HAUSE, WILLIAM v CARROLL, JOHN MARCH 1866 ST. LOUIS LAND COURT 56915

OLD REVERSED AND REMANDED
654 *

* no #, but it was between 4 & 6

INVOLVED:

MECHANICS LIEN

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the St. Louis Land Court, in said State—Greeting:

WHEREAS, In the record and proceedings in a certain cause lately pending in the St. Louis Land Court wherein William Hause is plaintiff, and John Carroll and B. F. Thompson and others are defendants, in a civil action, manifest error hath intervened, to the great damage of said Defendant John Carroll as by ~~their~~ his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the city of St. Louis, in the County of St. Louis, in said State, on the third Monday in October next, so that the Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law, ought to be done.

Witness, ANDREW W. MEAD, Clerk of our said Supreme Court, with the Seal thereof hereunto affixed, at office in the city of St. Louis, the Twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-four.

A. W. Mead, *Clerk.*

STATE OF MISSOURI, }
County of St. Louis } ss. I, Robert White

Clerk of the St. Louis Land Court within and for the County aforesaid, in obedience to the mandate of the within writ, herewith transmit to the Honorable Supreme Court of the State of Missouri, held at St. Louis, a full, true and complete transcript of the record and proceedings (as required) in the within entitled cause, as fully as the same remain of record in my office.

In Testimony Whereof, I hereto set my hand and affix the Seal of said Court, at office in the City of St. Louis this twenty second day of July 1864.

SEAL OF THE SUPREME COURT ST. LOUIS LAND COURT

Robert White, Clerk.
By Chas. Levy D.C.

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State of Missouri }
County of St. Louis } SS.

Be it Remembered that on the Ninth day of February in the year of our Lord One thousand eight hundred and sixty one there was filed in the office of the Clerk of the St. Louis Land Court a petition.

(Which Petition is not copied in this Transcript, as there was filed in this cause an Amended Petition, for which Amended Petition see Pages 3.4 & 5 of this Transcript. Clerk)

Upon the filing of the aforesaid Petition, the Clerk then issued to the Sheriff of St. Louis County a Summons.

Which Summons is in the words and figures following, to wit:

Summons

County of St. Louis, SS.

The State of Missouri,

To the Sheriff of St. Louis County. Greeting:

We command you to summon John Carroll, B. A. Thompson, R. F. Bridwell and Grable & J. Hockham and A. Fenn to appear before the Judge of our St. Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the second Monday of March next, then and there to answer the complaint of William Hause as set forth in the annexed petition: and have you then and there this writ.

Witness, Edward N. Tracy, Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St. Louis this 12th day of February in the year of our Lord, eighteen hundred and sixty one.

Seal

Edward N. Tracy Clerk.

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Upon which Summons the Sheriff made his Return in the words and figures following to wit:

Sheff's Return

Executed this Writ in the County of St Louis on the 14th day of February 1861 by delivering a copy thereof with a copy of the petition as furnished by the Clerk to R. E. Bridwell and further executed this writ in the County of St Louis on the 16th day of February 1861 by leaving a copy of this writ as furnished by the Clerk at the usual place of abode of Alfred Grable with a white person a member of his family over the age of fifteen years and further executed this writ in the County of St Louis on the 19th day of February 1861 by delivering a copy of this petition as furnished by the Clerk to J. Lockham and further executed this writ in the County of St Louis on the 19th day of February 1861 by leaving a copy of this writ as furnished by the Clerk at the usual places of abode of A. Penn & John Carroll with white persons a members of their families over the ages of fifteen years.

John H. Andrews Shff
By Jas Owens.

And I did further execute this writ in the County of St Louis on the 7 day of March 1861 by leaving a copy of this writ as furnished by the Clerk at the usual place of abode of B. A. Thompson with a white person a member of his family over the age of fifteen years.

John H. Andrews Shff
By Fr. Schaefer Dpt.

And afterwards, the following proceedings were had in this cause, to wit:

October Term 1862 Friday October 17th 1862

William Hause
vs
John Carroll et al

Amd. Pet. filed

Amended Petition filed in this cause

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Amd Petition

Which Amended Petition is in words and figures following to wit:

William Hause Pltff vs. John Carroll, B. A. Thompson, R. F. Bridwell, J. Hockham and A. Fenn Defs	In the St. Louis Land Court. March Term 1891

Plaintiff states that defendants are indebted to him in the sum of Two hundred and twenty four dollars with interest from the 16th day of October 1890 being for certain materials furnished, sold and delivered by plaintiff to defendants and used in erecting the building hereinafter mentioned as per account as follows, to wit;

1890 October 16. To 44,000 bricks @ $5 per M. $224.00

which said bricks were at said date and for the price to be paid therefore, to wit; Five dollars per thousand furnished sold and delivered by plaintiff to defendants Thompson and "Hockham & Fenn" a firm composed of J. Hockham and A. Fenn and were used in erecting That certain three story brick building being erected upon that certain lot or piece of ground situate on the North side of Olive Street Road in block four of the subdivision of the sixteenth section of Township forty five Range Seven East in the County of St. Louis, containing in front on Olive Street Road Fifty feet and extending in depth along Ware Avenue One hundred and twenty feet, bounded North by Olive Street Road, East by Schools and West by Ware Avenue.—

Plaintiff further states as his best information and belief that said John Carroll one of the above named defendants, was at the time of the delivery of said material and is now the owner of said above described premises and that said Hockham & Fenn were contractors under him for the erection of said building and furnishing of said material, that said defendant Thompson and defendant Bridwell

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furnished brick to said Hockham & Fenn which were used in erecting said building and that said Thompson contracted with plaintiff for said material so used as aforesaid.

Plaintiff further states that he furnished to said building on defendant Thompson own order, under his contract with him as aforesaid about ten thousand bricks and that he furnished under the same contract to Hockham & Fenn's personal order about Thirty four thousand eight hundred bricks. all which said bricks were furnished and delivered at and used in erecting the above described premises.

Plaintiff further states that on the first day of January 1887 being within four months of the furnishing of said material (after having given ten days notice to said defendant Carroll owner as aforesaid of his intention to file a lien) he filed in the Clerk's office of this Court a just and true account of the demand due him for said materials after allowing all just credits and set offs, being the sum of Two hundred and twenty four Dollars. which account so filed was intended to be a lien upon the aforesaid building and land, together with a true description of the property upon which said lien was intended to apply, which lien was so filed within ninety days prior to the commencement of this action and within four months after the accruing of said indebtedness.

