No. 8718

Supreme Court of Illinois

McClurken, et al,

vs.

Lucas, et al,

71641 7

State of Illinois
Washington County

James L. McClurkin & Harvey B. Lucas, Pltffs in Error
vs
James Logan & Joel A. Edmiston, Deftts in Error

Sup. Court

I James L. McClurkin one of the plaintiffs in the above entitled cause now pending in the Supreme Court of the 3rd Grand Division at Springfield Illinois do consent that the sum of one dollar & one cent in hand paid at and before the signing and delivery of this paper, the receipt whereof is hereby acknowledged, do hereby release and fully waive all and all manner of errors and defects and irregularities in the record and proceedings of the Circuit Court had and taken in said cause and do hereby authorize the Supreme Court to confirm the judgment of the Circuit Court aforesaid to date to affirm the judgment of error in witness whereof I have hereunto set my name and seal on this the 17th day of December 1857

Attest
Jert. Sly Hick
J. A. Harris

J. L. McClurkin (Seal)

[8718-2]

Springfield } SS
Ills

This day came before me the undersigned clerk of the Supreme Court for 2nd Grand Division J T Mayne who being duly sworn says on oath that he is one of the subscribing witnesses to the foregoing release was present & witnessed its execution by the said James L McClurkin & that he says not so

Sworn to before me } J T Mayne
this 20 Jany 1858 }

Wm K Turney
Clk S.C.

Release
McClurkin & others
to
Sagamonk

Notice to be at Springfield on 15th day of January 1858

I herewith file the Original Release of James L. McClurkin one of the Plaintiffs in Error in this Cause appended to and on the back of which is an affidavit or proof of its Execution, As the Case is not on the Docket here I cannot plead it, but append it for the information of the Court, if they cannot consider it — It at all events will be a circumstance to weigh with the Court as to whether the Opinion of the court in the Cause will or will not be withheld until the next term of the Court at Mt Vernon.

Allen & Hampton

James L McCherkin
Etal vs
James Logan Etal

Sup Ct at Mt Vernon

Before proceeding to present an argument or brief upon the facts as they are set forth of record - the Will please allow me to direct their attention to the affidavit of Affleck as to the interest of himself and Kellogg - Deriving title under this decree by quit claim and from Logan one of the nominal defts here & purchaser under the Sale by the Shff made to satisfy said decree - The Court will see by this affidavit that Logan has no interest & also that the joinder in Error at Mt Vernon by Logan's Counsel (S G Hicks) was after the adjournment of that term, and without time or the attorneys part to examine and learn if the record was correct & full;

One object therefore designed to be effected by an appearance by the parties really interested, is to perfect the record, as in its imperfect state, there may be Error, which by perfecting it, might be obviated

I proceed therefore to point out the Imperfections in the record - with the view of inducing the Court to withhold their decision in the case if they conclude there be error therein as it now appears

First then.

It appears by the record (Page 11) that certain Exhibits marked (D) are not filed with this record nor made a part thereof in any way. These Exhibits are certified (parts of) Plats of the town of Richland in which the lots of land in Petition described are shown by metes & bounds, with the name of James L McCherkin thereon written, - sd plats being duly acknowledged & recorded and as we insist show title in McCherkin to sd land

Rev St P. 115 Sec 21

(2708-3)

By reference to the affidavit of Kellog herewith filed the Court will discover that said papers were filed in said Cause below and ought to be here as a material part of the Evidence to sustain the Decree below

Secondly

In the 18th & 21st pages of the record this Court will see that Aeft Edmiston here, obtained Leave to file bill of interpleader below, & was made a party by bill of interpleader, and yet no where in this record does sa bill of interpleader appear - although for its want pltffs in Error have now here assigned Error.

Third.

It appears (Page 11) that the record is imperfect in not setting out Exhibit (A) whereas it appears by said petition below & the affidavit of sa Kellog here. was the account sworn by clerk of the Complainant below

Fourth

Page 6 of this record there appears a paper in this record purporting to be the Answer of Lucas. to petition of Complainants below - & no where does it appear that said paper ever was filed or became a record of said Cause by leave of Court or otherwise, but on the Contrary the Decree in said Cause shows that the Demurrer of Defendants remains not withdrawn, but abided by and that there was judgment upon the Demurrer for Complts and an order of reference to the Master to hear testimony & Complts &c which shows said answer to be an interpolation & an unauthorized paper in this Cause

It is for these reasons that we ask the Court to withhold a decision until the Court can be

(over)

properly applied to for Leave to set aside the Judgment in Error. And an Order for Certiorari to the Clerk of Washington Circuit Court

But if the Court should Conclude that they will not be authorized to withhold an opinion or final decision in this Cause until the Nov Term 1858 at Mt Vernon. then I proceed to the merits of this Cause and

First. – In order to dispose of all the Errors so far as the Pltff in Error McClerkin is concerned we rely upon his release & so far as he is Concerned ask that the Decree be Affirmed.

Secondly.

As to the Errors assigned I propose to notice Each in their order – now as to the first Error – the Decree of the Court shows Conclusively that there was a bill of interpleader filed by Edmiston and that he became a party by leave of Court by virtue of the Same – Page 21 of Record So that the Error or Assignment is untrue – But if it were not untrue still the Error is not well assigned for the Statute. (1845. P. 346 Sec 10) does not require a bill of interpleader but only an application to the court to Entitle the party interested to become a party to the suit – this application might be made otherwise than by bill of interpleader. perhaps by Simple Motion for Leave or by other Methods of applying for the right

Sect. 10 R. S. 346

[8118-5]

Thirdly

The Overruling of the Demurrer insisted upon in the 2nd assignment of Error, was waived if there was an answer filed - but we insist no answer ever was filed, the paper purporting to be the answer of Lucas is no part of this Record - so that they may be treated as standing by their Demr. and I insist that under the Statute (P 345 Sec 4) the petition is sufficient - the Contract - its terms - amount due thereon - the description of the premises subject to lien - the facts that the work was done - & not paid for is all stated - with certainty - and this is all that is required - this is intended to be a Summary & simple remedy given to the Laboring man - and if more strictness is required than is shown by the pleadings here the remedy instead of being simple becomes complex & technical in form & practice vide 13 Ills 530 - et seq1m - - -

Fourthly

The 3rd Error is not well taken, because although the Court may not have followed the ordinary practice in allowing the first petition to be withdrawn & the cause continued yet this if it be an Error at all is by Mc Cluer Esq released; & by Lucas waived by entering his appearance & filing his Demurrer to the 2nd petition filed on 2nd day of May 1855. When he Demurred he was in Court to answer to this bill on which the decree was made

[8118-6]

Fifthly

the fourth Error is predicated upon the Supposition that 1st the Answer of Lucas was filed & is now part of this record — & 2nd by that being a part of the record a replication must have been filed & an issue made up — We insist as I have before said that the paper Copied on Pag 6 is no record in this Cause & not filed — But if it be I still insist that the reference to the master was correct because — the Sept below Lucas Says Some work was done — Denies nothing — and sets up nothing he Avers to (contradict) Contract, — Suppose we take the facts to be true as he States in this paper — No issue is to be decided — but merely a Computation as to the Amount due Logan & Edmiston — And so the decree Shows that the order was of reference to the Master — to hear Evidence & "make Computation" Certainly the Court Could do this — & Could not well have done otherwise —

Sixthly

The fifth Error is avoided first because the record Shows that both Defts Demurred to the bill — (vide decree P. 21 of record & also P. 7 of record where the Demurrer itself Shows that "McCluskin et al" as May Term 1855 by R Shand did appear — the Word "defendants" in the plural is plain in Several places & there there is one Special Cause for the Deft Lucas alone

But this Error is also defeated by the Release of McCluskin filed herein —

[8718-7]

Seventhly

The Sixth Error if true is cured by the appearance of McClurkin & waived — and also released by his release

Eighthly

The Seventh Error is nonsense — for if the Master was to hear Evidence & make Computation only — What aid would he have been to the Chancellor, & how could he be of aid without making a report of his Computation — and if he did report, why not enter the decree upon the report — Surely this is right —

Ninthly

The Eighth Error is cured by the appearance of the parties — Lucas certainly did appear & if McClurkin did not his release covers this as to him — & Lucas cannot now insist upon it after waiver

Tenthly

The Ninth Error is not well assigned because a party may Answer or Demur without a rule & if he do so, & take no further steps Judgment must go against him — But McClurkins release covers this also —

Eleventh

The tenth assignment of Error is untrue so far as it assumes that any Amount of the Judgment was for hauling — the Decree was for the Labor of Complainant alone tho that Labor was to be paid for by $1,50 per Day & board — the board was

[8718-8]

was as much a part of Log and pay for his Labor as was the $1,50 per day and this is all he charges for and this is all he got - See the Bill Page 10 of Record also the Evidence P. 16 of Record - So that there is no Error in this. -

Twelfth

The Eleventh Assignment is bad - because first the Statute of frauds was not set up as aforesaid below, - 2nd the Oral Evidence was not Objected to, 3rd no Exception was taken at the time - Oral testimony is receivable to prove any fact

See 4 Scam P. 337 - In the case of Whiteside & ux vs Dowes it is decided that an action cannot be maintained for Cutting timber without proof of legal title - So it has since been held in other cases - where Suit is brought to recover the penalty for the trespass -

Yet in 5 Gill P 506 - the Court expressly held that Parol proof of title not objected to is Competent & Sufficient -

See the Whole case Page 508 - 9 -

[8718-9]

Since the dicree in this cause below the Lands there of but little value have been greatly enhanced in worth by the erection of magnificent improvements thereon. Consisting of a fine flouring mill — Carding Machine — Woollen factory & pulling machine & I think Spinning machine — the property (when this decree was rendered) being of little value the party hereon could but little for In fact, he was never supposed to own it — but held it to protect Mr Clarkson Since a large amount of money (ten thousand & more) has been expended there he now seeks to regain some advantage by reversing this decree upon which Afflock & Kellogs title is predicated — I trust it will not be done unless there be a necessity for it — Clearly Manitoba, pass the rules & principles of law as applied to the facts of the case

I Macrae
Sol

James L. McCluskin
et al vs
James Lagan et al

Error to Washington

Motion for Certiorari to Clk Circuit Court
of Washington County &c

The Said Defts Come and moves the Court, for a Writ of Certiorari directed to the Clerk of the Circuit Court of Washington County Ills: directing & requiring him to certify to this Court a complete record of the proceeding had by & before said Court, in the above entitled Cause and Defts now show to the Court the following grounds for asking the aforesaid Writ &c

1st.

