No. 11867

Supreme Court of Illinois

Wheeler.

vs.

Law,

71641 7

Cos. $4.

C. Thatcher Wheeler
vs
Matthew Law

Tazewell

89

11867

1851

Pleas to the Circuit Court of Tazewell County to the April and September Terms, in the year of our Lord, one thousand eight hundred and forty-seven, and the April and September Terms in the year of our Lord one thousand eight hundred and forty-eight before the Hon. Samuel H. Treat, one of the Justices of the Supreme Court of the State of Illinois, assigned to and presiding in the Eighth Judicial Circuit:

Be it remembered, that on the fifth day of February in the year of our Lord, one thousand eight hundred and forty-seven, Matthew Law by his Solicitor, Benjamin F. James filed in the Office of the Clerk of the Circuit Court of said County his Petition and Praecipe, in the words and figures, as follows, to wit:

Petition

To the Honorable Samuel H. Treat, Associate Justice of the Supreme Court, and Judge of the Tazewell Circuit Court

Your Petitioner Matthew Law, hereby complaining, would show unto your Honor, that on or about the Second day of April A.D. 1845, David Kinnaco of the County of Tazewell and State of Illinois was the owner in fee simple of the following described Lots of land lying and situate in the Town of Pekin in the County of Tazewell and State of Illinois, and described in a plat & map of said Town as Water lots, Lots one (61) Lots two (62) Lots three (63), Lots four (64) and Lots five (65) as by reference to a plat or map of said Town will more fully appear. Your Petitioner further

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States, that on or about the second day of April AD. 1845,
at the County of Tazewell aforesaid, he made a contract
with said Daniel Hinn &co (said firm being stated
to your Petitioner as being composed of Daniel Hinn
Charles J. Wheeler, and William C. Ellis) who are
made Defendants hereto) to assist in his labor and
services in putting up and running a Distillery
Your Petitioner being a practical Mechanic and Distiller
Situated upon the lots above specified and owned by the
Defendants as aforesaid. And your Petitioner,
further, states, that it was agreed by and between
himself and said Daniel Hinn &co, that he should
receive and they pay him, for putting up and running
said Distillery, and for the work labor found by him
to the just and full sum of one hundred Dollars per
month or give him at his the Petitioners option one
Eighth part of the net profits made out of the Grain
whisky and hogs in pens, manufactured by the said
Steam Mill and Distillery, situated upon the lots above
specified, and, also his travelling expenses to and from
Cincinnati in consideration of his transacting business
for the said Defendant. But your Petitioner at the time
of entering upon this contract refused to receive the Eighth
part of the profits as aforesaid but accepted of the wages
of one hundred dollars per month, as per contract, and
for any other labor performed and materials furnished
the said Petitioner was by contract or agreement to re-
ceive reasonable and fair compensation for the same,
and, at the expiration of said work and the per-
formance thereof, the said Daniel Hinn and co. were
to account to and with him and pay the balance
that might then be due him and in arrears, unpaid.
Your Petitioner further states, that in pursuance and in

"fulfilment of said agreement he did labor, and furnish
"materials for the said Firm &c in and about said
"Flour Mill and Distillery in putting up and repairing
"the same as were of him required by said Defendants,
"And from the first day of May AD. 1845, until the
"Twenty-ninth day of December AD. 1846, your Petitioner
"under said agreement and contract was entitled to and
"said Defendants justly owed him the sum of two thou-
"sand and fifty dollars, the whole of which moneys are
"due and unpaid,

"Your Petitioner further states that the said Dan-
"iel Firm &c are indebted to him in the further
"sum of Twenty-one hundred dollars for work and
"labor care and diligence of said Petitioner in and
"about the business of said Defendants as aforesaid,
"in furnishing materials, repairing and putting up
"and running said Distillery and flouring mill
"upon the lots or tract of land above specified, at the
"special instance and request of said Defendants, be-
"tween the first day of May AD. 1845, and the
"Twenty-ninth day of December AD. 1846. And,
"also for the further sum of Twenty one hundred
"dollars on the Twenty-ninth day of December AD.
"1846 upon an account then and there had between
"your Petitioner and said Defendants which amount
"was found due and owing this Petitioner by said Defen-
"dants for other work, labor, and materials found in
"for and about said Flour Mill and Distillery sit-
"uated upon the lots as aforesaid, done and performed
"by this Petitioner and at the special instance and
"request of said Defendants done between the first
"day of May AD. 1845, and Twenty-ninth day of
"December AD 1846. All of which sums of money are
"yet due and unpaid. Your Petitioner further states
"that six months have not yet elapsed since he com-
"pleted said work and labor above stated and furnish-
"ed the materials used in and about the premises a-