Plaintiff says that the whole of said amount of Two hundred and twenty four Dollars is yet due and asks judgment for the same with interest and his costs and a special judgment against the above described property.

E. Peacock Atty for Plff

State of Missouri }
County of St. Louis } ss. William Hause the plaintiff above named being duly sworn on oath says the above amended petition and matters therein are true as he believes.

William Hause

Sworn to and subscribed before me this 17th day of October 1862
Robert White Clerk
By E. T. Walsh D.C.

And afterwards, to wit; at the same term the following further proceedings, were had in this cause, to wit:

Tuesday November 11th 1862.

Ans. filed.

William Hause
vs
John Carroll et ali } Answer of Amended Petition filed in this cause.

Which answer is in the words and figures following, to wit:

Ans. of Lockham & Fenn.

William Hause Plaintiff vs John Carroll, B. A. Thompson, R. F. Bridwell, J. Hockham and A. Fenn. Defendants.	In the St. Louis Land Court. March Term 1861.

The defendants J. Hockham and A. Fenn for separate answer to the Plaintiffs amended petition deny that they are indebted to him in the sum of Two hundred and twenty four dollars, with interest, as stated in the petition.

As to whether on the sixteenth day of October 1860 Plaintiff furnished 44.000 bricks at Five dollars per thousand to defendant Thompson. these defendants have not sufficient knowledge or information to form belief; but they deny that the said 44.000 bricks, or any part thereof, were furnished to them by Plaintiff, as stated in the petition.

As to whether said bricks were used in the erection of the building mentioned in the petition they have not sufficient knowledge or information

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to form belief.

These defendants admit that they were contractors under the defendant John Carroll for the said work done in the building, mentioned in the petition, and also that the bricks used in the erection of the said building was furnished to them by the defendant Bridwell and paid for, but whether said brick, or any of them, are the same mentioned in Plaintiff's petition they have no knowledge or information sufficient to form belief.

As to whether Plaintiff furnished to defendant Thompson, on order ten thousand brick as stated in the petition, these defendants have not sufficient knowledge or information to form belief, but they deny that Plaintiff furnished them on their personal order about thirty four thousand brick, or any other amount, as stated in the petition and defendants deny that they had any contract with Plaintiff for the furnishing of any material whatever for said building, and they deny that Plaintiff furnished under any contracts to these defendants on their personal order, or in any other manner about 34,000 brick or any other amount, and they deny that any brick furnished them by Plaintiff was used in erecting said building.

Defendants further deny that said defendant Bridwell had any contract whatever connected with the said building

These defendants have not sufficient knowledge or information to form belief whether Plaintiff gave defendant Carroll ten days notice of his intention to file a lien, as stated in the petition, nor whether he filed an account of the demand due him for said materials, at the time and place stated in the petition, nor, if filed, whether said account was just and true and they call for strict proof of the same.

John Wickham Atty for said Defdts

Joseph Wickham upon oath states that the foregoing answer and the matters therein as stated he believes to be true.

Joseph Hockham

Subscribed & sworn to before me this 11th day of Novr. A. D. 1862.

Robert White Clerk

By Chas. Levy D.C.

And afterwards the following further proceedings, were had in this cause, to wit:

March Term 1863. Saturday March 14th 1863.

Answr. of Jno Carroll filed

William Hause
vs.
John Carroll et ali. } Answer of John Carroll filed in this cause.

Which answer is in the words and figures following, to wit:

Answr. of Jno Carroll.

William Hause. Plff
vs.
John Carroll, B. A. Thompson, R. F. Bridwell, J. Hockham and A. Fenn. Defts } In the St. Louis Land Court. March Term 1861.

The defendant John Carroll for seperate answer to Plaintiffs' petition, denies that he is indebted to plaintiff, either seperately or jointly with any of the other defendants, in the sum of two hundred and twenty four dollars with interest, as stated in plaintiffs' petition.

This defendant admits that he is the owner of the lot of ground fronting on Olive street as described in plaintiffs' petition, on which lot he imployed defendants Hockham & Fenn to erect and build a three story brick house in 1860.

The materials for building said house were to be furnished by said Hockham & Fenn, This defendant states that said house

was built and finished by said Hockham & Fenn, and fully paid for by this defendant.

This defendant denies that said defendant Thompson had any contract or agreement in any manner whatever for the building of said house or for furnishing any materials to be used in the same with this defendant, This defendant has been informed and believes it to be true and so states the fact to be, that said defendant Thompson was not connected with said Hockham & Fenn in the erecting and building said house or in furnishing materials for the same in any way whatever, in their contract with this defendant.

This defendant denies that plaintiff ever furnished to this defendant, or to said Hockham & Fenn, 44,000, bricks at $5.00 per thousand, or any other materials which were used in the erection and building of said house, This defendant knows nothing, nor has he any information to form a belief, whether any agreement ever existed between said defendants Thompson & Bridwell, to furnish any bricks to defendants Hockham & Fenn to be used in said building but whether or not any such arrangement did exist between between them, this defendant denies that said Thompson & Bridwell on behalf of Plaintiff ever furnished to said Hockham & Fenn any bricks that was used in the building of said house, as stated in plaintiffs petition.

This Defendant knows nothing of any order having ever been given by Hockham & Fenn for any materials as stated (in) plaintiffs petition.

This defendant admits that a notice was served on him by Plaintiff or some other person purporting to be an intention of filing a lien against said property for materials furnished &c, but whether said notice was within four months after said materials were alleged to have been furnished, or whether any lien was filed, this defendant does not know, but defendant states said notice was long after he had fully paid said

Hockham & Fenn for building said house, and for all materials that were used in the same.

L. L. McLure Atty for Deft.

John Carroll one of the above named defendants being duly sworn, on his oath says that the matters and things as stated in the foregoing answer he believes to be true to the best of his knowledge and belief.

John Carroll

Subscribed & sworn to before me this 14th day of March A. D. 1863

Robert White Clerk

By Chas. Levy D. C.

And afterwards, to wit; at the same term, the following further proceedings were had in this cause, to wit;

Wednesday April 1st 1863.

Ans. of B. A. Thompson filed.

William Hause vs. John Carroll et al } Answer of B. A. Thompson, filed in this cause.

Which answer is in the words and figures following, to wit;

Ans. of B. A. Thompson.