On Page Eleven of the record filed in this Cause, It appears & (Defts State the same to be true) that. Certain Exhibits marked "D" & filed with said petition, have not been ~~filed~~ certified, with said petition & record. nor do the said Exhibits appear therein in any way - & for their want, Material Evidence is absent to said Defts

2nd. On Page 18 & 21 in the copy of the decree of said Court below it appears that Deft Edmiston obtained leave to interplead & was made a party to said Proceedings by bill of interpleader & yet no where in said record does said bill of interpleader appear. And for its want, Plffs in Error have now here assigned Error,

[8718-4]

3rd Page 11 (4 line) It will appear that Exhibit (A) was filed with said Petition & it is not shown appears in the record of this cause & for this reason a material part of the case of Complt Culver (Apt here) is wanting. that that part showing particularly the items of Lagans Acct for which Lien is asked to be inforced

4th

It appears that (on Page 6 of record) there is a paper sent up with this record which purports to be the Answer of Deft (Lucas) below, but it does not appear that the same was ever filed in said cause, nor is the same noticed in said cause, in any way by or in the decree of the circuit court, but so far as appears from said paper & said decree the same is an unauthorized interpolation, ~~[illegible]~~ and placed among the papers, as appears without leave of court which in fact Apts stand by their Demurrer to bill of Complt —

Therefore a writ of Certiorari is prayed for

W. J. Allen & Haynie
for Apts &c

this case I trust from its importance to the parties really interested,

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Brief of
J N Hayne

James L McCluskin
et al
vs
James Logan &
Joel A Edmiston

Allen & Hayne
for Appts

Copy of Petition

State of Illinois
Washington County } In the Washington Circuit Court
James Logan } October Term 1854
vs
James L McCluskey } Petition for Mechanics Lien
& Harry B Lucas

To the Honorable William H Underwood Judge of the 2nd Judicial Circuit in the State of Illinois presiding and holding Court in Washington County in said Circuit

Your Petitioner James Logan would respectfully represent & show that on or about the 20th day of March AD 1854 James L McCluskey who is made Defendant in this Petition, of the County of Washington and State of Illinois, had bargained with Miss B Thurman and John C Gunn for, and entered into the Possession of, and afterwards made valuable improvements and expended large sums of Money upon the following tract of Land, in the County and State aforesaid which tract of Land or Lot of ground, are bounded as follows to wit - Part of the South West qr of the South West qr of Section 2 Township No 2 South of Range No 1 West of the 3rd Pl Meridian. commencing at a planted stone, set for the corner of Sections No 2, 3, 10 & 11 in said Township - thence South 88.35 East 106 feet to the beginning - thence East 166 feet, to a stone set for the boundary between R. H Grant and James L McCluskey - thence North to the South line of Block No 13 in the Town of Richview, County and State aforesaid - thence in a North West direction, with the South line of Block No 13 and 14 in said Town to a stake 106 feet East of the West line of said quarter quarter Section and received, and on the South line of said Block No 14. thence in a South direction three hundred & five 305 feet to the beginning, containing one acre of Land. Also Part of the North West qr of North West qr of Section No Eleven (11) Township No two (2) South of Range one (1) West of the 3rd Pl Meridian -

[8718-13]

commencing at a stone on the Section line, between Secs 2 & 11 near the wool factory, thence South 8°. 30 West. 215 feet to a Post – thence North 88°. 35 West 234 feet 4 inches on the North and South Section line – thence North 0°. 15 East 215 to the Section corner thence South 88°. 30 East 272 to the place of beginning, containing one acre and one fourth more or less that said Samuel L. McClinton at the time and place aforesaid, then and there being the owner equitably, and having the actual possession of said Land, by a verbal contract made with said James Logan one of your Petitioners employed him (the said James Logan) to work and labor on and furnish Material for a certain house or Wool factory & Machinery, then in process of building by said McClinton on the lots of Land or ground herein before described, for which work, labor and Material so to be performed and furnished by said Logan, the said McClinton promised to pay the said Logan, when such work & labor should be performed and Material should be furnished, the sum of One Dollar and Ninety one and a half cents per day, for as much work and labor as should be performed on said building and so much as the Material furnished by said Logan should be worth. By virtue of and in compliance with said contract, the said James Logan, performed sundry days work & labor on, & furnished sundry Material for the construction of said house, and Machinery during the Months of March, April and May 1854 to wit thirty two and a half days work & labor, and Material worth the sum of one Dollar and forty cents, amounting in the aggregate to the sum of sixty three Dollars sixty four cents as will more fully appear as per (Ex A) filed herewith & made part of this Petition. – That said Logan only received of said McClinton, the sum of six Dollars and twenty five cents cash on his (said Logan's) demand,

which leaves the sum of fifty six Dollars and Eighty nine cents, due, owing to and unpaid to said Logan, for work and labor performed by him upon & Material furnished and used in the building of said house and fitting up the Machinery therein And the said James L McClurken being the owner as aforesaid, and having the possession & control of the said tracts of Land herein before described, on or about the 1st day of April AD 1854 at the County and State aforesaid by a verbal contract, made & entered into with Thomas B Applack one of your Petitioners employed & engaged him the said Applack to work & labor on, furnish Material and Money to be used in, and spent and laid out in the construction and fitting up that this amount remains unpaid — that said James L McClurken has been repeatedly requested to pay said amount due your Petitioners as herein before set forth but wholly neglects to do so — Your Petitioners would further shew, that afterward the said Milo B Thurman transferred by deed the said first described tract or lot of Land, with other quantities of Land, to Alexander P Shipley and Joseph Barter, with the agreement that said Shipley and Barter should convey the first above described tract, to said McClurken, that in compliance with this agreement the said Shipley & Barter did on the 22nd day of June 1854, by conveyance in fee, transfer said first described tract to said Defendant McClurken, and that afterward the said John C Gunn transferred by deed the said last described tract of Land with other quantities of Land, to Simeon Walker with the agreement that said Walker should convey the said last mentioned tract to said McClurken — that in compliance with this agreement the said Walker did on the 30th day of June 1854 by conveyance in fee, transfer said last mentioned tract to

said Defendant McClurken, which transfers from said Shipley & Barber, and Walker to said McClurken will more fully appear by the copies thereof filed herewith, and duly certified, marked (C & D).

Your Petitioners would further represent and show that since they have done work and labor on, furnished material and money used in, and laid out upon the said house, and machinery, situated on the tracts of Land herein before described, equitably owned by and which were in the possession of the said James L McClurken, one Harvey B Lucas, who is also made a Defendant in this Petition, has attempted to take and hold possession of said Lands and the improvements, house and Machinery therein, upon which improvements house & your Petitioners bestowed their work, labor, material and money; that the title interest or estate if any owned & held by said Lucas in and to, said Land and appurtenances, is unknown to your Petitioners it never having been recorded, and therefore void, as to the claims of your said Petitioners, upon said Lands, house & Machinery for work & labor done upon, material furnished & used in, and Money spent & laid out in the construction of said house, & the Machinery therein attached & belonging.

Wherefore your Petitioners pray that said James L McClurken and Harvey B. Lucas be summoned to appear and answer this Petition before your Honor — that on hearing the cause, an order may be made that said tracts of Land herein before particularly described be sold according to Law, and that the proceeds of such sale be applied to the payments of the demands due and owing to your Petitioners severally as herein set forth, from the said James L McClurken, together with all costs and expenses, incurred by your Petitioners

in the prosecution Petition; And that your Honor may make such other order as may seem proper and right in the Premises, consistent with the rights and interests of the Parties interested herein, And that your Petitioners have such other ~~xxxx~~ & further relief, as the nature of their claims and the Powers and Jurisdiction of this Court is authorized to grant in the Premises

O Meveny & Watts for Pltffs

State of Illinois } On this day personally appeared
Washington County } who being duly sworn says the matters & things contained in the foregoing Bill are true to the best of his knowledge & belief

Subscribed & sworn before me
this 1st day of July 1854

Endorsement on ~~Writ~~ — Filed July 1st 1854 — H. H Talbot Clk

Copy of Summons

State of Illinois } The People of the State of Illinois
Washington County } ss To the Sheriff of Washington County — Greeting
We command you to summon James L McClenken and Harvey B Lucas if to be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court house in Nashville, on the third Monday in the month of October next to answer James Logan, Thomas B Applack, & Joel A Ganiston in a Petition filed by them to enforce a Mechanics Lien, and have you then and there this Writ, and make your return thereon, in what manner you execute the same Witness Harry H Talbot Clerk of our said Circuit Court, at Nashville this 10th day of July in the year of our Lord one thousand eight hundred and fifty four

H. H Talbot Clerk

Endorsement on summons

Served the within Summons by giving the within named Defendants a copy of the same this 15th day of July 1854. John White Sheriff W.C.

[48713-15]

Copy of Answer

McClurkan & Lucas
vs
James Logan
Harvey B Lucas

May Term Washington Cir Court AD 1855
Bill to enforce Mechanic's Lien

One of the Defendants in above cause saith reserving unto himself all objection & exception to the manifold uncertainties and defects in Petitioners Bill appearing for answer saith that he is not ready to say what the truth may be as to the avers material allegations in said Bill contained having no personal knowledge of the same or any of them except that he admits that the said James Logan did do some work upon the property described in Compt's Petition but denies any further knowledge Respondent saith further saith that on the first day of May AD 1854 he obtained a legal title to the Premises in Question from one Simeon Wacker & Wife and also the original title from A P Shipley Mary A Shipley, Joseph Barter and J E Barter and that he has had possession of the Premises as his own for some time Premises to the deeds made him by the Parties last aforesaid named He answers that he had no knowledge at the time of the transaction of business between himself and the Parties of Oth and he received the Deed of any Lien upon said property and disavows any connection saith either as Partner in principal or the agency of (Mc) Co Dept in this Cause whatever

H B Lucas
A R S Bond
Respts Sol

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Copy of Demurrer

Oct Term of Washington Circuit Court 1854

James S McClerkin and
Harry B Lucas
vs
James Logan Thos B Applack
& Isaac H Cameron

Bill to enforce Mechanics Lien

And the said Defendants not acknowledging or confessing all or any of the facts set forth in said Complaints Petition say that the same as is therein set forth are insufficient in Law for the said Complainants to have and maintain their action therefore your Respondants ask to be dismissed with their reasonable cost & charges &c

Bond & White Sols for Defts

Copy of Demurrer

State of Illinois
Washington County

Washington Circuit Court
May Term thereof 1855

Logan
vs
Jas McClerkin et al

Petition for lien

And the said Defendants without assigning the manifold formal errors and discrepancies in Petitioners Petition appearing says that the Prayer of the said Petitioner should not be granted or the lien therein sought to be established - enforced because he says that the matters & things therein contained in manner & form as stated are not sufficient in Law to entitle him to the relief sought or the allowance of the claim Wherefore he prays Judgt &c

R S Bond for Defts

The Petition does not show that the Deft H B Lucas had or has any interest in the premises but on the contrary says he has not

[8718-46]

Copy of Amended Petition

State of Illinois
Washington County } In Washington Circuit Court
James Logan } October Term A D 1854 continued
vs } to May Term A D 1855
James L McCluskey
& Harry B Lucas