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"foresaid and every part thereof and that the
"time fixed for the completion of said contract was
"not extended for the space of three years, nor the
"time of payment thereon beyond one year from the
"time specified for the completion of said contract,
"Your Petitioner further states that George De Baum Jr.
"Aaron W. Hagar, Thomas Webster, Charles J. Wheeler,
"William C. Ellis, C. Thatcher Wheeler, George Carlisle, Wil-
"liam C. White and Addison Shankein pretend to have
"and claim some interest in said premises above spe-
"cified, acquired subsequently to the making of said
"contract and the commencement of said work as
"Petitioner believes and charges, and that whatever interest
"they have in said premises ought to be subject to the
"lien of your Petitioner on said Mill, Distillery and
"lots of land, Your Petitioner further charges, that
"he is entitled to a lien by virtue of the act of the
"Legislature of the State of Illinois, in such case
"made and provided upon said premises, to wit
"said lots of land and said Mill and Distillery
"therefor for the payment for said work and labor
"performed by your Petitioner as above stated.
"Your Petitioner further charges that since
"the completion of the work and labor in the contract
"specified as above, he is informed and truly believes,
"that said David Finn has departed this life leaving
"unknown heirs or legal Representatives to your Petitioner
"and no property by which the payment of this debt
"might be satisfied by the ordinary action at law, and,
"as this is his sole remedy he prays that the unknown Rep-
"resentatives of said David Finn deceased, George De
"Baum Jr. Aaron W. Hagar, Charles J. Wheeler,
"William C. Ellis, Thomas Webster, C. Thatcher Whee-
"ler, George Carlisle, William C. White, and Addison
"Shankein be made parties to this proceeding, and
"summoned to answer the charges and matters

" as aforesaid, but not on oath) their and each of
" their oaths being hereby expressly waived, and
" that a trial may be had of the charges and
" allegations herein contained according to the Sta-
" tute in such case made and provided; and that
" your Petitioner upon a hearing may have judg-
" ment and execution against said lots, lands and
" buildings thereon for the payment of such sum
" as shall be found due and owing from said
" Defendants to said Petitioner, in arrear and un-
" paid, and that the lien of your Petitioner
" be perfected on said premises and buildings
" thereon; and that the same may be sold to satis-
" fy and pay the amount that may be found
" due your Petitioner as aforesaid, and, that the us-
" ual process of Summons issue against said De-
" fendants, and for such other and further relief
" in the premises as shall upon consideration seem
" just and equitable

Matthew Law

" Benjn F. James

Solr for Pltff

"

"

Praecipe Matthew Law

" Daniel Stine, Unknown legal
" Representatives, George de Bouen
" Wm. Aaron W. Fagin, Thomas
" Webster, Charles J. Whelen, William
" Ellis, Chalotha Whelen, Geo
" Carlisle Wm. C. White and
" Addison Shanklin

Mechanics lien
Dft $2046.45
April Term A.D. 1847

" Saz. Circuit Court

"

" Sums as above ultimable as above Service on
" Copy

Clerk will issue

" Benjn F. James

" Solr for Pltff

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Now, afterwards, to wit; on said fifth day of February, in the year of our Lord, one thousand Eight hundred and forty-seven, Summons was issued in the words and figures as follows, to wit:

"State of Illinois } The People of the State of Illinois
"Tazewell County } ss to the Sheriff of said County, Greeting:

Summons "We command you to Summon David Timms unknown legal representatives, George De Baum Jr., Aaron W. Fagan, Thomas Webster, Charles T. Wheeler, William C. Ellis, Thatcher Wheeler, George Carrier, Alm C. White, Addison Shankin, if they are to be found in your County, to be and appear before our Circuit Court for said County, on the first day of the next term thereof, to be held at the Court House, in the Town of Tremont, on the Wednesday before the second Monday of the month of April next, then and there to answer unto the matters and things contained in a certain Petition for Mechanics lien filed in our Circuit Court for said County of Tazewell by Matthew Saw

"And you have make due return with an indorsement of the manner in which you shall have executed the same.

"Witness J. H. Jones Clerk, and the seal of said Circuit Court, at Tremont, this 5th day of February, one thousand Eight hundred and forty seven

(L.S.)

J. H. Jones
Clerk

"Served the within by leaving a true copy of the within with C. T. Wheeler, T. T. Wheeler and Addison Shankin, the other Defendants not found in my County this 11 March 1847

Ret

R. W. Biggs S.T.C.

Now, heretofore, to wit: on the fourth day of said month of

February, Affidavit was filed in the words and figures, as follows, to wit,

" Matthew Law

" Unknown legal representatives of
" Daniel Finn and George De Baum Jr.
" Thomas Webster, Aaron W. Fagan
" Chatcher Wheeler, Charles J. Wheeler
" Wm C. Ellis, George Carlisle, Wm E. White
" and Addison Shankein

" George H. James being
" duly sworn according to law saith that he is in-
" formed and only believes that George de Baum
" Jr. Thomas Webster, Aaron W. Fagan, William C.
" Ellis, George Carlisle, William E. White and Ad-
" dison Shankein are non residents of the State of Illi-
" nois; and, that he is not informed nor knows who
" constitute the legal representatives of Daniel Finn dec'd
" nor the residence of the same

" Sworn to and Sub-
" scribed this 4th July 1847

Affidavit

G H James

W. Jones Clerk

Now, Advertisement for Publication was sent to the Tazewell Whig in the words and figures as follows, to wit;

" State of Illinois } Circuit Court to the April
" Tazewell County } Term A.D. 1847

Advertisement for Publication

" Matthew Law

" Unknown Legal Representatives of
" Daniel Finn, deceased, George De Baum
" Jr. Thomas Webster Aaron W. Fagan
" Charles J. Wheeler, Wm C. Ellis, Chatcher
" Wheeler, George Carlisle, Wm E. White
" and Addison Shankein

Petition for Mechanics Lien

Affidavit

" having been filed satisfactorily showing that the
" Defendants George de Baum Jr. Thomas Webster, Aa-