William Hause Plff vs. B. A. Thompson et al } In the St. Louis Land Court. March T 63 St. Louis County Sct.

Defendant Thompson for answer to Plaintiff's amended petition, denies that he was a contractor with R. F. Bridwell for the erection of the building described in plaintiffs petition and further says that he has no knowledge or information sufficient to form a belief as to whether plaintiff filed a lien in St. Louis Land Court in accordance with the act of the Legislature of Missouri concerning Mechanics Liens and

having fully answered asks to be discharged.

Jas. Cornwell Atty for D. P. Thompson

State of Missouri }
County of St. Louis } SS. B. A. Thompson the above named Defendant being duly sworn on oath says that the above answer and matters therein are true as he believes.

Sworn to and subscribed before me this day of 1863.

And afterwards, the following further proceedings were had in this cause, to wit:

March Term 1864 Tuesday April 5th 1864.

William House
vs.
John Carroll, B. A. Thompson, R. F. Bridwell, J. Hockham & A. Fenn.

Trial by Court & Judgment

Judgment.

Now at this day come said Plaintiff and said defendants John Carroll, J. Hockham and A. Fenn by their respective attorneys, and the other defendants are not represented by counsel, and thereupon this cause coming on to be heard and a Jury being waived, this cause is tried by the Court, upon the pleadings, evidence and proofs adduced, and the Court having heard, and being fully advised of and concerning the premise, doth find that the defendant B. A. Thompson, is indebted to the Plaintiff, in the sum of Two hundred and twenty four dollars, with interest from the commencement of this suit, amounting to Forty two Dollars and forty five cents, making in the aggregate the sum of Two hundred and sixty six dollars and forty five cents. And it appearing to the Court, that the Plaintiffs demand has been filed as a lien against the following described property of the defendant John Carroll, namely; A certain three story brick building, and the ground whereon the same is erected being a certain lot or piece of ground, situate on the South side of Olive Street road, in Block

four of the Subdivision of the Sixteenth section of Township forty five Range seven East in the County of St. Louis. Containing in front on Olive street Road fifty feet and extending in depth along Ware Avenue One hundred and twenty feet, Bounded north by Olive street road, East by Schools and West by Ware Avenue. That within four months after said indebtedness had accrued, said Plaintiff filed his lien against said premises according to law, and that said lien was filed within ninety days next preceding the institution of this suit. It is therefore Ordered and adjudged by the Court, that the Plaintiff recover of said defendant B. A. Thompson, the debt and interest aforesaid, in form aforesaid as found, and also his costs and charges herein expended, and if no sufficient property of said defendant B. A. Thompson, can be found to satisfy said Judgment and costs, then the residue thereof, to be levied out of the property of said John Carroll, as hereinbefore described as charged with said lien and that Execution issue therefor.

And afterwards, to wit; on the same day, the following further proceedings were had in this cause, to wit:

Mo. for new Trial filed & overruled.

William Hause vs. John Carroll et ali } Now at this day, there is filed in this cause, a motion for a new trial, and the same being submitted to the court, and the Court being fully advised of and concerning the premises, doth Order and Adjudge that said motion be overruled.

(For which Motion for new trial. See "Bill of Exceptions" Clerk)

And afterwards, to wit; at the same terms, the following further proceedings were had in this cause, to wit:

Monday May 30th 1904

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Bill of Exp. filed

William Haase
vs
John Carroll et al.

Bill of Exceptions filed in this cause.

Which Bill of Exceptions is in the words and figures following, to wit:

Bill of Exp.

William Haase Pltff
vs.
John Carroll et al. Defs

In the St. Louis Land Court.

Be it remembered that on the trial of this cause the following evidence was offered by the parties plaintiff and defendants, which was all the evidence offered by either party.

First The plaintiff read in evidence the deposition of Charles Peetz.

Dept. of Chas. Peetz

Charles Peetz of lawful age, being produced sworn and examined on the part of the plaintiff deposeth and saith — I know the plaintiff William Haase, of the defendants I know Thompson and Hockham I saw Bridwell once and don't know Carroll. — Mr. Thompson came over to Mr Haase he bought brick for Mr Carroll's house on Olive Street and Ware Avenue City of St. Louis, he came there in the latter part of September 1890 he wanted brick for Carroll's house as much as it would take Mr. Thompson asked Mr Haase about the price Mr Haase told him the price was five dollars per thousand for red and hard. Mr Thompson agreed to that, Mr Haase sent over the brick to Mr Carroll's house, there were about ten thousand brick over there at the place when Mr Hockham came and ordered some more brick and said that Thompson turned over the brick to Mr Hockham and Mr Hockham ordered the balance of the brick necessary for the erection of the house, plaintiff furnished the brick on

Hockham's order, thirty four thousand eight hundred brick were furnished on Mr Hockham's order making forty four thousand eight hundred in all, that went into the building. I counted the bricks out of the kiln myself. Mr Hockham said he wanted better bricks than the first that had come there that is the reason he came over to the yard I counted all the brick and loaded them on three wagons driven by Becker Isensee and one of my own drivers. I saw the bricks which my own driver hauled delivered on Carroll's place, I saw Becker's and Isensee's teams there most all the time These bricks were laid in Mr Carroll's house by Mr Hockham, at the time Mr Hockham came for these bricks merchantable bricks were worth four dollars seventy five cents to five dollars per thousand, and red and hard brick also five dollars per thousand, these bricks were delivered in October in the first part,

Cross examination

I was employed by Mr Haase to keep the yard straight and count the bricks, I was present when the contract for these bricks was made between Mr Haase and Thompson, there was no other person present. the price agreed upon in this contract was five dollars per thousand for all the brick to be used in the house, Mr Bridwell had nothing to do with this contract, as far as I know, all the brick and hard under this contract were delivered at the house, about ten thousand bricks were delivered before I saw Mr Hockham, Mr Hockham when he came to the yard told me that Thompson had turned these bricks over to him (Hockham) he also said he wanted more red and hard brick that morning, that his hands were waiting, he said he wanted darker brick for the front, I saw Mr Bridwell but once and that was at the Courthouse, Mr Haase made a written contract with Thompson to deliver brick for three houses at five dollars per thousand the contract was originally for two houses but

afterwards by agreement this house of Carroll was included at five Dollars per thousand for the red and hard bricks, I had no interest in the profits of Mr Haase's brickyard but was working by the month. I had no authority to make contracts for Mr Haase and never made any for him, Mr Carroll never to me I don't know him at all, I don't know whether Mr Carroll made any contract with Mr Haase for bricks or not.