To the Honorable William H Underwood, Judge of the 2nd Judicial Circuit in the State of Illinois, presiding & holding Courts in Washington County Illinois in said Circuit – Your Petitioner James Logan would respectfully represent & show that on or about the 20th day of March A D 1854 James L McCluskey who is prayed to be made a Defendant in this Petition, as the County of Washington and State of Illinois had bargained with Miles B Thurman and John C Gunn for, into the possession of and made valuable improvements upon, and expended large sums of money in improving and building upon the following tracts of Land or Lots of ground in the County & State aforesaid, which tracts of Land or lots of ground are bounded as follows to wit Part of the South West qr of South West qr of Section 2 Township 2 South of Range 1 West of the 3rd Pl Meridian, commencing at a planted stone, set for the corner of Sections 2, 3, 10 & 11 in said Township – thence S 88 35 E 106 ft to the beginning – thence E 166 feet to a stone set for the boundary between R H Graves and James L McCluskey – thence North to the South line of Block No 13 in the Town of Richview County and State aforesaid – thence in a North West direction with the South line of Blocks 13 & 14 in said Town to a stake 106 feet East of the West line of said qr qr Section above described in the South line of said Block 14 thence in a South West direction three hundred & five feet to the place of beginning containing one acre of Land – also Part of the North West qr of North West qr of Section 11 Township 2 South of Range

[8718-17]

1 West of 3rd Principal Meridian commencing at a stone on the section line between Sections 2 & 11 in sd township near the Wool factory thence South 8° 30' W 215 feet to a Post; thence North 88°, 35' W 234 ft 4 inches on the N & S Section line - thence North 0° 18' East 215 ft to the Sec corner - thence S 88° 30' East 272 ft to the place of beginning containing one acre & a quarter more or less - that said McCluskey at the time and place aforesaid, then and there being the equitable owner, and having possession of sd Lands, by a contract with your Petitioner then & there made with your Petitioner, employed him the said James Logan your Petitioner to work and labor on a certain house or Wool factory & the Machinery therein, then in process of building by sd McCluskey, on the lots of Land or ground herein before described, and by sd contract made between your Petitioner & sd McCluskey Deft, the said Defendant promised to pay your Petitioner, the sum of one Dollar and fifty cents per day for as many days as your Petitioner should work on sd building and Machinery therein and board Petitioner in addition to said sum of $1.50 per day during the time he should be working on said building.
By virtue of and in compliance to the terms of sd contract, the sd James Logan your Petitioner performed sixty days work & labor on said house & the Machinery therein on sd Land during the Months of March April & May 1854 to his thirty two and a half days work. Your Petitioner further avers that sd McCluskey failed to board your Petitioner or pay his board for him during the time he was working on said building & your Petitioner was compelled to board himself which was worth & cost him the sum of two dollars and fifty cents per week making 35 5/7 cents

per day for board $1.50 per day for work, making your Petitioner's wages in the aggregate one Dollar & Eighty five & 5/7 cents per day for a more particular statement of days & dates see account filed herewith marked "B" & making the aggregate sum of sixty Dollars & thirty five cents due your Petitioner for his said work & labor done on sd building and board, during the time he was engaged in doing sd work, Your Petitioner has received of sd McCluskey the sum of five Dollars & thirty five cents on this demand, which leaves the sum of fifty five Dollars due, owing to and unpaid to your Petitioner for his work & labor done on said building on the lot of land or ground herein before described and his board &c during the time he was engaged in performing sd work under sd contract which sd Balance remains unpaid; that McCluskey has been repeatedly requested to pay sd Balance but wholly has and does fail & neglect so to do — Your Petitioner would further shew that afterward the said Thurman transferred the sd first described tract of land with other lands to A R Shipley & J Barber with an agreement between the Parties, that Shipley & Barber should convey said 1st described tract to sd McCluskey, that in compliance to this agreement Shipley & Barber transferred the same to sd McCluskey June 22nd 1854 — that afterward sd Green transferred the last described tract with other land to one J Walker with an agreement that Walker should convey the same to sd McCluskey in compliance with which agreement Walker transferred the sd last mentioned tract to sd McCluskey dec'd on the 30th June 1854 which transfers from Barber & Shipley & J Walker to sd McCluskey will more fully appear by certified copies thereof herewith filed marked (C & D) & made part of this Petition

Your Petitioner would also represent & shew

that since he performed sd work & labor on sd house & machinery therein on sd Lands herein before described equitably owned by sd McClurken & which were in his (M.'s) possession when sd work was performed, one Harry B Lucas who is also made a Deft in this Petition, has attempted to take & hold possession sd Land & the buildings & appurtenances thereon — the interest or title of sd Lucas if any in & to sd Lands & appurtenances, is unknown to your Petitioner, is never having been recorded & therefore void as to the claims of your Petitioner. Wherefore your Petitioner prays that sd James L McClurken & Harry B Lucas, be summoned to appear before your Honor & answer this Petition — that on hearing the cause an order or Decree may be entered, that sd tracts of Land herein before particularly described, be sold according to Law that the proceeds of such sale, be applied to the payment of his demand against the said McClurken together with all costs & expenses incurred by your sd Petitioner in prosecuting this Petition, and that your Honor will make such other order & decree as may seem just & equitable in the premises, consistent with the rights and interests of the Parties, and that your Petitioner shall have such other & further relief as the nature of his claim demand & the power & Jurisdiction of this Court is authorized to grant in the premises

James Logan
By O'Melveny & Davis
his Attys

Examined - filed May 2 - 1855
H. H Jacobs Clk

Copy of Bill of Interpleader

State of Illinois } In Washington Circuit Court
Washington County } October Term 1854

James Logan
vs } Petition to enforce a Mechanics Lien
James L McClurken & Harry B Lucas } To the Honorable William H Underwood
Judge of the 2nd Judicial Circuit in the State of Illinois - presiding & holding Courts in Washington County Illinois - The undersigned Thomas B Applack asks leave to interplead and be admitted to become a Party to the above entitled proceeding, and respectfully to represent & show to your Honor, that he the said Thomas B Applack Your Petitioner on or about the first day of April A D 1854 at the County of Washington and State of Illinois by a verbal contract made & entered into by & between the said Thomas B Applack and James L McClurken one of the Defendants in said cause by which Contract the said McClurken, then and there employed and engaged him the said Applack your Petitioner to work and labor as a Blacksmith or furnish Material and Money to be used in, spent and laid out, in the construction and fitting up for use of the said Wool factory and the Machinery therein then & there in process of construction or building by said McClurken upon the said Lots of Land or ground in the Petition of the said James Logan in fee in this cause more particularly set forth & described, for which Work & labor and Material furnished by said Applack, the said McClurken promised to pay to said Applack as soon as such work and labor was performed and Material furnished so much as the same should be worth and to repay said Applack, within four days after the Money should be laid out, the amount of Cash the said Applack Your Petitioner should lay out, or furnish to be laid out on said Wool factory and Machinery, By virtue of and in compliance with which contract, Your Petitioner the said Thomas B Applack, during the Months of April, May and June 1854, performed divers work & labor on & furnished divers Material used in the construction of said Wool factory & the Machinery therein, which work, labor and Material was worth Thirty Nine Dollars and seventy cents, and your Petitioner furnished thirty Dollars in Money which was used laid out and expended, on said building and Machinery

(all of which Items, dates and amounts will more fully appear as per accounts marked (A & B) and filed herewith and made a part of this Petition) amounting in the aggregate to the sum of sixty nine Dollars and seventy cents, the whole of which amount yet remains due and unpaid although said McClurken has been repeatedly requested to pay the same, Wherefore the undersigned prays to be made a Party to the above entitled Cause or proceeding that said James L McClurken & Harry B Lucas may be served to answer this your Petitioners Bill & Petition of interpleader that in hearing of the cause and in adjustment of accounts between your Petitioner and said Defendants McClurken above named an order or decree be made that the Lots of Land particularly described in the Petition of said James Logan against said James L McClurken and Harry B Lucas and the Wood factory thereon be ordered to be sold & the proceeds of such sale after paying the demand found due to said Logan be applied to the payment of the demand due to your Petitioner and the expenses incurred by your Petitioner in the prosecution of this Petition, And that your Honor will make such other order in this behalf as may seem right and proper in the premises, consistent with the rights and interests of your Petitioner, and that your Petitioner have such other & further relief as the nature of this claim will entitle him & the Power & Jurisdiction of this Court is authorized to Grant & thus will ever pray &c

Thomas D Applegate

Copy of Account

1854	James L McClurken to J B Applack	Dr
Apr	To repairing Waggon bottom in hauling Machinery for factory	3.50
"	" 20 bushel corn for feeding team engaged in hauling Materiae " "	5.00
" 28	" Cash for paying hands at work on factory	30.00
	" 1 Sack of flour for use of hands at work on Woolen factory	3.75
" "	" Board Bill of Robert Perry who was at work on " "	5.50
" "	" 10 lb flour for use of hands at " " " "	40
" "	" Damage done Wagon bed when hauling Machinery for " "	2.50
June	42 lb bolts for " "	10.50
"	" 1 Cent handle	25
	" 16 bolts at 30 cts per bolt	4.80
	" 4 Plates	1.50
	" 1 Crank for shaft	2.00
	Copy of Account	$69.70

1854	James L McClurken			
Mar 24 &	To P Logan			
25	To 2 days work at 1.50			3.00
27.28 & 29	3 " " " 1.50			4.50
Apl 1,3,4,5,6,7 & 8	7 " " " 1.50			10.50
9 & 10	2 " " " "			3.00
19,20 & 21	2 3/4 " " " "			4.12 1/2
May 1st 2,3,4,5 & 6	5 1/2 " " " "			8.25
8,9 & 10	3 " " " "			4.50
19 & 20	1 1/2 " " " "			2.25
22,23,24,25,26,27	5 3/4 " " "			8.62 1/2
To Board during same time 32 1/2 days @ 35 5/7				11.60
1854				$60.35
Mar 29 By Cash		$5.00		
Apl 19 " "		35		5.35
	Balance due			$55.00

Copy of Accounts

James McClerken D to S. A Eamiston

May the 8, 9, 10, 11, 12, 13 to 4½ days at	1.50		6.75
15, 16, 17, 18, 19, 20 to 5¾ days	1.50		8 87½
22, 23, 24, 25, 26, 27 to 5¾ days	1.50		8 62½
			23,25

Copy of order referring to Master

And now on Friday this cause is referred to Mr Vance to take evidence

Copy of Master's Report

James Logan
vs
James McClerken
Harry B Lucas } Petition for Mechanics Lien

Robert H Grant being first by me duly sworn upon his oath says

I saw James Logan working on Woollen factory that was being constructed by James McClerken, on the Lands described in Plaintiffs petition in Court during the pendency of the above entitled cause James McClerken one of the Defts told me he was to pay Logan one dollar & fifty cents per day & board him, told me so in May 1854, & several times since, McClerken told me there was about ½ a days difference between the time or number of days worked by Logan as Rept. by him & Logan himself - McClerken did not board Logan, Logan boarded with Applee during the time he was working on the building