"ron W. Hagan, Alson C. Ellis, George Carlisle, John E.
"White and Addison Shankline, are now residents
"of the State of Illinois, and summons having been
"issued returnable to the April Term A.D. 1847: Now, Pub-
"lic notice is hereby given to the said non resident De-
"fendants, and the unknown representatives of Daniel
"Hinn deceased, that, unless they be and appear before
"our Circuit Court, for said County of Tazewell, on the
"first day of the next Term thereof, to be held at the
"Court House, in the Town of Tremont, on the Wednes-
"day before the second Monday of the month of April
"next, and plead, answer or demur to the Petition
"herein filed, the matters and things therein con-
"tained will be taken for confessed, as to them, and
"a decree entered according to the prayer thereof.
"Dated at Tremont 4th February A.D. 1847.
"B. G. James T. H. Jones
"Sol for Petitioner Clerk."

Now, afterwards, to wit: At a Circuit Court
begun and held at Tremont, within and for the
County of Tazewell, on the First Wednesday of the
month of April, in the year of our Lord, one thousand
eight hundred and forty seven, Present the Hon:
Samuel H. Treat, and, on the First day of said
Term being the 7th day of said April, the following
proceedings were had in said cause, to wit:

"Matthew Law
"vs
"Daniel Hinn and others
} Petition for mechanics Lien

"This day comes
"the Plaintiff by his Attorney, and suggests the
"death of the Defendant Daniel Hinn, and on
"his motion, the Administrator of said Daniel, (Sur-
"ner. R. King) made a party Defendant.

Now, afterwards, to wit: on the second day

of said Term of said Circuit Court, being the eighth day of said month of April, the following proceedings were had in said cause; to wit;

Matthew Law
" vs. Petition for mechanics
Order " Daniel Ginn and others Lien N

" This day comes the Plaintiff by his Attorney again, The Administrator
" aforesaid Susan R. King enters his appearance
" herein, and this cause is continued"

Said, afterwards; to wit; on the fifth day of said Term, being the 13th day of said month of September, the Plaintiff files his amended Bill in the words and figures, as follows, to wit;

" Matthew Law Tazewell County
" vs. Circuit Court
Amended Bill " Daniel Ginn et al April Term A.D. 1847
Petition by way of amend-
" ment to his said Petition says that since the last
" Term of this Court said Daniel Ginn has de-
" parted this life intestate devising a portion of all of
" his property to Manda Ginn and Susan P. Wheeler
" wife of Charles J. Wheeler, and the heirs of said Ginn
" are unknown to your Petitioner, And Susan R.
" King has been duly appointed Administrator of the
" Estate of said Ginn with the Will annexed.

" And Petitioner further states that John G.
" Caldwell claims some interest in said premises
" adverse however to the lien of Petitioner.

" Petitioner therefore prays that said Manda Ginn
" Charles J. Wheeler, Susan P. Wheeler, the un-
" known heirs of Daniel Ginn, & John G. Caldwell
" be made parties Defendants to said Petition, and
" this amendment and Summons issue against them
" according to the statute in such case made and
" provided requiring them to answer the said Petition

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" said Complainant, and that Complainant have
" judgment against them as well as the Defendants
" said Petition herein filed in this cause in
" manner and form aforesaid.

W. A. Merriman
Sol for Compl

" Now, afterwards, to wit: on the 27th day of May,
in the year of our Lord, one thousand eight
hundred and forty seven, affidavit was filed in
the words and figures as follows to wit:

" Matthew Law
" vs
" Daniel Fiske et al

Tazewell Circuit Court
April Term 1847

Affidavit 2d

P. G. James

" being first duly sworn according to law de-
" poseth and saith that he is informed and believes
" that Maria Fiske, John G. Caldwell are non-
" residents of this state, and that the heirs of said
" Daniel Fiske deceased are unknown to this
" affiant.

P. G. James
Atty for Pltff

" Subscribed and sworn
" to before me this 27 may
" 1847

J. A. Jones Clk

Now, afterwards, to
wit: on said 27th day of May AD 1848, sum-
mons was issued in the words and figures, as fol-
lows, to wit:

" State of Illinois
" Tazewell County

Summons 3d

" The People of the State of Illinois,
" to the Sheriff of said County
" Greeting:

" We command you to summon Maria Fiske
" Charles J. Wheeler, Susan P. Wheeler unknown
" heirs of Daniel Fiske, John G. Caldwell if they
" can be found in your County, to be and appear before
" our Circuit Court for said Tazewell County on the
" first day of the next Term thereof to be held at the
" Court House, in the Town of Pekin on the first

Wednesday of the month of September next, then
" and there to answer with George De Bruce Brand
" thus into the matter and contained in a certain
" Petition for Mechanics Lien filed in our said Circuit
" Court by Matthew Law, and to do and perform
" whatever our said Circuit Court shall order and
" decree in the premises

" And you hereof make due return with
" an endorsement of the manner in which you
" shall execute the same.

" (L.S.) Witness J. Albert Jones, Clerk and the
" Seal of said Circuit Court at Fer-
" mont this 27th day of May, one thou-
" sand Eight hundred and forty-seven.