Re Examination

Mr Haase told me that he was going to furnish brick for two houses for Thompson and he was going to make a written statement, I call a statement a written agreement for the sale of brick and for the payment of money, this house of Carroll was not included in that contract, there was no written contract for the delivery of bricks for the house of Carroll made by plaintiff with defendant Thompson;

Question, (you have stated on your cross examination that there was a contract for three houses in writing which was originally for two and that afterwards by agreement this house of Carroll was included, do you mean that this after agreement by which Carroll's house was included, was in writing

Answer It was not in writing at all.

Question What do you mean that there was originally a written contract.

Answer I mean by that, that he gets some much money per thousand brick.

Question What buildings had this written contract reference to

Answer A house on twelfth street between Chouteau Avenue and hickory and one house on 18th street and Locust.

Cross examination.

Question Were those contracts you speak of made between Haase and Thompson.

Answer Without my knowing it Haase told me so.

Charles Jeetz.

Anton Jensey's Test:

Anton Jensey then being sworn on the part of the plaintiff testified as follows, I know the plaintiff but don't know defendants, in the fall of 1890 I hauled brick for him from his brickyard to Mr Carrolls house on the corner of Olive Street and Ware Avenue, I can't say how many I hauled, but hauled 700 or 800 at a load, the bricks were used in building a house on the corner of Olive Street and Ware Avenue, I delivered all the bricks as directed and loaded by Mr Charles Jeetz.

Henry Becker's Test:

Henry Becker, then being duly sworn on the part of the plaintiff said, I hauled bricks for the plaintiff in the fall of 1890. I hauled bricks for him to a house on the corner of Olive Street and Ware Avenue, I hauled about 800 at a load, I can't say how many bricks I hauled. Mr Jeetz counted the bricks and delivered to me and I delivered all the bricks he gave at the house on Olive Street and Ware Avenue as directed by him.

Plaintiff then offered in evidence the notice served on defendants and the lien.

Notice served on Defts

To John Carroll Owner. Take notice.
That I will in ten days from this date, file a lien in the Clerk's office of the St Louis Land Court against the following described property, to wit; That certain three story brick building, being erected upon that certain lot or parcel of ground situate on the south side of

the Olive Street Road in block four of the subdivision of the Sixteenth Section in Township 45 Range 7 East. Containing in front on Olive Street Road Fifty feet and extending in depth along Ware Avenue One hundred and twenty feet bounded North by Olive Street Road, East by Schools and West by Ware Avenue. Said lien being for Forty four thousand eight hundred bricks furnished sold and delivered by the undersigned to B. A. Thompson, and were used in the erection of the above described building, of which you are the owner and Bridwell & Grable were the contractors under you and Hockham & Fenn under said Bridwell & Grable and B. A. Thompson contractor also under said Bridwell & Grable, but he having transferred his interest therein to said Hockham & Fenn: And there is due to me for furnishing said bricks as aforesaid the sum of Two hundred and twenty four dollars, And I shall file a lien as aforesaid so as to charge said above described premises with the payment of said sum as aforesaid due me.

William Hause
by Eber Peacock his Attorney.

Lien

William Hause
vs.
John Carroll, B. A. Thompson Hockham & Fenn
and B. F. Bridwell & Bridwell & Grable.

In the St. Louis Land Court.
Mechanics Lien.

B. A. Thompson: and Hockham & Fenn
1861 To William Hause Dr.
October 16th To 44800 brick @ $5.00 per M. $224.00

State of Missouri }
County of St. Louis } SS. William Hause, being duly sworn on oath says the above is a just and true account of the demand due him by B. A. Thompson and Hockham & Fenn after

allowing all just credits and set offs, for materials being 44,000 bricks furnished, sold and delivered at the date above mentioned by him to them, and used in the erection of that certain three story brick building, being erected upon that certain lot or piece of ground, situate on the South side of the Olive Street road in block four of the Subdivision of the Sixteenth section in Township 45 Range 7, East, containing in front on Olive Street Road Fifty feet and extending in depth along Ware Avenue One hundred and twenty feet, bounded North by Olive Street Road, East by Schools and West by Ware Avenue, and that the amount so due affiant as aforesaid is Two hundred and twenty four dollars. Affiant further states that at the time of the erection of said building as aforesaid said John Carroll was and affiant has reason to believe is now the owner in fee of said above described premises, and said R. F. Bridwell or Bridwell & Grable were original contractors under him and said Hockham & Fenn were contractors under said Bridwell or Bridwell & Grable, and said B. A. Thompson was also a contractor under said Bridwell or Bridwell & Grable, he, transferring his interest therein to said Hockham & Fenn and said affiant having contracted with said Thompson but said contract having been transferred by Thompson to Hockham & Fenn.

Affiant further says, that the whole amount of said Two hundred and twenty four dollars is yet due him as aforesaid and files this his lien to charge the said property with the payment of the same.

William Haase

Sworn to & subscribed before me this 29th day of December, 1888.

Seal

Ebor Peacock Notary Public
St. Louis County.

R. F. Bridwell Test:

Defendant then introduced R. F. Bridwell a witness, who testified as follows; I bought some bricks from defendant

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Thompson, in the fall of 1860. I think about 50,000 bricks, I sold the same bricks to defendants Hockham & Fenn in the fall of 1860. Hockham & Fenn paid me for them, I paid Thompson for them, that is he was owing me, and he was paid in that way. I don't know as a matter of fact whether the bricks sold by me to Hockham & Fenn were used in building a house on the corner of Olive Street and Ware Avenue or not for John Carroll, Plaintiff told me he sold the bricks to Thompson, which were used in Carroll's house and he had not been paid for them, the bricks furnished by me to Hockham & Fenn, were furnished on my order on Thompson for them.

Defs Insts.

Defendants then asked the following instruction which was given

Given April 5, 1864

If the Jury find from the evidence that the materials in question were contracted for by and sold to defendant Thompson, who afterwards sold the same to Bridwell; they must find for the defendants Carroll, Bridwell & Hockham & Fenn unless they also find that said materials were sold and furnished to Thompson expressly for the building in question and none other.

Defendants then asked the following instructions which were refused and defendants excepted &c at the time.

The following instruction is asked on behalf of Deft John Carroll.