Niles B Thurman being first by me duly sworn upon his oath says

I was owner and in possession of the S. W of the S. W of Section 2 T2 SR 1W previous to & until about the 20th day of March 1854 as near as I can recollect, I agreed to let James McClerken have one acre of ground in the S. W corner of the Tract to build a Woollen factory on for 22 dollars - McClerken had erected the building

on the grounds before the agreement was made between us - the factory now stands on the same grounds afterwards I sold & transferred by deed the whole tract to Shipley & Barber with the understanding that they should make a deed to McCleskey for the one acre as above stated, so soon as he paid the 25 Dollars as agreed for the same. McCleskey was the reputed owner of the factory building at the time the agreement was made between him & myself - dont recollect at what time it became publicly known that Dr Lucas was the owner of the Property - think as near as I can recollect the Land was transferred to Shipley & Barber by me in April 1854 and that it became publickey known that Dr Lucas was the owner of the factory some time about the first of June following I saw James Logan working in the factory building during the process of its erection - I did not receive the 25 Dollars from McCleskey for the one acre of Land - when I sold the Land to Shipley & Barber it was agreed that they should receive the 25 Dollars from McCleskey & make him a deed for the one acre do not know whether Shipley & Barber made deed to McCleskey or not within the last few days seen a deed from Shipley & Barber to Dr H B Lucas for the one acre of Land above mentioned

Thomas Applack having been first by me duly sworn upon his oath

Mr James Logan boarded with me during the time he was at work on the factory building for McCleskey I contracted with Logan himself to board him & he served with me for the same - My charges were $2,50cts per week - think Logan boarded with me 4 or 5 Weeks during the time he was at work on the factory building, but cannot be positive as to the time

heard McCleeken say that Logan's demand was just and ought to be paid – have heard Dr H B Lucas say that he was not a part owner of the building at the time Logan worked on the house – think McCleeken has had no control over the factory since Dr Lucas purchased it, only as a hired hand –

James Logan
vs
James L McCleeken &
Harvey B Lucas

} Petition for Mechanic's Lien

The undersigned Special Commissioner as appointed by the Court to examine witnesses – submits as his report that upon the testimony elicited from said Witnesses James McCleeken one of the Defendants in the above entitled cause is indebted to James Logan the Plaintiff in the sum of forty eight Dollars & thirty seven & one half cents for work done on the factory building of said Defd's & in the further sum of eleven Dollars and sixty cents for board during the time said labor was being performed making an aggregate due to said Logan of $60,35 all of which is respectfully submitted

G M Vance
Special Commissioner &c

Endorsed filed 19th May 1855 H H Taylor Clk

Copy of Master's Report

James Logan
vs
James L McCleeken &
Harvey B Lucas

} Petition for Mechanic's Lien
Price of Interpleader of Joel A Cameron

James L Logan having been first by me duly sworn upon his oath says

I heard McCleeken tell Cameron if he would go to work for him on the factory building when it was in process of erection, he would allow him the ordinary wages of the country – Hands were getting from one

Dollar & fifty cents to two Dollars per day for such work
McCleskin was paying other hands from one Dollar &
fifty cents to two Dollars per day – I saw Caminson
at work on the building in the spring of 1854 – think
he worked some 18 days on the building – I frequently
passed the building & saw Caminson at work on it
James Logan being by me duly sworn upon his
oath states
I know that Caminson work on the factory building
I think he worked there the most of three weeks
McCleskin was paying from one Dollar & fifty cents to
one Dollar eighty seven and a half cents per day for
hands on the works
James Logan

James L McCleskin & Harvey B Lucas vs } Petition for Mechanics Lien Interpleader of Joel A Caminson

The undersigned Special Master Commissioner appointed by the Court to examine Witnesses reports that from an examination of the Witnesses who had first been duly sworn reports that from the statements of said Witnesses it appears that James L McCleskin one of the Defts is indebted to said Joel A Caminson in the sum of Twenty Seven Dollars for work & labor done on the factory building then being in process of erection by said McCleskin

E. M Vance
Special Master &c

Endorsed filed 19th May 1855 – H. H Talbot Clk

[8218-22]

Copy of Order

October Term Washington Circuit Court Thursday October 19 - 1854

James Logan
vs
James L McClerkin
& Harvey B Lucas } Petition for Mechanics Lien

And now on Monday comes said Pltff by O'Melveny & Ware his Attorneys & said Defts by White & Bond their Attys and are sued to answer by Tuesday - And now on Tuesday said Defts demur to Pltffs Petition - Demurrer sustained - Leave asked by Pltff to amend - leave granted leave asked to interplead by Applett & Cammonson granted and sued to answer by Wednesday - And now on Thursday said answer being before the Court leave is asked by the Pltff to withdraw the Petition - allowed and this cause is continued until next Term of this Court

Copy of Order

May Term Washington Circuit Court Saturday May 19th - 1855

James Logan
vs
Jas L McClerkin
& Harvey B Lucas } Petition to enforce Mechanics Lien

On Friday comes the Compt by Jas Logan and Joel A. Cannistan (who obtained leave to interplead and who was made a Party to this proceeding by Bill of Interpleader, the Bill of Interpleader filed, by J B Applett last Term having been dismissed) by O'Melveny & Ware their Attys and Defts by R. S Bond their Atty - Defts filed Demurrer to the Petition which was overruled by the Court and it was ordered that the cause be referred to E. M Vance Spl Master to take evidence and make computation. Now on Saturday the report of the Spl Master having been presented & filed, it is ordered & decreed by the Court that Judgment be rendered in favor of said James Logan Compt for the sum of

[8718-23]

$60.35. and in favor of said Joel A Easmiston for the sum of $23.25 against the Land and its appurtenances described in Petition — that special Execution issue against the Land described in the original Petition in fee to wit — Part of the South West Qr of the South West Qr of Section 2 Township No 2 South of Range No 1 West of the 3rd P.M. Meridian, commencing at a planted Stone, set for the corner of Sections No 2, 3, 10 & 11 in said Township thence South 88° 35' East 106 feet to the beginning, thence East 166 feet to a stone set for the boundary between R H Grant and James L McCluskin — thence North to the South line of Block No 13 in the Town of Richview, County and State aforesaid — thence in a North West direction with the South line of Blocks No 13 & 14 in said Town to a stake 106 feet East of the West line of said quarter quarter Section above described and on the South line of said Block No 14, thence in a South direction three hundred & five (305) feet to the beginning containing one acre of Land also Part of the North West qr of North West qr of Section No (11) Township No two (2) South of Range one (1) West of the 3rd P.M. Meridian, commencing at a stone on the section line, between Sec 2 & 11 near the Wool factory, thence South 8° 30' West 215 feet to a Post — thence North 88°, 35' West 234 feet 4 inches on the North and South Section line — thence North 0°, 18' East 215 to the Section corner — thence South 88°, 30' East 272 to the place of beginning containing one acre and one fourth more or less, and it is ordered & decreed by the Court that the above described Land with the appurtenances be sold as Public Venue according to Law for cash in hand that out of the proceeds of such sale the claim of said James Logan be first paid and out of the remainder the claim of said Joel A Easmiston and all the costs of this Cause, that has accrued this term be paid

and the remainder if any there be, shall be paid to said Harry B Lucas, and that Compt & said Carnistin pay all costs that accrued in this Cause last Term and Execution is awarded therefor

State of Illinois } I Harry H Talbot Clerk
Washington County } of the Circuit Court in and for said County do certify that the foregoing is a full and complete transcript of the Record in the foregoing entitled cause as taken from the Papers on file & Records of said Court in said cause

Given under my hand and the seal of said Circuit Court this October 13 1857

H H Talbot Clerk

Clerks Fee, $6,00
for Transcript

Iris Logan

vs

J. L. McClurken &

H. B. Lucas

Transcript &c

James L. McCollum &
Harvey B. Lucas
Plaintiffs in Error

vs

James Logan and
Joel A. Edmiston
Defendants in Error.

Error to Washington -

In the Supreme Court, State of Illinois
1st Grand Division, November term A.D. 1857

This day came the plaintiffs in Error by Nelson & Johnson their attorneys, and say that in the record process and proceedings aforesaid there is manifest error, because they say the Circuit Court of Washington County, in the record process and process and proceedings aforesaid rendered a judgment in favor of the defendants in error, and against them the said plaintiffs in error whereas by the law of the land said judgment should have been rendered ~~in favor of the defendants in error and against~~ in favor of the plaintiffs in error and against the defendants in error. And for assigning errors specially on the record aforesaid the plaintiffs say that the said Circuit Court of Washington County erred in the rendition of the judgment aforesaid and this they are ready to verify.

1st Because the said Court ren-

[8716-25]

rendered a judgment in favor of said Lucas a Defendant without any petition being previously filed by him - and without his being made a party plaintiff as required by the statute in regard to Mechanics liens -

2d ~~Because~~ The said Court overruled the demurrer of ~~defs~~ plaintiff in error Lucas filed to the petition of defendant Logan.

3rd The said Court allowed the petition of said Logan to be withdrawn and continued the suit until the following term -

4th Because the Court ordered the Cause to the Master to take evidence instead of setting the cause down for a hearing as to said Lucas, there being no replication to said Lucas answer, filed as required by law.

5th Because the Court referred the Cause to the Master to take evidence without any summons or process being served upon the plaintiff in error McCluken in the suit commenced by said Logan.

6th The court ~~rend~~ rendered a judgment ~~in favor of~~ against said McCluken without any process being served on him -

7th The said Court rendered a judgment upon the the report of the Master, when the cause was not referred to the Master to report but to

take evidence and make com-
-pensation.

8th The Court rendered a judgment against the plaintiffs in error without any process being served on them or either of them, in the suit commenced by the said Logan against the plaintiff in error.

9th The Court rendered a judgment against the plaintiff in error McClurken, without taking any rule upon him to answer, or without the said McClurken being in default.

10th The Court erred in rendering a judgment in favor of the defendant in error, Logan in a suit for Mechanic lein for board and lodging and for hauling.

11th The Court erred in receiving oral testimony of the title in the plaintiffs in error, to the premises in petition described, ~~which~~

~~Which are the grounds of un-~~
~~relied on by the pl.~~ Wherefore the plaintiffs say that in the rendition of the judgment aforesaid by the Circuit Court of Washington county, and in the record and proceedings and process aforesaid, for the reasons aforesaid, there is manifest error and that the said judgment ought to be reversed.