" J. A. Jones Clerk

" Upon which said writ was endorsed the
following return:

" Served the within Subp in Chancery on John G.
Not " Calhoun by leaving a true copy of the same
" with him on the 17th day of July A.D. 1847
" the other Defendants not found

" R. M. Briggs Sheff Y.C.
" By Geo L. Parker Dep'ty

" Now, afterwards, to wit: At a Circuit Court
begun and held at Fermont, on the First
Wednesday of September, in the year of our Lord, one
thousand Eight hundred and forty-seven, and
on the First day of said Term, the following
proceedings were had in said cause, to wit:

" Matthew Law

" Petition for
" Judson R. King Garnish-
" Mechanics Lien
" ishee of David Finn and others

Order

" This day comes
" the Plaintiff by his Attorney, and it ap-
" pearing to the satisfaction of the Court that,
" Judson R. King has ceased to be Au-

[illegible]-5

"ministrator of Daniel Finn, on motion, it is ordered
"that Philip Finn his successor be made a
"Party Defendant, leave granted to amend Bill and
"cause continued.

Now, afterwards, to wit: on the second day of
said Term being the second day of said September,
the Complainant files his second Amended Bill
in the way and begins, as follows, to wit:

"Matthew Law
Amend. Bill
vs
Philip Finn and others

Tazewell Circuit Court
Sept 2. 1847

"Said Complainant
"by leave of the Court, for amendment to his
"original Bill, states, that since the last Term
"of this Court, said Terrence R. King has ceased to
"be Administrator of the Estate of Daniel Finn, de-
"ceased, and letters of Administration with the
"Will annexed of said Daniel Finn deceased
"have been granted to Philip Finn by the Probate
"Justice of said County, and he is now acting as such
"Administrator of said Estate, and Complainant prays
"that said Philip Finn may be made Defen-
"dant to said Bill and the amendments thereto,
"and that Summons issue against him according
"to the Statute in such case made and provided, And
"he be compelled to answer the matters in said
"original and amended Bills, and Judg-
"ment be entered in this cause against said
"Philip Finn in manner prayed in said
"original Bill.

"And as in duty bound will ever pray
"&c.

"H. P. Merriman
"Sol. for Complt"

Now, afterwards, to wit: on said second day
of said Term the Complainants files his af-

figure of non residence, in the words and figures, as follows, to wit:

" State of Illinois
" Tazewell County } ss. S. R. Merriman being
" first duly sworn deposes and says that he is
" informed and believes that Philip Finn is a
" non resident of the State of Illinois
"
" S. R. Merriman
" Subscribed and Sworn to
" this 2nd day of September AD.
" 1847 before me
" K. A. Jones
" C.C."

" Now, therefore; to wit; on the 15th day of January, in the year of our Lord, one thousand eight hundred, and forty eight, Summons was issued against Philip Finn, Administrator of Daniel Finn, in the words and figures, as follows, to wit;

" State of Illinois } The People of the State of
" Tazewell County } ss. Illinois to the Sheriff of said
" County, Greeting;

summons. " We command you to summon Philip Finn
" Administrator of Daniel Finn if he can be
" found in your County, to be and appear before
" our Circuit Court for said Tazewell County, on
" the first day of the next term thereof to be held
" at the Court House in the Town of Tremont, on
" the first Monday of the month of April next,
" then and there to answer unto George De Baum
" and others upon the matters and things contained in
" a certain Petition for Mechanics lien filed in our
" said Circuit Court by Matthew Lace, and to
" do and perform whatever our said Circuit Court
" shall order and decree in the premises, And
" you hereof make due return with an endorsement
" of the manner in which you shall execute the same

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" Witness J. A. Hunt Jones, Clerk, and
" the seal of said Circuit Court at Tazewell
" this 15th day of January one thousand
" seven hundred and forty eight.
" J. A. Jones Clerk "

" Now, afterwards, to wit; At a Circuit Court
begun and held at Tazewell, on the fifth
Wednesday of the month of April, in the year
of our Lord, one thousand eight hundred
and forty eight, present the Hon: Saml
S. Hunt, the Sheriff of said County Tazewell
made return of said writ endorsed as follows, to wit,
" Not found in my County"
" April 1. 1848
R. W. Briggs S.T.C. "

" Now, afterwards, to wit, on the first day
of said Term, being the fifth day of said
month of April, the following proceedings
were had in said cause, to wit;

" Matthew Law
" Mary Ann, Charles J.
" Wheler, and the legal heirs
" and Representatives of Daniel
" Ann deceased and others

Petition for Mechanics Lien

" This day
" comes again the Plaintiff by his Attorney,
" and the said Philip Ann having ceased to
" be, the Administrator of said Daniel Ann, Wil-
" liam J. Parker, the Public Administrator
" of Tazewell County enters his appearance herein
" as a party Defendant, and is called to answer in
" forty days from this date, and the remain-
" ing Defendants are called to answer in twenty
" days under oath. And this cause is continued

Now, afterwards, to wit: At a Circuit Court, begun and held at Tremont, on the First Thursday of the month of September, in the year of our Lord, one thousand Eight hundred and forty Eight, present the Hon. Samuel Thomas Judge; and on the second day of said Term the Defendants C. Thatcher Wheeler, David C. Alexander and Thomas Webster and William B. Parker, Administrator of David Stern answered for their Answers in the words and figures, as follows, to wit:

State of Illinois } In the Circuit Court of
Tazewell County } the September Term 1848