Refused April 5th 1864

If the Court find from the evidence that the bricks in question was purchased by Deft. Thompson, from Plaintiff, and sold by said Thompson to deft. Bridwell and paid for by said Bridwell, and also sold by said Bridwell to defts Hockham and Fenn, then Plff has no lien on deft Carroll's premises in question.

Refused

If the Jury find from the evidence, that the Plaintiff sold the materials in question to Thompson, who afterwards sold the same to Bridwell who paid for them, and that Bridwell furnished them to Hockham and Fenn, they must find for Carroll Bridwell Hockham Fenn Defendants; unless they also find that Thompson was a contractor for the building in question, and that the said materials were furnished him for said building.

Refused Sept 15th 1864

If the jury find from the evidence that the materials in question were sold and furnished by Plaintiff to Thompson under a contract with him they must find for Defendants in this action even though Hockham and Fenn ordered a portion of said brick and used them in constructing the house in question; unless they find that Thompson was a contractor for said building and had agreed to furnish the same with materials.

Whereupon the Court sitting as a jury found a verdict for the plaintiff.

Verdict of the Court

Hause v Carroll et ali

The Court rules in this case that if the Brick were furnished by plaintiff to Thompson for the building mentioned (in) plffs petition and were actually used in the construction of said building the plaintiff is entitled to recover against said Thompson for the value of the same & the premises in question ought to be charged with a lien therefor.

C. B. Lord.

Whereupon defendants Thompson and John Carroll moved the Court for a new trial for the following reasons.

Mo. for New trial

William Hause.

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vs. } In the St. Louis Land Court.
John Carroll et ali } March Term 1864.

Defendants move the Court for a new trial in this case, for the following reasons_

1st Because the Court erred in instructions on behalf of Plaintiff.

2d Because the Court erred in refusing instructions asked by defendants_

3d Because the verdict of the Court is contrary to and against the evidence given on the trial of the case,

4th Because the verdict of the Court is against the law in the case.

John Wickham, C.C. McLure.
Attorney for Defts.

Bill of Excpt. which motion was overruled by the Court, to the overruling of which defendants Thompson & Carroll excepted at the time, and file this their bill of exceptions and pray the same may be signed, sealed and made a part of the record in this cause, which is done accordingly.

C. B. Lord.

State of Missouri }
County of St. Louis } ss.

I, Robert White, Clerk of the St. Louis Land Court, within and for said County, certify the foregoing Transcript to be a true and correct copy of the Record and proceedings (as required) had in the case of William House plaintiff and John Carroll and others defendants as fully as the same remains of record in my office.

In Testimony, whereof, I hereto set my hand, and affix the seal of our said Court, at office in the City of St. Louis this Twenty second day of July A.D. 1870

Robert White Clerk
By Chas. Levy D.C.

STATE OF MO. ST. LOUIS LAND COURT

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Anton Bensey's & Henry Becker's Test. .	" 15.
Lien	" 16 & 17.
Ro. F. Bridwell's Test. . .	" 17 & 18.
Defts Instructions. . . .	" 18 & 19.
Verdict of the Court. . . .	" 19.
Mo. for new trial. . . .	" 19 & 20.

7300 words. $7.30
Certificates 1.00
$8.30

65

March Term, 1866.

William Hause
Deft in Error

vs

John Carroll imp'd &c
Plaintiff in Error

Error to Land Court

Filed September 14. 1864
A. W. Neal Clerk
E. Peacock
Atty D.E.
McLure & Cornwell
Attys P.E.

Trans. $1.30 paid by J. Carroll
$1000/100 " " " "

1864 Nov 14. Motion to quash writ of Error overruled. Leave to Carroll to prosecute writ of error alone, appn for stay of execution overruled. D/S 285

Asst of Errors filed
1866 April 4 Statement of P.E. filed
" " 16 Brs. of P.E. & D.E. filed
" " 24. Sub. on briefs
" May 7 Reversed & Remanded.

William Hause ~~Deff~~ Deft in Error
vs.
John Carroll Pltff in Error

In the Supreme Court of Missouri October Term 1864

Now at this day comes the Defendant in Error above named and moves the Court to quash the Writ of Error issued in said cause for the following reasons, to wit;

1st Because the judgment below, was a judgment against both the said John Carroll, ~~Defendant~~ Plaintiff in Error as aforesaid and one B. A. Thompson, who does not join in the writ

2d Because the judgment below being an entirety can not in effect be divided except by the special order of this Court as by Statute provided.

E. Peacock.
Atty for Def in Error

In the Supreme
Court of the
State of Missouri.

William House
Def in Error
v.
John Carroll
Pltff in Error

Motion to Quash.

Filed Oct. 19th 1864
H. W. Mead
Clerk

E. Peacock
Atty for Def in Error

William Hause
Defin Error
vs
John Carroll
Plffin Error

In the Supreme Court
October Term 1864
State of Missouri
County of St Louis } p

Ever Peacock being duly Sworn on oath Says that Suit was instituted by him as Attorney for William Hause against John Carroll, B. A. Thompson and others in the St. Louis Land Court on a Mechanic's Lien, a lien having been previously duly filed in the Clerk's Office of said Court and the property and premises as described in case No 217 of this Court was sought to be liened for the debt claimed to be due by said Thompson, Affiant states that in due time said suit was tried and a general judgment was rendered therein against said B. A. Thompson and a special judgment against said John Carrolls premises as described as aforesaid Affiant states that said John Carroll has sued out a Writ of Error from this Court directed to said St Louis Land Court and directing the record and proceedings in said cause to be sent to this Court, which was done and the case was returned to the present (October) Term and is numbered 217. Affiant says that said B. A. Thompson should have joined in said writ of error in conjunction with said John Carroll, but that he has never done so. and further states that he has reason to believe and does believe

that said Thompson has never been asked to join therein and further says not.

Sworn to and Subscribed before me this 19th day of October 1864

H. W. Mead
Clerk

Eber Peacock

In the ~~Sub~~ Supreme Court of the State of Missouri

William Hause
Def in Error

vs

John Carroll
Pff in Error

Affidavit.

Filed Oct. 19th 1864

H. W. Mead
Clerk

E. Peacock
Atty for Def in Error

In the Supreme Court of the State of Missouri

William House, deft in Error } Error to the St Louis Land Court
vs
John Carroll, Plff in Error }

John Carroll the Plaintiff in Error in the above entitled cause, states that the consent of Thompson a Joint defendant in the said cause and judgment in the court below, and against whom said judgment was rendered, could not be obtained to join in said writ of Error with said Carroll by reason of the said Thompson being absent out of this State,

Said Carroll prays the court to allow him to prosecute said writ of Error alone, without joining said Thompson in said writ.

