - And if another suit is brought afterwards, then he should be made to pay his own costs. This rule should have been applied to Daigling -

Scaris, McAllister & Jewett
for Plaintiffs

¹²⁷
Supreme Court of Illinois
Alumini et al
^{vs.}
North Presbyterian Church
of Chicago et al

Paff's Points

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the ~~Circuit~~ ^{Superior Court of Chicago} Court for the County of ~~Cook~~ ^{Cook} Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the ~~Circuit~~ ^{Superior} Court of ~~Cook~~ ^{Chicago} County, before the Judge thereof, between Otto Jerne, Peter Alminia & Charles Daugling

plaintiffs and the North Presbyterian Church of Chicago
~~in~~ ~~pleaded with~~ George F. Lee & Wesley Munger —
~~Defendant~~

defendants; it is said manifest error hath intervened, to the injury of the aforesaid The North Presbyterian Church of Chicago

as we are informed by the complainants of said Church — 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 21st day of July — in the Year of Our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.
J. D. R. Deputy

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75

The North Presbyterian
Church

No.

vs.

Cotterone v. the

WRIT OF ERROR.

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

L. Leland

Wm. B. Kim Clerk
Deputy

FILED

July 21st

A. D. 1862

L. Leland

Clerk.

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

NORTH PRESBYTERIAN CHURCH

—(Impleaded with others,)

versus

OTTO JEVNE, PETER ALMINI

AND CHARLES DAEGLING.

*Error to Supreme Court of
Chicago.*

POINTS AND AUTHORITIES FOR DEFENDANTS IN
ERROR.

It is very difficult to tell exactly what the causes of complaint of the plaintiff in error are, for his objections are so completely answered by the *record*, and the decisions of this court, that it would *seem* to be impossible for any *new* and *original* theories to prevail over the old and well settled doctrines of this court upon the subject of Mechanics' Lien.

I.

In the first place, it has been decided by this court that, "when work is done or materials furnished under the provisions of this law, they become a *part of the land*, and *together* with the ground upon which the improvement is made, form one *entire* thing, that is, real estate; and

however many interests there may be in the land, and by whatever names they may be known, all together constitute the land. The *land* may be sold in this proceeding, the value evolved into money, and the money applied according to the rights of all parties in interest before the court.

The *lien* created by the law is not against the specific *thing furnished* nor necessarily against the *interest* alone in the land of the party for whom they are furnished, but against the land, and should be satisfied out of the same in any manner consistent with the statute and the principles of equity."

Steigleman v. McBride, 17 Ill. 301.

Donaldson v. Holmes, 23 Ill. 87.

II.

The 20th section of the Mechanics' Lien Law determines the rights of mechanics who furnish materials and perform labor upon premises that are *incumbered*; and while a mortgage or "deed of trust constitutes a first lien upon the premises and improvements thereon at the *time* the trust deed was recorded, the *statute* gives the mechanics and material men liens *paramount* to the trust deed upon the improvements made by them upon the premises." And where the owner of the property borrows money, and the *mortgagee* lends money, knowing that the money is to be appropriated in building a building, and as in this case, and the mechanics furnish materials and do the work, it cannot be error to enter a decree ordering a sale of the interest of the owner of the property, or to order a sale of the entire premises which have been improved, to satisfy the lien.

Gaty v. Casey, 15 Ill. 192.

Raymond v. Ewing, 26 Ill. 343.

Smith v. Moore, 26 Ill. 395.

23 Ill. 87.

17 Ill. 301.

Now the decree in this case conforms in every particular to the rules here laid down by the court, and was drawn in accordance with these rules and the suggestions made by the court in the recent cases, as

will be seen by the slightest inspection of the decree set forth in the abstract.

III.

As to the premises not being susceptible of division, and to the exclusion of the *incumbrancer*, etc., which is suggested by the plaintiff in error in his second point, we can only say, that these slight *inconveniences* cannot be remedied by this court, that the law never contemplated that a mechanic should be deprived of his *security* because the property was incumbered, and this contingency is fully answered by the cases already cited.

IV.

As to the point of the defendants paying costs, because separate suits were commenced, we are unable to find anything in the statute *compelling* all parties to unite in a single suit, and if they do choose to commence separate suits, which are afterwards consolidated by order of the court below, as in this case for the purpose of disposing of the whole matter by *one* decree, it is no reason whatever that the plaintiff should pay all the costs.

HERVEY, ANTHONY & GALT,
Attorneys for Defendants in Error.

127 75
North Presbt Church
As

Otto Jume et als
points of

Filed April 28-1863
Leland
Clark

I know all men by these presents that
we the North Presbyterian Church of
Chicago, principal, and Joshua
Wadsworth and Samuel
Howe trustees are held and
firmly bound unto Charles
Doegling, and Otto Corne
and Peter M. - Alumni - in
the several sum of two
thousand dollars lawful
money for the payment of
which well and truly to
be made, we bind our-
selves our heirs, executors
and administrators jointly
severally & finally by these
presents.

The condition of the
above obligation is such
that whereas the said
Doegling - and the said
Corne and Alumni, on
or about the 10th day of
January 1862, in the Superior
Court of Chicago, did recover
a decree on a Mechanic's
lien, the said Doegling for the
sum of seven hundred and
thirty eight $\frac{7}{100}$ dollars - and the
said Corne & Alumni in the
sum of one hundred and
fifty dollars - and each
recovered his costs - having
upon consolidation of the

of the said Daegling and the
petition of the said Irvine and
Alvini - thus the rendition of
a joint decree declaring a
lien upon the premises
in said petitions described.
And whereas the said North
Presbyterian Church has
sued out a writ of error
upon said decree to the
Supreme Court, and the
same is ordered to be
made a supersedeas upon
the said North Presbyterian
Church giving bond in
the sum of Two thousand
dollars with Eliza S.
Wadsworth & Samuel Howe
Sureties Conditioned as the

law directs.
Now if the said North
Presbyterian Church shall pay
the amount of the said decree
together with costs & interest
& damages in case the
said decree shall be af-
firmed, and shall duly
prosecute the said writ
of error then this obli-
gation shall be null and
void, else to remain in
full force and virtue
given under our
hands & seals this

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North Presbych
to

Sagging Journal
Mini

Band



Filed July 21st 1862
L. Leland Cl.