Chicago Answer

Matthew Law }
" David Stern et al } Petition for Builders Lien

" Answer of C. Thatcher Wheeler, one of the Defendants in this cause, The said Defendant
" saving all just exceptions &c. and
" makes answer, that at the time of the holding
" the last Term of this court, this Respondent was
" the owner in fee by good title of in and to
" all the undivided half of the real Estate described
" in the Petition, and, that since said period this
" Respondent has conveyed his said one half of
" said real Estate to Thomas Webster one of the
" Defendants, by deed with full covenants of
" Warranty and Seizen. This respondent, therefore,
" has now no longer any interest in the matters
" in said Petition set forth further than his liability
" upon said Covenants of Warranty and Seizen. This
" Respondent further answering saith that the affi-
" davit by way of offset in this cause and attached
" to the answer of the Defendants Thomas Webster and

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"Daniel L. Alexander is true, and this affiant further answering saith that he verily believes that the payments in said a/c contained and specified amount to a much larger sum than any claim which the said Petitioner has against the said Daniel Finn deceased, and upon which he can claim a lien upon said premises, if upon any part of his said demand he can make such a claim.

"This Respondent further answering saith that he understands that said Petitioner was employed by said Daniel Finn and as a superintendant of said Mill and Distillery and that whatever labor or mechanical services he may have rendered in the planning or repairing the same was merely incidental to his occupation of superintend said mill and distillery and not such mechanical work and labor as contemplated in the statute upon which this proceeding is founded. This Respondent now having full answers Petitioner prays to be dismissed with his reasonable costs.

" Thatcher Wheeler
" by Jones
" his Att"

" Matthew Law

" " On Petition for Lien

Wm B. Parker Admin. Parker, executor of Daniel Finn decd Anthony et al

" William B. Parker Admin. of the Separate Answer of the said William B. Parker Admr &c.

" This Respondent saving and reserving to be no answer to Petitioner saith that he has no knowledge of the facts set up in said Petitioner, and calls for proof of the same. He therefore prays to be dismissed with his reasonable costs.

" William P. Parker Admr of
" Daniel Fenn by Daniel Jones
" his Atty
" Circuit Court of Vermilion County Illinois Of the
" September Term A.D. 1847 In Chancery

Webster & Alexander Solicitors — Matthew Law
" Turner King Admr of
" Daniel Fenn dec'd et al

Petition for Mechanics Lien

And now come
" David C. Alexander and Thomas Webster Defen-
" dants herein, and for answer to so much of com-
" plainants petition as they are advised it is material
" for them to make answer unto, make answer and
" say, that the said Daniel Fenn now deceased
" in said Petition mentioned whom Respondents
" understand and believe at time of the doing all
" and singular the work and furnishing as the material
" by said Complainant if any such was furnished
" had either legal or equitable title to every part
" of said premises in the Petition described, and be-
" ing thus Proprietor thereof, and being indebted
" to one Aaron W. Fagin in the sum of Eight
" thousand dollars in order to get time for the
" payment thereof, executed before the execution of said
" work and the furnishing said material to one
" C. Thatcher Wheeler a deed of Trust on said property
" on the Twenty-fourth day of December Eighteen hun-
" dred and forty-five to secure the payment of
" said sum of money. And that, afterwards,
" to wit; at a sale made of said premises upon
" the Twenty fourth day of June Eighteen hundred
" and forty seven, the said Wheeler Trustee as afore-
" said pursuant to the terms of said Deed of Trust
" made sale of said premises, and these Respondents
" became the joint and equal purchasers thereof at
" the sum of Eight thousand two hundred dollars.

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" These respondents answering further say that they
" have no personal knowledge of any contract be-
" tween the said Daniel Finn deceased and the
" said Petitioner, but are informed and verily believe,
" that he has been nearly or fully paid all the
" demands he has ever had against the said
" Daniel Finn of every kind whatsoever. But
" that if there is any balance due said Petitioner, it
" is a balance for which he is not entitled to any lien
" whatever upon said premises.
" These Respondents further answering, say that
" the account of payments to the said Petitioner
" herein exhibited they are informed and
" verily believe the same to be accurate and
" true. These Respondents further say that since
" the last continuance of this cause the Defendant
" Lyner King has been removed from his of-
" fice as Administrator of the said Daniel
" Finn deceased, and that one Phillip Finn
" has been appointed Administrator de bonis
" non of said Daniel Finn deceased and that
" Respondents submit if it would not be just
" and proper that he should be made a party
" thereto. And now having fully answered
" Petitioners Bill they pray to be dismissed with
" their costs.

" D. Alexander
" Thomas Webster

" State of Missouri
" St Louis County & City } ss

" They say perso-
" nally appeared before the undersigned a Jus-
" tice of the Peace within and for the County & State
" aforesaid David C. Alexander and Thomas
" Webster and being duly sworn according to
" law deposed and say, that the answer above

" subscribed by them and things therein contained
" so far as it purports to be of their own knowledge is true, and so far as from information received from them they believe it to be true.
" Given and subscribed before me this third day of September A.D. 1847 Geo A Hyde J.P.

D. G. Alexander
Thomas Webster

" State of Missouri }
" County of St Louis } Ss.

" I, the undersigned
" Clerk of the County Court within and for
" said County, certify that George A. Hyde
" Esq. whose name is subscribed to the forego-
" ing certificate was on the day of the date thereof
" and now is an acting Justice of the Peace in
" and for said County, duly commissioned and
" qualified that the signature thereto is genuine,
" and that to all such his official acts full
" faith and credit are and ought to be given.