[8718-26]

J Tam in Error } Nelson & Johnson Attys
S G Hicks for Dep in Error } for Plffs in Error

No 55 12

James L. McClurken
& Harvey B. Lucas
plfs in error and
defendants in the
Court below

vs } error to Washington

James Logan &
Jos. A. Edmiston
defendants in error
& plffs in Court below

Record & assign
ment of errors

Filed November 25. 1857.
N. Johnston Clk

Prepaid by Nelson - $5.00

this day came before the undersigned Clerk of the Supreme Court Thomas B Affleck who being duly sworn says on oath that the matters set forth in an affidavit made by him now before Saml C Pope Clk Co Ct Washington Co in the press of this Court in the Case of Sucas v McClenstan vs Logan & Edmunston were and are still true in substance and facts Affiant states also that he is informed & verily believes and so charges, the truth to be that in the trial of this Sd Cause in the Court below certain Exhibits marked and mentioned in this record viz Exhibits A & D were filed in the Court below, and that the same do not appear in this record and are not certified by the Clerk of the circuit Court up to this Court, that said Exhibits are material parts of this Cause and ought to be here

Also that the answer of ~~Hatley~~ of Sucas as certified in this record has no file mark, of the circuit Clk but is certified here in this Cause

He further states that he has the Writ and sealed Return of Sd McClenstan which affiant here asks to file as a release of Errors in this part to this Cause, whereupon for the reasons stated in the affidavit made before Saml C Pope above referred to affiant

the Causes hereinbefore set forth be proper that the Judgment in Error may be allowed to be with Damages and the Record perfected and the ~~[illegible]~~ ~~[illegible]~~ said ~~[illegible]~~ defts be allowed to interpose their proper legal defences to said Cause in this Court — & further says not

Sworn to before me on this
11th Nov 1838 Thomas B Affleck
A. Johnston Clk

Lucas Stall
vs
Logan Stall

Filed Nov 11. 1838
A. Johnston Clk

Affidavit of
Thomas B Affleck

Memorandum
[illegible]

Lucas & McClurkin
vs
Logan et al

Motion

And the said Defts by Hayne their atty comes and moves the Court for leave to withdraw the Judgment in Error in this cause for the following reasons

1st The Judgment in Error was signed by S G Hicks without an Examination of the record and without information of its Contents

2nd The Judgment was signed by S G Hicks without the knowledge that it was an imperfect record and under the supposition that it was complete when in fact & truth it was not.

3rd The Judgment in Error was signed under a mistake and misapprehension of facts by the atty of the nominal party to the record, when the party in interest had no opportunity or notice that it would be done and at the very heel of the term when no opportunity to correct error was afforded

4th The Defts in Error now have a full & legal release of Errors as to McClurkin

Hayne

[8718-28]

12

Motion for leave to withdraw
Demurrer in Error & for Certiorari

Lucas & McClurkin
vs
Logan & Edmiston

Grounds of Motion

Filed Nov 11. 1858
A. Johnston Clk

This day personally came before me J. McGuire who being duly sworn says on oath that in the case of Lucas & McCluskey pltff in Error vs Logan & Edmiston defts & there has been an order of this Court for a Certiorari to the Clerk of the Circuit Court of Washington County - Pltff to send up a full record in said cause, and affiant believes that said order was placed in the hands of the Clerk of the Superior Court at Springfield to whom it was directed - But affiant states that he finds no process of Certiorari returned to this Court & additional record filed curing the imperfections that was complained of when the order was made whereupon he asks the Court to order the Clerk of this Court to issue a Certiorari for said record & further says not

J. McGuire

Sworn to before me
on this, 12 Nov 1858

N. Johnston Clk

[8718-29]

Supreme Court first Grand Division
Nov Term 1859

Harvey B Lucas & James L McClurkin Plffs in Error
vs
Thomas B Affleck Def

Error to Washington

And now at this day Comes the said defendant by his attorney and says that the said plaintiff in Error McClurkin ought not further to have or maintain his writ of Error in this case because they say that said plaintiff in Error McClurkin heretofore to wit on the 17th day of December 1857 at the County of Washington and State of Illinois, made his certain instrument of release signed with his hand and sealed with his Seal and did thereby release and fully waive all Errors and defects and insufficiencies in the records and proceedings of the circuit Court of Washington County had and made in this Cause below which Comes be the said McClurkin against said Complainants below then had, in said Cause, and this the defts in Error are ready to verify by wherefore &c

Keagan & Powell
for defts in Error

And now Comes the Defendant in Error by the Clerk of the Circuit Court of said County

[8718-30]

And for further plea in this behalf by leave of defts in error says that as to said plaintiff in error McClurkin the said plaintiffs ought not to have or further maintain their writ of error in this cause because they say that heretofore to wit on the 23rd day of January 1859, and after the suing out of the writ of error in this cause and pending the same, the said McClurkin by his certain instrument of writing under his own proper hand and seal, did release unto said defts in error all manner of errors and deffaucemis as well those assigned as those not assigned in the above cause, which had been made or committed as to him by the Circuit Court of Washington County Illinois, and then delivered the same to the said defts - By means whereof the errors in this cause as to said McClurkin were and are released and waived, and this the defts in error are ready to verify whereupon they pray judgment as to said McClurkin &c

Yours &c Allen & Bowen
for defts

[8718-31]

12 = 12

Pleas – 1 & 2

Sogers & Ellmestow
atty
Lucas & McCleskin

Plaintiff's Counsel is absent by consent.
Thomas & Patterson
Attys for Defts
i answer

Filed Nov. 18. 1859.
A. Johnston Clk

James L. McCluken &
Harvey B. Lucas
Plaintiffs in Error.

against

Error to Washington —

James Logan and
Joel A. Edmiston
Defendants in Error.

It is hereby agreed by Nelson & Johnson, on behalf of plaintiffs in Error, and Stephen G. Hicks, on behalf of defendants in error, that this cause be submitted to the court upon record, abstracts and errors assigned; and that the defendants in entering their appearance herein by their attorney, as aforesaid, hereby expressly waive process in this cause, and to submit as aforesaid —

Made and entered into at Mt. Vernon, this 20 day of December A.D. 1853

Nelson & Johnson
for Plaintiffs in Error
S. G. Hicks for
defts in Error —

[8718-32]

12

M'Clenkin et al

vs

Logan et al

Filed Dec. 2. 1857.
N. Johnston Clk

~~Sir~~ cas. Stat. by Ingersoll

This Case was submitted at the last term of this Court (on 2nd Oct 57) on the last day of the term at night I believe, after the Court had perhaps adjourned & I refer to 1st the affidavit of Afflack marked No 1 filed at this term — also to Afflacks affidavit (& Killogs) filed at Springfield last winter marked No 2 — also to my Reasons filed at Springfield marked No 3 for asking the Court time to prep or send the Case back —

Also to the record as paps referred to in my argument to show that this record is imperfect.

I S Haynie
atty for Defts

State of Illinois,

Supreme Court, - Second Grand Division.

CLERK'S OFFICE,

Springfield July 31st 1858

Noah Johnston Esq
Dear Sir,

Enclosed I send you record &c in a case which was doubtless in your Court at last term. The Judges have made an order - as you will see enclosed - respecting said case. I think the Judges were mistaken in sending the papers to me, for the case was never in this Court to my knowledge. It, certainly, never was on docket & I know nothing about it.

While sending this I thought it well to send your reports also. ~~Have actual-~~ ~~Edge receipt.~~

Truly Yours
Wm H Turnest

[8718-35]

State of Illinois
Washington County }

This day personally Came before the undersigned an acting Justice of the Peace ~~XXXXXXXXXXXX~~ and Ex Officio Clerk of said County of said Thomas B Afflack who being duly sworn says on oath that heretofore to wit on the 25th day of August 1855 the Sheriff of said County offered for Sale two certain tracts of Land (one containing one acre and the other one and a quarter acres) situate in Sections No. two and Eleven Township 2 South of Range One West being the same tracts upon which James L McClurkin had erected a factory or Mill. That the same was offered by said Sheriff to satisfy the amount due one James Logan and Joel A Edmiston by virtue of a decree of the Circuit Court of said County in a certain proceeding to enforce Mechanics lien for work and labor done by Logan upon the buildings &c or sawing lumber for Mr McClurkin. Affiant states further that at said Sale said Logan became the purchaser of both of said tracts of Land at and for the sum of 76 dollars the same being (50 for one tract and 26 for the other) the highest and best bidder therefor — Affiant further shews that afterwards to wit on the 4th day of December 1856 after the said Logan had called upon the said tracts one of

[5718-35]

One of the Defts in the Mechanics Lien Case in the Circuit Court to Redeem. and after the said Mear had repeatedly refused and failed to pay the amount of the said Logans bid, he the said Logan upon Demand made by him upon the Sheriff, received from him a Deed for said Rocks of land reciting said Sale & said bid which said Deed was dated 4th of Dec 1856 aforesaid duly signed sealed acknowledged & delivered is now here offered to be exhibited to this Court, the same having been rec'd by affiant from said Logan

Affiant further says that afterwards to wit on the Eleventh day of December 1856 - the said Logan (then being the owner and possessor of said property, by the title aforesaid) made recorded, signed sealed acknowledged & delivered a Deed of Conveyance of all of said property to this affiant, for which affiant then and afterwards paid the said Logan one thousand dollars, whereupon affiant took possession of said Rock property and thereunto has Continued to possess the same / and afterwards made large improvements and additions to said property houses & tenements and in so doing expended as he believes Something near one thousand dollars, the deed from said Logan to affiant & under which he held & made the improvements and expenditures aforesaid is now here to the Court offered to be exhibited & read

Affiant further states that after having had the property aforesaid until about the 7th day of August A.D. 1837 he sold by deed & transferred the undivided half of said property to One Orson Kellogg at and for the sum of Nine one thousand dollars and then & there delivered the same possession of the property aforesaid to the said Orson Kellogg who met this affiant in said deed (all now here offered to be read and shown to the Court) have had the possession of the same up to and until the present time and have made large and valuable improvements and additions upon said lands, amounting in the aggregate costs of the same to, not less than Six thousand dollars and affiant thinks more than that sum — Affiant further states that the deed of Logan the Complainant in the case in the Circuit Court to affiant is a quit claim deed only, and the said Logan having received ~~all the money~~ five hundred dollars on the note of affiant for the balance due on the same is now entirely desculous pecuniarily to affiant claims, he having rec^d the amount forfeited & therefore not caring what may be the result of the case so far as it may injure or pecuniarily prejudice him — And affiant further states that said Edmiston having been paid his amount of said debt in full has no interest in said case being a mere entire or defendant — and this is reality, truth & in fact — The said affiant & said Kellogg

[8716-36]

are the only persons who will be prejudiced by the reversal
of said Court, they holding title under the ~~[illegible]~~ deed below
first claim and Affiants further states that, not being
a party by name to said record affiant did not
know that he had or his co partner had any
right to appear or ask this honorable Court to be
allowed to appear & have his interests protected —
and did not know that the agreement signed
by Counsel dictated to its submission would affect
them until after it was done, and then did
not know until informed by his Counsel that it might
affect his interest. That he is further informed and
believes the said agreement of Logan's Counsel & the
Counsel of plaintiff in Error as well as the failure
of Error by Plfs Counsel was all done in great
hurry after the adjournment of the term at Mt Vernon
and so asks submit it then as if done in term time
& so much harmed new the fortis that Logan's Counsel
as affiant is informed & believes did not have time
to read & did not read over the record, but sign d
said agreement of submission & failure in Error without
giving to done, by reason of the hurry aforesaid
Wherefore and in as much as affiant since
the said Kellogg & his partner & former owner
of affiant may be finally prejudiced in
their interests unless allowed by this Hon Court to

be heard they pray that the judgment in Error & agreement aforesaid may be set aside and they be allowed to defend & fully protected in their interests if compatible with justice & a due regard to the faithful administration of the laws to and in behalf of the

Sworn to before me this 17th Dec 1859.
A. S. Rowley

Thomas B. Affleck

Orson Kellogg being duly sworn says on oath that the matters and things set forth in the foregoing affidavit according to the best of his knowledge information & belief are true in substance & fact

Sworn to before me this 17th day of Dec 1859

Orson Kellogg

A. S. Rowley

[8718-32]

State of Illinois } I Samuel C Page Clerk of
Washington County } the County Court in and for said County do certify that Alvin T Rowley before whom the foregoing affidavit was made is now and was at the time of signing the same an acting Justice of the Peace in and for said County duly Commissioned & qualified that his Commission was dated on the 21st day of November 1857 & will expire on the 21st day of November 1861 & that his signature thereto is genuine

Given under my hand & the seal of said Court this December 8 D 1857

Samuel C Page Clk

No 2 12

Affidavit

Logan
vs
Lucas et al

[8-0-1-8]

DEFENDANTS Points. The first error is disposed of by the statement in the decree pg 21 of Record—by the title of the def't demurrer pg 7, and by the clerk's return to the certeorari herein.