Christopher C McLure attorney for said Plaintiff in Error John Carroll, after being duly sworn says the above statement as therein states he believes to be true

C C McLure

Sworn to before me this 28th day of October 1862

[illegible]

William House
Deft in Error
vs
John Carroll Pltff
in Error

affidavit &
Mayer for severance

Filed Oct 28. 1864
A. W. McEad Clk

William House, Deft in Error } In the Supreme
vs } Court.
John Carroll Plff in Error }

And now comes the said John Carroll and says that in the record and proceedings of the Court below in the above entitled cause, there is manifest Error, and for Error he assigns the following

1st that the said Court Erred in the instructions given to the jury Court setting as a on behalf of Plaintiff.

2d the Court erred in refusing instructions asked by Defendant.

3d the verdict of the court setting as a jury is contrary to law, and against the Evidence in the Case,

4th

C C McLure
atty for Plff in Error

Now at this day Comes the plaintiff above named, (respondent here and says that there is no error in the record and proceedings in this cause in the Court below and says that said judgment is right and ought to stand

E Peacock
atty for respondent

No 217

Supreme Court

Wm Hause, deft in Error

vs

John Carroll, Pltff in Error

Assignment of Errors

Filed Dec 2nd 1864

A W Mead

Clk

McLean, atty

In the Supreme Court
Error to the St Louis Land Court —

William Hause, deft in Error,
vs
John Carroll, pltff in Error,

Statement of the Case, by pltff in Error.

This was an action under the Mechanic's lien law, brot by deft in Error, against John Carroll, B A Thompson, R P Bridwell & Hackham and A Penn. on an account for 44800 bricks alleged by pltff below to have been sold by him to Thompson, Hackham and Penn, amounting to $224. which were used in building a house for deft Carroll. The lien petition filed & the alleged that Bridwell, or Bridwell and Gable were the original Contractors with Carroll to build his house, and that Hackham and Penn were sub contractors, under Bridwell & Gable, and that Thompson was also a contractor to build said house, and purchased the bricks of pltff as such contractor.

Hackham & Penn's answer, state that they built the house in question for Carroll, under their own contract with Carroll for that purpose. They denied that Bridwell or Thompson had anything to do with their

Contract with Carroll to build said house. They denied having any bricks from the Plff to build said house. They denied that Thompson sold or furnished any bricks to them to be used in said house — They stated that the bricks used by them in building the house, was purchased by them from Bridwell, and they paid Bridwell for them, and that neither Bridwell nor Thompson had anything to do with their Contract with Carroll for the building of said house.

Carroll's answer, denies having any Contract with Thompson or Bridwell or Grable for building the house, or furnishing materials, his Contract was, with Hackham & Fenn alone to build and furnish the materials, that they furnished the materials and built the house, and he paid them in full, he denied that Plff furnished any bricks to Hackham & Fenn.

The Evidence, on the trial proves that the bricks in question were sold by the Plaintiff (Hause) to B. A Thompson, that Thompson afterwards sold them to R F Bridwell, and that Bridwell paid Thompson for them — and Bridwell afterwards sold them to Hackham & Fenn, and that Hackham & Fenn paid Bridwell for them, and that Hackham & Fenn used them in building said house, under their Contract

with Carrol to build the same. and that the bricks were hauled to Carroll house by Plff under his contract with Thompson for delivery.

No evidence was given or offered tending to show that Thompson, Bridwell or Grable ever had any contract with Carroll, or Hackham & Penn for the building of the house, or furnishing Materials — nor that Plff sold the bricks to Thompson for the purpose of being used in said house.

There was no evidence on the trial that the Plff had given Carroll ten days of his intention to file his lien against the property, before he did file the same.

The following instructions were asked by deftS and refused by the Court.

1st If the jury find from the evidence, that the bricks in question, were purchased by defendant Thompson from Plaintiff, and sold by said Thompson to deft Bridwell and paid for by said Bridwell, and also sold by said Bridwell to deftS Hackham & Penn — Then plaintiff has no lien on deft Carroll's premises in question.

2d If the jury (Court sitting as a jury) find from the evidence, that the plaintiff sold the Materials in question to Thompson, who afterwards

sold the same to Bridwell who paid for them, and that Bridwell furnished them to Hackham & Fenn, they must find for Carroll, Bridwell, Hackham & Fenn, defendants, unless they also find that Thompson was a contractor for the building in question, and that the said Materials were furnished for said building.

3 If the jury find from the evidence that the Materials in question were sold and furnished by Plaintiff to Thompson under a contract with him, they must find for the defendants in this action, even though Hackham & Fenn ordered a portion of said bricks and used them in constructing the house in question, unless they find that Thompson was a contractor for said building and had agreed to furnish the same with Materials.

The Court gave the following instruction

If the jury find from the evidence, that the Materials in question were contracted for and sold to deft Thompson, who afterwards sold the same to deft Bridwell, they must find for defts Carroll, Bridwell, Hackham & Fenn, unless they also find that said Materials were sold and furnished to Thompson expressly for the building in question and none other.

The Court rules in this case, that if the bricks were furnished by Plff to Thompson for the building mentioned in Plaintiffs petition and were actually used in the construction of said building, the Plaintiff is entitled to recover against said Thompson for the value of the same, and the premises in question ought to be charged with a lien therefor.

Whereupon the Court sitting as a jury found a verdict for the Plaintiff.

Defts Carroll & Thompson move the Court for a new trial -

1st Because the Court erred in instructions on behalf of Plaintiffs.

2 Because the Court erred in refusing instructions asked by defendants -

3 Because the verdict of the Court is contrary to and against the evidence on the trial of the case.

4th Because the verdict of the Court is against the law the law in the case.

Which motion was overruled.

C C McLure
John [redacted]
for Plff in Error

No. 79

Supreme Court

William House, Deft in Error
vs
John Carroll et al Pltff in Error

Statement of case for Pltff in Error

Filed April 4. 1866
O. T. Fishback
Clk

McLure & Wickham

William Hause deft in error } In the Supreme
vs. } Court
John Carroll pltff in error }

This is an action under the Mechanics Lien Act of 1837.