" Given under my hand and the
" Seal of said Court, at Office in
" the City of St Louis, the third
" day of September Eighteen hun-
" dred and forty seven.

" P. Barlow Clerk

Matthew Law N/ To Daniel Fenn Dr.

1845			
May 20	To cash pd you in a/c with him		5.00
26	do " " " "		25.00
June 16	do " " " "		37.04
July 7	do " " " "		5.00
8	do " " " "		2.00
"	1 Coat 75 ch 2 lb Sugar 25 d		1.00
23	Paid 1 Bt Dinner for cash advanced you in St Louis		14.00
Aug 11	Paid yr order for 1 Bt Dinner		15.00

41867-10

Aug 26	"	" Thos Webster Co	31.25
" 20		" Gibson	2.00
Sept 7	"	" Your on a/c	4.00
" 15		do	6.00
23		" do for S.P. Bailey	3.00
Oct 6		do	3.00
25		do	3.00
"		do	15.00
27		do	30.00
30		do	100.00
"		1 Barrel Flour on 14th inst	3.50
31		for Cadiness a 10th inst 88 & for Cadiness this day 88 c.	1.76
"		Paid Robert Smith	3.00
"		paid up board to S.P. Bailey	5.50
"	"	Gibson	5.50
"	"	S.P. Bailey for E. Bacon	3.00
Nov 1		Ck on De Bauni Fagin Co 10.50	
3		do do 5.00	
4		do do 7.00	
6		do do 5.00	
14		do do 4.00	31.50
24		do do 1	4.00
"		Paid to crew 50 ¢ Do ¢ 200	2.50
Nov 29		Paid to Mrs Law	40
"		" Crew for Rigs 12th inst	9.50
"		1 Sp Chamber 18th Sept	1.25
"		1 Electric 4th Reader 9th Oct	88
"		1 Spelling Book	12
"		1 Surg 1/4 & Bus Map	19
"		1 Barrel Flour 12th	3.50
"		3 Cords Wood 7th	4.50
"		1/2 do do 23	88
"		Pd crew for St. Apple 25th	4.30
Dec 3		Paid to Mrs Law	50
5		do to Self	16.00
6		do to Mrs Law	3.00

Dec 13	do to Self $5. Do $5.		10.00
" 25	do to Mrs Law 43d		.43
" 22	do "		3.00
" "	do for Baron	17th	1.35
" "	do Self	19th	2.00
" "	do for J. Alexander $1.70. do $1.50		3.20
" 31	do Justice Kelley		10.00
" "	do Mrs Law		.50
"	1 Bot Brandy for Gilston Oct 20		.50
"	cash for Maza D. Fro 18th June		3.00
"	Amt Paid Do Baron Lagniste for yr acct		138.33
"	" " J. W. Carey for Maze 12th 13th 17th 24th 29th		4.00
"	Key cash on R. B. Murry 20th Inst		7.71
"	5 yds Canton Flannel 4th		2.50
"	1 Load Wood to Baily & Pratt		.50
"	Flour 2th $1.25 do 27th 18d do 29th 50c		2.43
"	1 Bush Meal 37½ 10 Bus Bran $3		1.00
"	2 yds Table linen Oct 25th		1.88
"	3 " Flannel Dec 2nd		1.20
" 1824	Cash July 27		.25
"	do 31		10.00
"	do do		25.00
"	do 22d		3.00
"	do of Jos Alexander get his Chd		13.00
"			$1393.69

Now, afterwards, to wit; on said Seventh day of September the Complainants files his Replication to the Answers of said Defendants Parker, Kelsten, Alexander and Wheeler, in the words and figures, as follows to wit;

" Matthew Law
" " Lazenell Circuit
" William D. Parker Court
" Sylvania's heirs of Daniel Sept T. 1848
" Ann decd & al
"

[11 867-11]

Repl'tn

" And said Complainant by way of Replication to the answers of said Defendants Parker, Herbert, Wheeler and Stephenson say that the matters and things stated and set forth in his said Bill are true, and all the matters and things alleged in said several answers of said Defendants are untrue. And this Complainant is ready to aver maintain and prove as this Honorable Court shall direct and as in duty bound will ever pray &c

" Merriman & James
" for Compt

And now, afterwards, to wit: on the eighth day of said month of April, being the fourth day of said Term, the following proceedings were had in said cause; to wit:

" Matthew Law
" vs
" William B. Parker Administrator of Daniel Finn deceased, the Unknown heirs of Daniel Finn deceased, John G. Caldwell and others

Petition for Mechanics Lien

" This day came the Complainant by his Solicitor and suggests the death of the Defendant John G. Caldwell; and, on his motion, it is ordered that said suit abate as to said Defendant, And, it is further ordered, that said Bill be taken for confessed against all the Defendants served with process herein, and who have failed to answer Complainants Bill.