The second error is not well assigned the decission of court below being proper in overruling demurrer, petition was sufficient.

Vide Revised Statutes pg 345 see 4.

The third error assigned if an error, was waived by after demurring to amended bill, without objection. Still if not waived it was to pl'ffs advantage and not to his prodidice, as compt's [illegible]rdered to pay costs.—bill pg 21 & 22 of Record.

The fourth error is improvidently assigned. There was no answer filed the paper not sworn to is not answed, or leave given so to file, nor issue made up. But the reference was at once on overruling demurrer, Def't as shown by record not withdrawing his Demurrer or asking leave to answer.

The fithh error is improvidently assigned because both def'ts answered by demurrer as shown by the record and the decree but assumed this error is released by McClurkin.

The sixth is answered same as the fith.

The seventh assignment is without point.

The eighth error is answered the same as the fifth error.

The ninth error is answered by the appearance of both def'ts and filing demurrer and by Sheriff's return.

The tenth error is improvident for the reason that judgment was given in demurrer, when it is shown in the bill and admitted by demurrer that the contract for hire of Logan was to pay him $1,50 per day, and board, the board thus being part pay for work done ; there is no item for hauling by Logan or Edmunston. See last half of P. 15, and first of 16.

The eleventh error is improvident—the judgement being on demurrer the title stated in the bill is admitted and no proof was required. Still record proof was made by the pl'tffs filed herein.

And so def'ts say there is no error now shown by the record of this court.

HAYNIE, ALLEN & PARISH, for Def'ts.

[9/10-28]

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—NOVEMBER TERM, 1859.

LUCAS & McCLERKIN,
Page vs. } Error to Washington.
Rec. LOGAN & EDMISTON.

1 On the 1st day July, 1854, Logan filed his bill to enforce mechanics lein vs. McClerkin & Lucas—for Oct term 1854.

5. On 10th July summons issued, on 15th, served on both. At the Oct. term 1854. deft demurred to said petition; demur sustained; leave gived to (21) amend, and also leave to interplead by Edmunson & Afflack, and then answer filed, and then leave granted to withdraw petition and cause continued,

7. See demurrer filed to first petition—entitled 'McClerkin & Lucas ats. Logan, Afflack & Edminston.'

9. On 2d May, 1855, comp't. Logan filed his bill.

7. To this bill the 'Defendants' by 'R. S. Bond, for def'ts, filed a demurrer entitled of 'May term 1855,' but said demurrer was not marked filed.

21. At May term 1855, the order of the court was made thus: 'on Friday comes the compl't. Jas T Logan and Joel A Edmiston (who obtained leave to interplead and who was made a party to this proceeding by bill of interpleader &c, and def'ts, by R S Bond, their att'y, filed demurrer which was ovrruled and the cause was then refered to the master to take evidence.

21. On Saturday master's report filed and it was ordered that judgment be rendered for Logan for $60 35, and for Edmiston for $23 25 against the lands &c and that special fi fa issue to sell &c the lands described in the order and petition—proceeds to pay Logan first, 2d Edmiston and all cost, remainder to be paid to Lucas—costs of last term (oct '54) to be paid by Logan & Edmiston.

13. There is a bill of interpleader in this record filed by Afflack &c as appears by the order of comp't. on pg 21 of Record. this was dismssed. There is no copy of Edmiston's bill sent up, but the order shows he was made a party by bill of interpleader.

7. The demurrer is entitled ats. Logan & Edmiston—and the return of the clk to the certeorari shows that the bill of interpleader was filed but now can not be found.

6. There is what purports to be an answer by Lucas, but it is not marked filed, neither is it noticed in the order of court, nor did Lucas ever withdraw his demurrer, or ask how to do so, nor is there any replication to the same. nor is said answer under oath although the oath is not waived, as is required by Revised Statutes, pg 346 sec 7.

16-17-18-19. Report of master 'Vance' of evidence and finds that McClerkin owes Logan $60 35 and Edmiston $27 00.

By Logan's bill, see pg 11. he admits payment of five dollars thirty-five cts and claims balance due $55 00.

For errors assigned, see pl'ff error's abstract.

Def'ts in error filed two pleas: as follows:

1st. That pl'ff in error, McClerkin, on 17th Dec 1857, made his written release, thereby waiving and releasing all errors in the cause in the court below.

2d. That on 23d of Jan 1858, after the suing out of a writ of error in this cause, pl'ff in error, McClerkin, by his instruments of writing under his seal, did release remit said def'ts in error all errors which had been made or committed by the Circuit Court.

12

McClelland et al

vs

Logan et al

Defts Abstracts

Filed Nov. 21. 1859

A. Johnston Clk

State of Illinois } S.S.
County of Washington }

This affiant Harvey B. Lucas being first duly sworn according to law deposes and says that this affiant took the cause wherein he this affiant and James L. McClinkin are plaintiffs in error and James Logan and Joel A. Eddiston are defendants in error into the Supreme Court for the first Grand Division of this State by consent of the said James L. McClinkin who had no interest in the matter, only that he was a defendant in the court below, and told this affiant that he wanted the judgment reversed if possible, and for him to go on and employ counsel to endeavor to have it done - and this affiant accordingly by the consent of Stephen T. Keicks, counsel for James Logan and Joel A. Eddiston, defendants in error, and Thomas B. Applegate who claims to be interested in the suit at the November Term A.D. 1857, of said Supreme Court, at Mt Vernon, agreed in writing agreed to submit

[8718-41]

the said cause to the said Court at Mt Vernon, aforesaid, and that R. Johnson, atty, at the request of all parties drew up an agreement to that effect which said agreement was signed by said Sleichs, in the presence of the parties concerned.

That after the said cause was submitted as aforesaid, one Orson Kellogg attempted to tamper with one James L. McClurken, this affiants co-plaintiff in error, so as to obtain said McClurken's assent to prevent said cause from being decided, when said McClurken called on this affiant and apprised him of the fact & told this affiant he had no interest in the property, nor in the event of the suit more than that he was nominally plaintiff in error, with this affiant - but that he McClurken would execute no writings nor interfere in said cause if it would injure this affiant and that he would like to consult R. S. Nelson, atty for said McClurken and this affiant, as to whether it would injure this affiant if ~~it was~~ he should make

a quitclaim deed to ~~this~~ said Kellogg - whereupon, said Nelson at the said McClurken's request gave him his opinion in writing, & informed said McClurken that he would be guilty of violating the 154th section of the Criminal Code against cheats, swindlers and fraudulent persons if he did so, and when said McClurken read said letter he said that he would not make said Kellogg any deed whatever to the premises, but the said McClurken did afterwards make the said Kellogg a quitclaim deed to said factory property at Richview, ogres aid for the consideration of $100, as this officer has been informed

That this officer told the said Kellogg that he was the lawful owner of said property before he took said deed to said property, and that said McClurken had no interest in it - and this officer also told said Aflack, before he bought said property of James Logan that said Logan had no right sell it, and that his judgment for a lein was settled - and that said Logan had been paid up all ~~[illegible]~~ & which this officer had arranged to the satisfaction of said

[8718-43]

Logan, and which affiant has since complied with.

That Stephen B. Hicks, Atty for said Logan & Edmiston and Affleck told this affiant that he would go into trial, if he found the record all right. When he reached Mt. Vernon, and that he afterwards stated that the record was all right, and that he would agree to submit the case at that term of Court. and did sign an agreement in writing to that effect as before stated.

This affiant further saith that the said Kellogg & Affleck have combined to prevent a decision from being made, ~~for the purpose~~ by pretending that the record is not complete, so as to avail themselves of their corrupt and fraudulent contrivance with the said McClurken, as aforesaid, and have notified this affiant to appear at Springfield, out of said 1st Grand Division for that purpose — but that this affiant cannot consent in any wise to postpone said case nor to the venue of said cause being changed to the ~~2d~~ 2d Division.

That this affiant is the

owner of the property described in the record in said cause, and purchased the same from Shipbly & Barber, and also paid said McClinton for the improvements, some three years ago - and he this affiant is really the rightful owner of said property - mulls fraud and collusion will take the place of right - and further affiant saith not -

Harvey P. Luca

Subscribed and sworn to before me this 16th day of January, A.D. 1858 -

G. T. Hooks J.P. (Seal)

[8718-43]

State of Illinois } S.S.
County of Jefferson }

This affiant R. S. Wilson being first duly sworn according to law; deposes and says that when the record in the case of Lucas & McClurken vs Logan & Edmiston was made out, this affiant was not at Ashville and that he gave no directions to the Clerk in reference to said record further than to make out and send up a complete record in case, and have the papers to appear in regular and consecutive order - and presumes that the said record is so complete and truly made out, as the Clerk of the Circuit Court of Washington County, who made out the same, has so certified it - and for the additional reason that he was told by Stephen G. Hicks, defendants' atty, that he had examined the record, and that it was correct, and that he was willing to submit it to the Supreme Court at Mt. Vernon - which this affiant consented to, and an agreement was accordingly drawn up by Heidolman, atty at Law, at the request of said Hicks

[8718-14]

draw up an agreement, as this affiant has been informed and believes - and this affiant and the said Johnson being counsel for the said Lucas and McClurken nor the said Lucas have consented to have the said case reinvestigated at the Supreme court at Springfield or elsewhere -

That said McClurken recognized this affiant as one of his counsel, and obtained this opinion as to the propriety of suffering himself to be tampered with by the said Kellogg and Flack, and informed said McClurken in substance that he would be guilty of swindling in case he did. This affiant believes that the said Lucas had a right to use the said McClurken's name whether he was willing or not, in prosecuting the said writ of error, and advised said McClurken that any attempt of his to defeat right by fraud would render him liable to a prosecution, or words to that effect - I positively do not

Wm. T. Nelson

State of Illinois
Jefferson County

This day came before me Richard S. Nelson who being duly sworn according to Law deposed upon oath that the above affidavit is true in substance & in part

In witness whereof I have set my hand & affixed my seal of office at office at Mt. Vernon this 15th January 1858

Noah Johnston Clk
Supt. 6. 1st Grand Division

[8718-45]

State of Illinois } S.S.
Jefferson County }

This affiant, Henry Coleman being first duly sworn deposes and says that he was one of the atty's in the Supreme Court at Mt. Vernon for Lucas & McCluskey, vs James Lagan & Joel C. Edmiston, in a writ of error from Washington County, and that on the application of the parties he drew up an agreement to submit said cause, without argument, and that after said agreement was drawn up, he signed the same on behalf of the plaintiff's in error, and the said ~~plaintiffs~~ defendants by Stephen G. Hicks, their atty, signed the said agreement, ~~and~~ which was afterwards filed, and the papers taken up from the Clerk's office to the Court to be decided at Mt Vernon, in the 1st Grand Division, and of the November Term A.D. 1857. And this affiant never supposed but that said cause would be disposed of according to said agreement, till a short time past.