The petition of plaintiff below (deft here) asks to recover the sum of $324 70/100 for 44.800 bricks sold to Thompson, and delivered to him at and used in Carrolls house, describing the same.
It further states that B. A Thompson & Hockham & Fenn, were the parties to whom said material was delivered
Also states that Carroll was the owner of the premises at the time of the delivery of the material & at the commencement of the suit
That Hockham & Fenn were contractors under him as owner
That Bridwell & and defendant Thompson furnished the material to Hockham & Fenn, which was used as above
& that Thompson contracted directly with plaintiff for said material.
Petition further states that he furnished on Thompsons own order under his contract abt 10.000 bricks & to Hockham & Fenn under same contract 34.800 bricks, all of which were furnished & used in said building.
Further alleges the filing of the lien, service of notice & prays judgment for said $324 and a special judgment against the property described

Defendants Hockham & Fenn file a separate answer & set up want of knowledge as to whether pltff furnished the material, the amt & at the price to defendant Thompson & deny that said material or any portion thereof was for

to them by pltff as stated in the petition - Set up want of knowledge as to whether said material was used in the erection of the building

They admit that they were contracting under Carroll the owner & that the material used in the building was furnished to them by defendant Bridwell & paid for, but whether said brick or any of them are the same mentioned by pltff they have no knowledge &c.

Set up want of knowledge as to whether pltff furnished Thompson 10000 bricks & deny that pltff furnished them on their personal order abt 34.000 or any other amt of brick

Deny having any contract with pltff, deny that pltff furnished under any contract to them or on their personal order abt 34.800 & deny that any brick furnished them by plaintiff was used in erecting said building

Deny that Bridwell had any contract connected with said building

Set up want of knowledge as to notice & lien &c

Defendant Carroll filed their separate answer denying indebtedness to plaintiff in any manner.

He admits that he is the owner of the property

Admits he employed Hockham & Tann to erect & build the house, & that the material was to be furnished by Hockham & Tann, & says he has paid them

Denies that Thompson had any contract or agreement for building the house or furnishing materials

Denies the furnishing by pltff to Hockham & Tann of 44.800 bricks

Has no knowledge as to any agreement between Thompson & Bridwell to furnish brick to Hockham & Tann.

Denies that Thompson & Bridwell on behalf of pltff ever furnished any brick used in building said house

Admits service of notice, but has no knowledge of time & the filing of a lien.

B. A. Thompson also files his separate answer and ~~de~~
Denies that he was a contractor with R. T. Bridwell for the erection of the building.
Sets up want of knowledge as to filing a lien.

Trial by the Court without a jury and a verdict for plff for amount claimed against B. A. Thompson and a special judgment against the property.

The whole theory of the defence in this case was that unless the parties and all of them, through whose hands the materials passed from ~~plaintiff~~ the brickmaker until they went into the house, were connected with the building or erection as contractors or subcontractors, that plaintiff could not recover.

This doctrine, does not seem to be either in accordance with principle or justice and was not sustained in the Court below.

The first section of the Act of 1857 ~~gives~~ says every person doing or performing any work upon, or furnishing any materials for buildings or other improvements &c shall have a lien upon the same, to secure for such work done, or materials furnished &c whether he or they be employed by the owner, agent, contractor, subcontractor or other person &c

Sess Acts 1857 page 668.

Sec. 8th Same act, says, "in all suits under this act, the parties to the contract shall and all other persons interested in the matter in controversy and in the property &c may be made parties. &c

The believe no question is raised as to any matter or

thing occurring on the trial, no objections were taken as to pleadings, none to the evidence, the case therefore simply turns upon the law under the evidence.

Plff in Error assigns for error.
1st That the Court erred in the instruction given on behalf of Plaintiff (respondent)

To this respondent replies that as none was given by the Court on the motion of plaintiff (respondent here) and the Bill of Exceptions shows such to be the case this matter of error amounts to nothing

The Court however did grant the 1st instruction asked by plff in error (defendant below) and this we say presents the law of the case as fully as it could be presented, the point in that instruction is that it must appear that the material was sold by plff expressly for the building in question

No objection being made except to the instructions refused & the verdict, we submit that no other questions can be raised in this Court, we therefore confine ourselves to the consideration of the case as made by Appellant in his Statement.

Appellant states that no proof was offered to show that the bricks were sold to Thompson for the purpose of being used in Carrel's house -

We submit that if Appellant had read Chas Pates' testimony as preserved by the Bill of Exceptions, he would never have made such a Statement, for Pates swears directly that the Contract was expressly for Carrel's house & that the material was delivered under said contract and actually used in the building.

As to another point in Appellants brief that there was no proof of ten days notice to Carroll of respondents intention to file a lien, we reply That the Bill of Exceptions shows a notice read in evidence without objection, so found made below as to this matter, and that Judge Lord trying the case without a jury found a verdict for plaintiff, this we consider a sufficient answer to such matter & we hold that this Court cannot entertain any new objection to the verdict made for the first time in this Court.

Respondent prays the Court therefore to affirm the judgment of the Land Court

E. Peacock
Atty for respondent

No 79

In the Supreme Court

William Hause
D.E.
vs
John Carroll P.E.

Statement of
D.E.

Filed April 16, 1866
C. T. Fitzbuck
clk
E Peacock
Atty for D.E

William Hause
Defendant in Error
vs
John Carroll et al
Plaintiffs in Error

No. 79
Supreme Court
March Term
1866.

Brief of Plaintiff in Error.

The defendant in Error in this case is not entitled to a lien against the property of the Plaintiff in Error Carroll.

1st For there was no contract between him and Carroll the owner of the land. The petition and evidence both show that the brick in question were sold by Defendant in Error to one Thompson who had no contract with Carroll, but on the contrary sold the brick as an article of merchandise to Bridwell and was paid for them; Bridwell afterwards furnished the brick to Hockham & Fenn the contractors and he alone if any one is entitled to a lien for them.

Porter et al. vs. Tooke et al.
35th Mo. Rep. page 107.

2nd

The petition shows that there was no privity of contract between the Defendant in Error and the Plaintiff in Error Carroll.