Now afterwards, to wit; on said fourth day of said Term, the following proceedings were had in said cause, to wit;

Matthew Law
vs
William B. Parker
Administrator of Daniel Finn
deceased, Charles J. Wheeler, Aaron
W. Hagan and others

Tazewell County
Circuit Court
September Term
A.D. 1848

Decree

On this day
this cause came on to be heard, and, it appearing to the Court that Charles J. Wheeler, Susan J. Wheeler have been duly served with Summons in this suit, and more than ten days before the present Term of this Court, and that George De Baum Jr. Aaron W. Hagan, William C. Ellis, George Carlisle, William E. White, Addison Shanklin, Mary Finn have been duly notified of the pendency of this suit, more than sixty days before this Term of this Court; and the above named Defendants being three times solemnly called came not nor any person for them. It is, therefore, ordered that the said Bill and amended Bill be taken for confessed as to said Defendants above named. And issues being joined on the Answers of Thomas Webster, David C. Alexander, C. Shelton Wheeler and William B. Parker, Administrator of Daniel Finn deceased. It is ordered, that a Jury be empanelled to try the said issues joined, and, thereupon come a Jury of twelve good and lawful men, to wit: William Boyhill, Philander Dean, John T. Scott, Solomon Lincoln, Cary and B. Tinney, Lorenzo D. Hamilton, Robert A. Dunham, David Roberts, Benjamin W. Parker, Sr. K. Alexander of the regular panel and Richard T. Higgins and Nathaniel Pratt summoned from the bystanders, the

"regular panel having been exhausted, who having
"been first duly sworn according to law well
"and truly to try the said issues, and having heard
"the evidence offered by both parties, and instructed
"the jury returned a verdict in favor of Complain-
"ant for the sum of five hundred and Seven-
"ty-seven dollars, And this cause coming on
"to be heard, upon the said Bill, amended Bill,
"Answers aforesaid, Exhibits and the said Verdict,
"It is ordered, adjudged, and decreed that said
"Complainant is entitled to a lien on the pre-
"mises described in said Bill to wit: Water
"lots Sixty one (61) Sixty two (62), Sixty-three (63)
"Sixty four (64) Sixty five (65) in the Town
"of Pekin County of Tazewell and State of Illinois,
"as by reference to the map of said Town will more
"fully appear and the buildings thereon for the pay-
"ment of said sum of five hundred and Seventy
"Seven dollars and costs of suit, as against each
"and every of said Defendants, and, that, unless
"said Defendants pay or caused to be paid
"to said Complainant or his Solicitors the
"said sum of five hundred and Seventy-
"Seven dollars and interest from this date
"within five days from the date of this decree
"a special writ of execution issue against all of
"said Defendants according to the Statute directing
"the Sheriff to sell ~~said~~ lots and buildings
"according to the Statute, and that out of the
"proceeds of said sale said Sheriff pay the said
"sum and interest and the costs of this suit, and
"that on such sale he give the purchaser or purcha-
"sers a Certificate according to the Statute.

State of Illinois
Tazewell County ss. I, J. A. Jones Clerk of the Circuit Court, in and for said County, do hereby certify, that the foregoing Twenty four pages are a full, true and accurate transcript of all the proceedings had and papers filed in the said entitled cause of Matthew Law vs William B. Parker, Administrator of Daniel Finn deceased Charles J. Wheeler, Aaron W. Fagin and others, as fully and completely as the same are of record in my said Office

Witness my hand and official Seal at Pekin this Seventh day of October, in the year of our Lord, one thousand Eight hundred and forty Eight.

J. A. Jones
Clerk

[1867-12]

Matthew Law

vs.

Daniel Finn's

Administrator et als

Transcript.

vs

Matt

vs

Matthew Law

The plaintiff in error assigns the errors, as causes for reversal of the decree in this cause — 1st because upon his own bill the complainant is not entitled to the lien — 2nd because no sufficient affadavit was ever filed by complainant of the fact that the heirs of Daniel Finn were unknown to him the complainant — 3rd the proper parties against whom the decree was rendered were not all served with process, or before the court by publication, as required by law — there was no publication of notice, as to DrBaum, Fagin, Ellison of the firm of Daniel Finn (Jr.) Carlisle, White — Maria Finn, or Susan P Wheeler, nor service of process on them — 4th Susan P Wheeler, was never served with process, nor is there any affadavit of her non residence — 5th Because the decree gives the Petitioner a lien upon the lots and buildings — whereas by the answers under oath of David & Alexander, & Thomas Webster, the lots were under a prior incumbrance to secure a debt due to Aaron W Fagin and they were the purchasers under the sale made by the Trustee in the deed of Trust to Fagin —

Sheat & Edwards & Jones
Att'ys for pltff.

[1867-14]

State of Illinois }

The Clerk of the Supreme court for the third Grand Division will issue a Supersedeas upon the filing the forgoing record in his office together with a bond conditioned as the law directs; executed by C. Hatchen Wheeler the said Plaintiff in Error as principal and John Atkinson as security said bond to be in the penal sum of Eleven hundred and fifty dollars.

P. Caton
Justice of the Supreme Court

C. Hatchen Wheeler
vs
Matthew Lane
Record

Filed Feb. 3d 1849
Nelson Cm.

State of Illinois, Sct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of Tazewell, Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Tazewell county, before the Judge thereof, between Matthew Law

plaintiff and C. Thatcher Wheler & others

defendants it is said manifest error hath intervened to the injury of the aforesaid C. Thatcher Wheler as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment 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 second Monday of June 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. Samuel H. Treat Chief Justice of our said Court, and the seal thereof at Ottawa, this third day of February in the year of our Lord one thousand eight hundred and forty-nine.

S. Leland

Clerk of the Supreme Court.

[11 867-15]

8

Supreme Court

C. Statler Wheeler

vs

Matthew Lane

Writ of Error

To June Term 1849.

Filed Feby. 3d 1849.