That this affiant has not consented that the venue

in said cause should be changed to Springfield, or that the same should be re-heard, or otherwise interfered with since it was submitted - and further he saith not -

H. Johnson

State of Illinois } ss.
Jefferson Co'ty }

This day came before me Henry Johnson, who being duly sworn according to law declared upon oath that the foregoing affidavit is true in substance and in fact -

In witness whereof I have hereunto set my hand and affixed my seal of office at Mt. Vernon, this 15th day January A.D. 1865 -

Noah Schuyler Clk
Sup. C. 1st Grand Division

State of Illinois } S.S.
Washington County }

This affiant William M. Logan being first duly sworn according to law, deposes and says that after the case of James L. McMullen and Henry B. Lucas, plffs in error, against James Logan and Joel A. Edmiston was taken to the Supreme Court for the 1st Grand Division of this State at Mt. Vernon, he heard Oscar Kellogg, who is now attempting to interplead in said cause and pretends to claim to the property involved in said suit, say that he was about to buy said property, and he expected to buy a lawsuit with it, or words to that import, and that said property is that known as the Richardson Woollen Factory and is the same property purchased by said Henry B. Lucas of Shipley and Barber, and the same property about which the said Lucas Logan and one Thomas B. Affleck have a suit now pending on the Chancery side of the Circuit Court of Washington County.

~~That upon~~ before said H. B. Lucas commenced said suit in the Washington Circuit Court, said Lucas, by an agreement with said James Logan, satisfied said judgment

[3718-47]

and said James Logan thereupon agreed to give up all claim to the property; (~~and said Lucas actually paid up the said Logan all to $~~ and said Logan set a day to meet said Lucas and settle the balance and into satisfaction of the judgment. But the said Logan, instead of doing so made a deed to said Afflack who was apprised of the said arrangement between said Logan and Lucas, before he obtained a quitclaim deed from said Logan under which he now pretends to claim the property. (~~and the said Lucas only got $150 for said property; if said Afflack under the said purchase, could hold the same.~~

(That this affiant heard ~~the said McClunken say that he had no interest in the property before he obtained made the quitclaim deed to said Kellogg, under which he now pretends to claim: more than that he the said McClunken had disposed of the said property long before that time, and that all the right he ever had to said property, said Lucas had purchased, long before the making of said deed to said Kellogg~~

That this affiant knows

that A. B. Lucas had made an arrangement with said Edmiston to satisfy him for what work he had done on the factory. and that said Edmiston always expressed himself satisfied with it. and affiant heard him say that he considered it as settled, and this was before either said Affleck or said Kellogg obtained title to the property. and further affiant saith not.

Wm. M. Logan

Subscribed and sworn before me this 16th day of January 1858.

C. T. Hooks J. P. Tex.

State of Illinois } S.S.
County of Washington }

These affiants, Joseph Barbor and Alexander Shipley, being first duly sworn according to law, depose and say, that they were the owners of the real estate described in the Petition of Adam Logan vs Harvey B. Lucas & Charles L. McClurken, for a Mechanic's lein, and which was brought to the Supreme Court of this State, and was submitted at the last term of the Supreme Court ~~as they~~ at Mt. Vernon, as they are informed and believe - and in which case an attempt is now made to amend the record in the Supreme Court at Springfield ~~as~~ they have also heard

That when they laid off Shipley & Barbor's Addition to the town of Richview, C. L. McClurken's name was inserted on the town plat simply to indicate that that lot was to be set apart for a factory which the said McClurken thought of putting into operation, but said McClurken never paid them for said property, ~~nor had any interest in it~~, but that Harvey B. Lucas, one of the plaintiffs in error purchased and paid them for said ~~lot~~, and they made him a deed therefor about the 2d day of ~~May~~ June A.D. 1854 -

[8718-49]

which said deed was made by them at the joint request of said Harvey B. Lucas and James, L, McClurken.

That these affiants have since that time been informed that Orson Kellog has purchased the same property, and he the said Orson Kellog has since then told these affiants that when he purchased said property he expected he was buying a lawsuit and they understood from said Kellog that he knew when he bot said property that there was a law suit pending between said Harvey B. Lucas and James, R. Logan and Thomas, B. Oflack about the same property

That said property is called the factory or Mill property and is the same property and no other in dispute between the parties above named & for the sale of which under a Petition for a Mechanics lien a Judgment was obtained in the Washington Circuit Court, which s^d Judgment was taken to the supreme Court by writ of error in the name of James, M. Clurken and Harvey B. Lucas vs James R Logan & Joel Idiminston as they have been informed and verily believe from reliable information & further these deponents say that they have never conveyed said property to any other person except s^d Harvey B. Lucas & further these deponents say

not

A P Shipley
Joseph Barber

Subscribed and sworn
to before ~~me~~ me this
16th day of January
A.D. 1858

G. J. Hoke J P Seal

That this affiant has since that time
understood from said Orson Kellogg that
he ~~Antie~~ expected he was buying a lawsuit

A P Shipley

Subscribed & sworn to
this 16th day of January
1858 G. J. Hoke J P Seal

[3718-51]

Motion in the Supreme Court 2d Grand Division

Kellogg & Affleck
vs
H. B. Lucas

Affidavits of
H. B. Lucas
R. S. Nelson
H. Coluson
Joseph Barber
A. N. Shepley &
W. M. Logan

Kellogg & Affleck
vs
H. B. Lucas — Motion, in Supreme Court for the 2d Division.

This affiant, Henry Johnson, being first duly sworn according to law, deposes and says that he is one of the attorneys originally retained by Lucas & McClurken in a cause ~~about to be tried~~ from Washington County in the Supreme Court at Mt Vernon, at the November Term, A.D. 1857 against Logan & Edmiston, brought up on writ of Error from said Washington Circuit Court, to reverse a certain judgment in a suit for Mechanic's lien, in which the said Lucas & McClurken were defendants in the court below, and plaintiffs in error.

That the record in the cause was not filed in sufficient time to get a service on the defendants in error, ~~and~~ at the ~~adjournment of~~ said Nov. Term, 1857, that said cause was continued to the next term of the Supreme Court for the 1st and 2d Divisions ~~and~~ that, on the same day of the adjournment of court, and after court had adjourned, H. B. Lucas, plaintiff in error, arrived at Mt Vernon, and told affiant that defendant Logan, and Thomas B. Affleck (who is the same person, who moves to be made a new party to this record, and who, as this affiant has ~~always~~ for some time understood was, before, and at that time, ~~in partnership~~ concerned with one Orson Kellogg in the property involved in this suit) together with the Hon. Stephen G. Hicks, their attorney, were on the way to Mt. Vernon, aforesaid, and

[8718-52]

were anxious to have the cause submitted before the judges of the 1st Grand Division.

That afterwards, the same evening, affiant met said James Logan, defendant in error, & Thomas B. Applack, and their attorney, said Hicks, at the Supreme Court Room, and, with the knowledge and consent of the said parties, as well as of Lucas plaintiff in error, as aforesaid, this affiant drew up, in conformity to an understanding of all parties there had, an agreement to submit the cause of Lucas & McCluken against Logan & Edmiston, with another case in which Col. Hicks was concerned as counsel on the opposite side. and that said agreement, after being read and examined by the said Hicks in private counsel with said Logan and Applack, was signed by said Hicks as their attorney, and was filed by the Clerk; by which said agreement the said cause was to be submitted to the Court, to be decided here at Mt. Vernon, and for the 1st Grand Division, — as by reference to said agreement among the papers of this cause will be better understood — and explained —

H. Johnson

State of Illinois } S.S.
County of Jefferson }

Came this day before the undersigned Clerk of the Circuit Court within and for said County, D. Johnson, whose name appears to the foregoing affidavit, and being by me sworn, upon his oath states that the same is true to the best of his knowledge and belief —

Witness my hand and the official seal of said office, at Mt Vernon, this 13th day of January, A.D. 1858 —

John S. Bogan
Clerk C. C.

[8112-58]