All liens must be founded upon contracts direct or indirect, express or implied, with the owner of the estate sought to be charged; and the Court erred in refusing the 2nd and 3d instructions asked by the Plaintiffs in Error. This principle is firmly established as well by our own decisions, as by the authorities from other states, based upon statutes more or less analogous to ours. The common object of all which is to give a lien to the mechanic or person furnishing the materials for a building, provided it be done under a contract expressed or implied with the owner and not with a stranger dealing generally in building materials

Clark vs. Brown
25th Mo. Rep. page 560.
Squires vs. Fithian
27th Mo. Rep. page 138.
Harlan vs. Rand
27th Pa. State Rep. page 575.
Consociated Pres. Society vs Staples
28d Conn. Rep Page 559.
Ibid " " " 637.

17 Wend " " 550
22nd " " " 395
26 Miss. " " 126

By the express terms of the special act for St Louis County, the right of lien for materials furnished is confined exclusively to the party furnishing them; here it is shown that the bricks in question belonged to Bridwell who bought them of Thompson in the kiln. The mere delivery of the bricks by Defendants in Error at the house in question under the order of Thompson & Hockham & Fenn gave him neither a right to the property, nor to a lien, under our statute, for in so doing he acted merely as the agent of Bridwell, the owner of the bricks.

See Mechanics Lien Law
Special Act for St Louis Co.
Sess. Acts 1856 & 7 p. 668.

9th " There is no evidence in the record to show that notice of this lien was given to Plaintiff in Error Carroll at least ten days before the filing of the Lien.

Heltzell vs. Hynes
38th Mo. Rep. p. 482.
Schubert vs. Crowley
38th Mo. Rep. p. 564.

No. 79

Supreme Court
March Term 1866

William Hause
Defendant in Error,
vs.
John Carroll et al.
Plaintiffs in Error.

Brief of Plaintiff
in Error

J. Wickham
of Counsel for
Deff. in Error
Filed April 16. 1866
O. T. Fisleback
Clk

All of which is respectfully submitted
John Wickham
of Counsel for Deff. in Error

In the Supreme Court.

Error to the St Louis Land Court

William Hause, deft in Error.
vs
John Carroll, Pltff in Error.

No 79
March Term 1866

Brief for Pltff in Error.

The Mechanic's lien law, was only intended to protect, those who done work on the building, or furnished materials to the owner, or those engaged in erecting the building. But was never intended to create a lien in favor of third parties, and every body who had owned and sold the materials to sundry persons, before it was purchased by the builder, or owner of the building.

Steinmetz v Boudinot, 3, S & R, 541.
Hills vs Elliott 16, S & R, 56.

There was no privity of Contract between the deft in Error (Hause) and John Carroll Pltff in Error, nor between House and Hacham & Fenn the builders. Hause sold the brick to B. A Thompson, who had nothing to do in building the house, or furnishing materials for it, either as principal or agent. Thompson, after he purchased them from Hause, sold them to Bridwell, and Bridwell had nothing to do with building the house,

or furnishing Materials. Bridwell paid Thompson for the bricks when he purchased them from him. and afterwards sold them to Hackham & Penn the builders, and they paid Bridwell for them, and Carroll plff in Error, paid Hackham & Penn for building his house.

Bridwell, purchased the bricks from Thompson, as an article of Merchandise, and sold them as such to Hackham & Penn. He, (Bridwell) therefore was the only party who could possibly have claimed a lien on the building, had he not been paid for them, and the only person of whom Carroll could be required or expected to ascertain whether or not he claimed a lien before paying Hackham & Penn.

House is not entitled to lien against Carroll, Carroll is in no way responsible to him for Thompson's indebtedness to him.

House did not give Carroll ten days, or any notice of his lien, before filing the same, this alone is fatal to his right of recovery against Carroll. Hetzell vs Hynes 35, Mo Rep, 482.

C C McLure
atty for plff in Error

No 79
Supreme Court
March Term 1866

William Hause, Deft in Error
vs
John Carroll, Plff in Error

Brief for, Plff in Error

Filed April 18. 1866
C. T. Fitzback
Clk

C C McLure
atty for Plff in Error

William Hause
vs
John Carrol et al

In the Sup Ct Mo
Mch T. 1866.

Opinion of the Court.

The point made in this case, by the plaintiffs in error, as to the sufficiency of the notice cannot be urged in this Court, as no objections were made to it in the Court below. There was an averment in the petition that the statutory notice was given preparatory to filing the lien, and the Court as the trier of the fact was the appropriate tribunal to judge whether the evidence supported the averment. A party seeking to enforce a mechanics lien upon a building must show that he furnishes the materials for the building, under a contract either with the owner of, or the contractor for, the building, (Hause vs Thompson et al 36 Mo 450) There was evidence tending to show that Thompson one of the defendants purchased

the brick of the plaintiff for Carrols house and that they were received by the contractors, but in what capacity he purchased them does not appear by the witness. There was evidence also going to show that he bought them absolutely of the plaintiff on his own individual responsibility, and then sold them to a man by the name of Bridwell, and received pay for them, and that Bridwell sold them to the contractors, who paid him their full value.

The defendants requested the court to declare the law, that if it, relying on a jury, found from the evidence that the bricks in question were purchased by defendant Thompson from plaintiff and sold by said Thompson to defendant Bridwell and paid for by said Bridwell, and also sold by said Bridwell to defendants Hockham and Fenn (the contractors) then plaintiff has no lien on defendant Carrols premises in question, which the court refused to do. We think

the instruction should have been given, It is plain, if the the plaintiff sold the bricks to Thompson on his own private liability, and he ~~furnished~~ sold them to another party, who furnished them to the contractors, the plaintiff is not entitled to a lien on the premises. His contract was with Thompson and he must look to Thompson for his pay. There was evidence going strongly to sustain this view of the case, and the defendants were entitled to have it submitted to a jury.

Reversed and remanded

Judge Holmes concurs, Judge Lovelace absent.

David Wagner

79

Wm Hause
vs
Carrol & others

Opinion of the Court,
Wagner.

Filed May 17 1866
O. T. Fitzback
Clk

Reversed & Remanded.

William Hause, deft in Error } In the Supreme
vs } Court &c
John Carroll, Pltff in Error }

Plaintiff in Error prays the Court, to make an order in the above intitled Cause, to stay Execution of the judgment of the Court below, upon said John Carroll entering into a recognizance, conditions as required by law, in which recognizance he offers Andrew Carroll and Christopher C McLure as his securities.

C C McLure
atty for Pltff in Error.

Wm Hause deft in Error
vs
Th Carroll, Pltff in Error

Motion for an order
to stay Execution