Wieland Clk.

This writ of Error is made a Supersedeas & is to be obeyed accordingly

Know all men by these presents, that we C. Thatcher Wheler and John Atkinson are held and firmly bound unto Matthew Law in the penal sum of ~~one~~ Eleven hundred and fifty dollars good & lawful money of the United States for the payment of which well and truly to be made, we bind our selves, our Executors and administrators jointly, severally & firmly by these presents. Witness our hands & seals upon this twenty fifth day of January in the year of our Lord Eighteen hundred & forty nine.

Now the condition of the above obligation is such that whereas the above mentioned Matthew Law at the September term of the Circuit Court of Sagadahoc County Maine in a certain proceeding in chancery said Court had, wherein he the said Matthew Law as a petitioner for a lien upon real estate for work & labor done & material furnished, was Plaintiff and William B. Parker admr de bonis non of Daniel Finn deceased, the above bounden C. Thatcher Wheler & others were defendants, judgment & decree was rendered in favor of the said Matthew Law for the sum of five hundred & seventy seven dollars, and costs of suit, which said judgment the said Wheler says to be erroneous, and has prayed to have said cause removed to the Supreme Court of the State by writ of error to operate as a Supersedeas which is about to issue for that purpose, Now if the said above bounden Wheler & Atkinson shall well and truly pay all judgments, costs, interests & damages in case said judgment shall be affirmed and shall duly prosecute his said writ of error then this bond to be null & void & else to remain in full force & virtue.

C. Thatcher Wheler (Seal)
by Edward Jones his atty in fact
John Atkinson (Seal)

[11867-167]

C. Thatcher Wheeler
vs
Matthew Lane

Bond

Filed Feby. 3rd 1849.
S. Leland Clerk.

C. Thatcher Wheeler impl.d &c.
vs
Matthew Law — } Error to Tazewell —

Deft's costs.

Appn. 25, fil. vent. joinder 30, Rule to file abstcts. 25,	.80
Ent. dfft. 25, Ord. dispg. 25, Ent. judt. 25, Ord. for dt. 25,	1,00
Dk. judt. 25, Extn. 25, bill of costs 25, Copy — 25, —	1,00
Fil. & Dk. 15, Shff's retn. 10, Posty. 25, Sats fn — 25,	.75
	$3,55
Alias ex.n 25, fil. & Dk. 15, Shff's retn. 10, 2d bill of costs 25	.75
Copy 25, Cert. & Seal 25, Shff's retn. 10,	.60
Amt.	$4,90

A true copy from my Fee Book as taxed and recorded therein —

L. Leland Clerk.
By P. K. Leland Deputy.

[11867-17]

inclose

C. Thatcher Mulder

vs.

Matthew Law –

Bill of Costs $ 4,90

STATE OF ILLINOIS, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Cook County — Greeting:

We Command You, That of the goods and chattels, lands and tenements, and real estate of C. Thatcher Wheeler

you cause to be made the sum of four Dollars and ninety Cents costs in the said Supreme Court, which Matthew Law

lately recovered against him before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourteenth day of November, in the Year of our Lord One Thousand Eight Hundred and Fifty-one.

C. Leland Clerk of the Supreme Court.
By P. K. Leland Deputy

[1867-12]

55

C. Thatcher Wheeler impl. vc.
vs.
Matthew Law —

Execution vs. Pltff.
Bill of Costs $ 4,90
Fee Bill — 9,36¾
Amt. $ 14,26¾

52
20
115
5,75

Satisfied 4,26½
4,4
8,6½
1,37½
1,82

Nov 21st
Wm L. Church Shff
By D. T. Mott Depy

fee $1.82
ch W. for fee

Filed May 17, 1852.
L. Leland Clk.
By P. K. Lelan Depy.

C. Thatcher Wheeler impld. &c.
vs. } Error to Tazewell.
Matthew Law

Plff's. costs.

Fil. record, 20, fil. errors & bond, 12½, Dk. cause, 12½, appm. 25,	,70
Writ of error & fil. 1,06¼, Sci. fa. & seal & fil. 1,06¼	2,12½
Supds. & seal & fil. 1,06¼, Contn. 25, Dk. cause 12½, Contn. 25,	1,68¾
Dk. cause 10, Bill of costs 25, Copy 25, Certf. & seal 25,	,85
Fil. & Dk. 15, Shff's retn. 10, Dk. fee 2,50 Ent. Sats fn. 25,	3,00
	8,36¼
2d. bill of costs 25, Copy. 25, Certf. & seal 25, fil. & Dk. 15, Shff's retn. 10,	1,00
	$9,36¼

State of Illinois, ss.
Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois to the Sheriff of Cook County, Greeting; — We command you, that of the goods and chattels, lands and tenements of C. Thatcher Wheeler you cause to be made the sum of nine dollars and thirty six & a fourth cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

Witness, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourteenth day of November Anno Domini Eighteen hundred and fifty one.

L. Leland Clerk of the Supreme Court.
By P. H. Leland Deputy.

[11867-19]

C. Thatcher Wheeler pltff. &c
vs
Matthew Law –

Fee Bill $ 9.36½.

50
20
25

1 03
5 25

1 65
91
5 17

Satisfied
Novr 21st 1831
Wm L. Charche Sheriff
By D. S. Wood Dep

Filed May 17, 1852.
L. Leland Clk.
by P. K. Leland Dep.