12

Orson Kellogg &
Thomas B. Affleck
vs
Hiram B. Lucas

Motion in the Supreme
Court to make new
parties &c —

Aff'ts H. Johnson

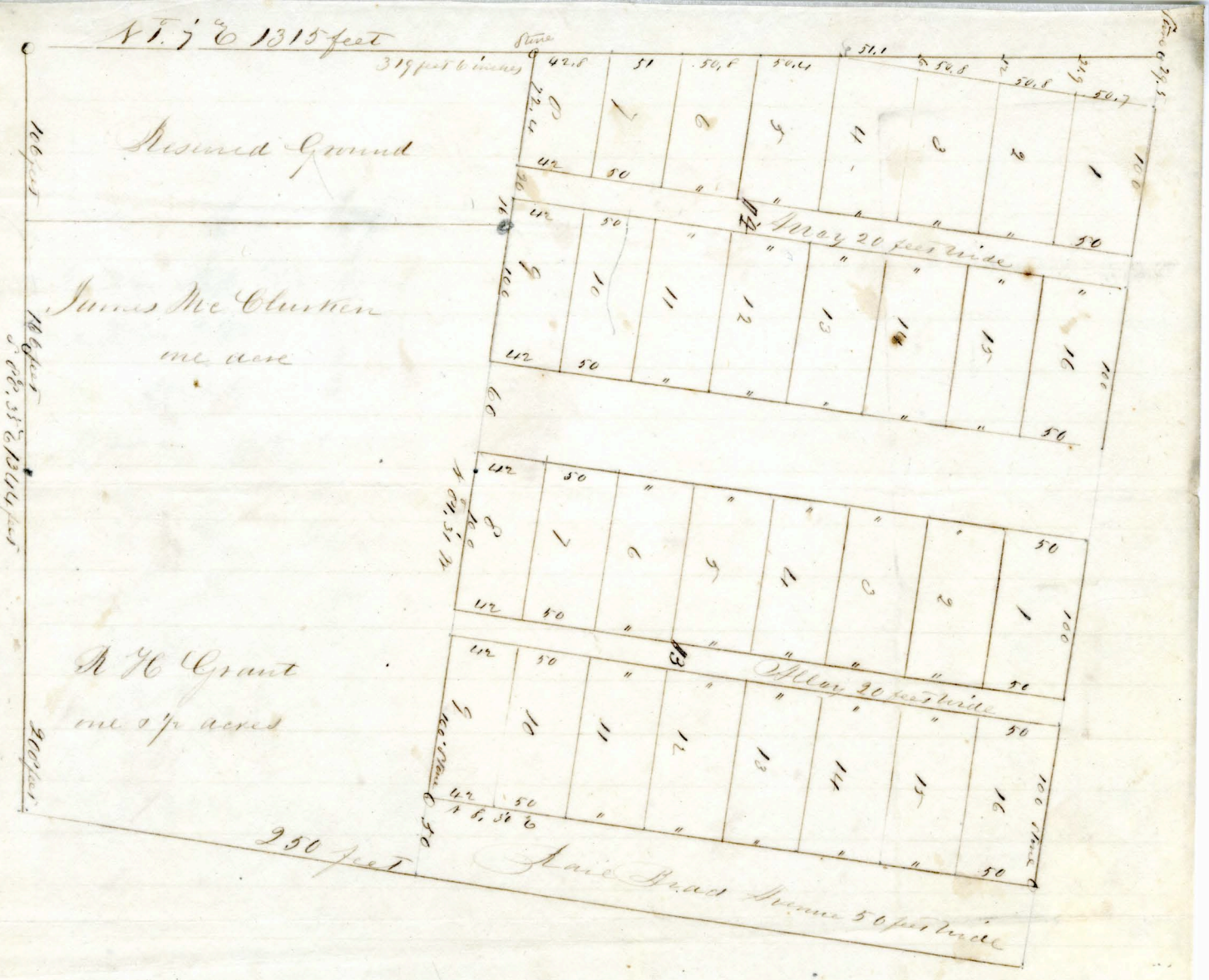
STATE OF ILLINOIS, } SS.
County of

I hereby certify, That George T Hoke
whose genuine signature appears to the foregoing affidavits, was, at the date of his official certificates, an acting justice of the peace for the county of Washington in the State of Illinois, and that full faith and credit should be given to all his official acts as such on said day.

In witness whereof, I have hereunto affixed my hand and seal of office on this 18th day of January A. D. 185[illegible]

[L. S.] Samuel C Page CLERK,

L8718-58

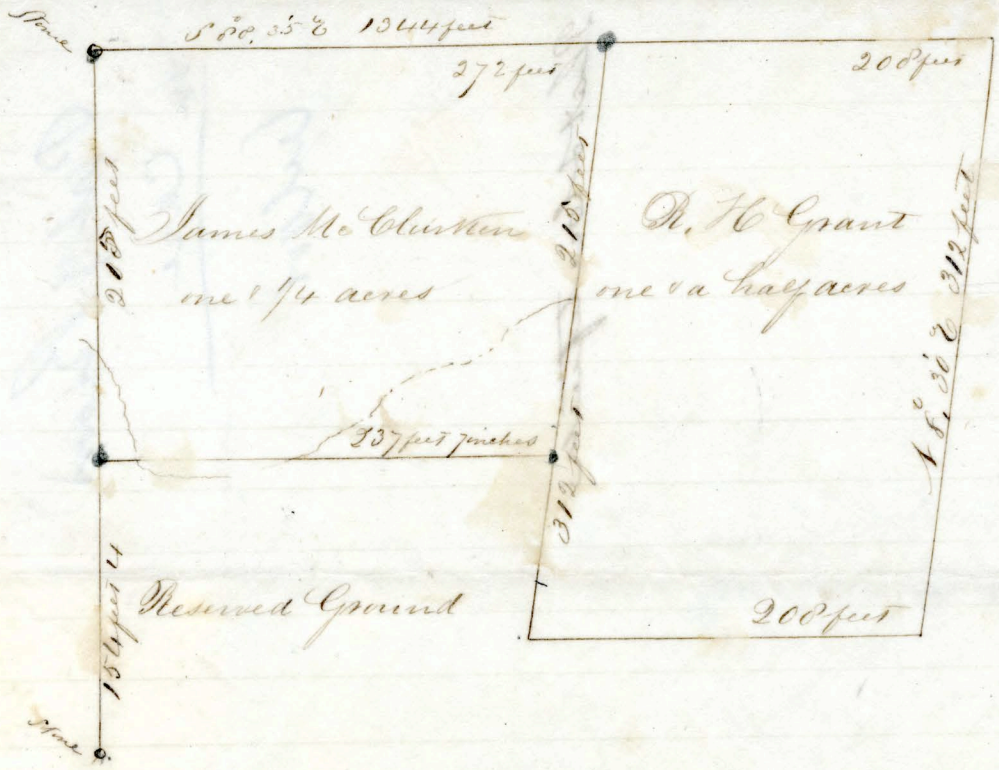


State of Illinois
Washington County } I Harry H Talbot Clerk of the Circuit Court in and for said County do certify that the within is a true and correct copy of part of a Plat or Map of the Town of Richview in said County which Plat or Map is duly certified by Thomas Greenup County Surveyor of said County and duly acknowledged by Alexander Shipley and Joseph Baker the Proprietors and duly recorded in my office

Given under my hand and the seal of the said Circuit Court at office in Nashville this 1st day of May AD 1836

Harry H Talbot Clk

[8718-54]



State of Illinois } I, Harry H Talbot Clerk of the Circuit
Washington County } Court in and for said County do certify
that the above is a true and correct copy of Part of a Plat or Map
entitled Walters Addition to the Town of Richview in said County
which said Plat or Map is duly certified by Daniel Greenup, County
Surveyor of said County and duly acknowledged by Simeon Walters
the Proprietor and recorded in my office

Given under my hand and the seal of
said Circuit Court at office in Nashville
this 1st day of July A D 1854

H. H Talbot Clk

State of Illinois } I Harry H Talbot Clerk of the
Washington County } Circuit Court in and for said County
do certify that the preceding is a true and correct copy as
taken from the Papers on file in my office in the case
James Logan vs James McClinton & Harry B Luca

Given under my hand & the seal of
said Circuit Court this December 17
A D 1857

Harry H Talbot Clk

[8718-55]

Clk fees $2,00 Paid

12 - 12

Pat of Board
in Case
Colors

Plat & Certificate

Filed Nov. 17. 1859 -
A. Johnston Clk

State of Illinois } I Harry H Talbot Clerk of the
Washington County } Circuit Court, in and for said County, do hereby certify, that I have made dilligent search in my office, for the original papers in the Case of James Logan vs James L McClurkin and Harvy B Lucas petition to enforce Mechanics Lien, in which Joel A Edmiston became a party plaintiff by interpleader, decided at the May term A.D. 1855 of the Washington Circuit Court, and that said original papers are lost and can not be found; that they were in their proper place when the copy of the Record was made out, to take this Cause to the Supreme Court, since which time I have not been able to learn anything about them

Given under my hand and the Seal of said Court at my office in Nashville this 11th day of November 1859

H. H. Talbot Clk

[8718-56]

12

~~Henry B. Lucas~~

James McClerkan
et al.

vs.

Logan et al.
~~Henry B. Lucas~~

Error to Washington

Answer to certiorari
by Clerk below

Filed Nov. 17. 1859
A. Johnston Cl

Lucas & McClurkin
vs } Supreme Court
Logan & Others } State of Illinois

Whereas I have made an application to be made a party in the defence of said suit, I hereby withdraw the said application, and hereby agree to remain ~~entirely~~ Indifferent, in relation to the Issue of said suit in consideration of an article of Indem~~nnification~~ given me by said Lucas to my Interests, specified in said article this day

attest Richmond 29th January 1858

Joseph Boslar Signed Orson Kellogg (Seal)

A true copy of an article

[8718-57]

52

Kellogg
to
Lucas

Withdrawn

Harvey Vs. Lucas, &
~~& Joel Edmiston~~
James L. McCluney
pltffs in error
defendants in the
Court below

Error
to
Washington

vs

James M. Logan
& Joel Edmiston
pltffs in the Court
below & defts in
error

The Clerk of Supreme
Court 1st Second division
will please issue a writ
of Certiorari in the above
Cause to the Clerk of
Washington Circuit Court
& oblige yours &c

8th Jany 1859

H. V. Lucas & J. L.
McCluney
Pltffs before their
attorney

[8718-528]

12

H. B. Lucas &
Denis L. McClenkin
vs.
James M. Logan &
Jos. Ellmaker

Recap

Filed January 8. 1859
S. Johnston Clk

M'Clerken & Lucas
vs.
Logan & Edmiston

In Supreme Court
Error from Washington county.

And the said M'Clerken by his Attys. comes & says the pleas of release of the said defts. in error are not sufficient in law, severally & separately

1st - In neither of them is there a profert of said supposed release, nor is it alleged to be lost or destroyed. 3 Chitty's P. 931.

2d - Because said first plea does not aver said release was made after the decree below was rendered, or after the sueing out this writ of error.

3 - Because in neither of said pleas is the date of said supposed release given.

4th - Nor does either of said pleas allege that the facts mentioned in said plea appear in said release or by it.

Nelson & Underwood
Attys for M'Clerken pl.

[8718-89]

M'Clerkenny

Lucas

vs.

Logan & Edmiston

Demurrer to

plea of release.

Filed Nov. 18. 1859 –

N. Johnston Cl

IN THE SUPREME COURT, STATE OF ILLINOIS,

For the 1st GRAND DIVISION,

November Term, 1857.

JAMES L. MCCLURKEN and HARVEY B. LUCAS, *Pl'tiff's in Error,*
vs.
JAMES LOGAN and JOEL A. EDMISTON, *Def'd'ts in Error.*

Error to WASHINGTON.

ABSTRACT OF PLAINTIFFS' CASE.

PAGE 1 This was a Petition for Mechanic's Lien, filed by the defendant against the plaintiffs
2 in error, in the Washington Circuit Court, at the October Term thereof, 1854, and on the
10th day of July, 1854, a summons issued from said Court against plaintiffs in error, to
5 answer a petition filed by James Logan, Thomas B. Afflack and Joel A. Edmiston, to enforce
a Mechanic's Lien, which was returned served on the defendants. At the same Term, the
petitioners asked leave to withdraw the petition, which was allowed, and the cause was
9 continued to the next Term of the Court.

12 At the May Term, 1855, of said Court, the petitioner, Logan alone, filed another petition to enforce a Mechanic's lien against the same defendants—which petition states that the petitioner made a contract with defendant McClurken to perform certain work and labor on a Woolen Factory and the machinery therein, for which said McClurken promised to pay petitioner $1,50 per day for as many days as he should work on said building, and to board petitioner besides, and that petitioner worked thirty-two and one-half days, or thereabouts, for said McClurken, and that his board was worth during that time, $2,50 per week—making in the aggregate, the sum of $60,35 due petitioner; that petitioner re-
12 ceived $5,35 on account from said McClurken, which left a balance of $55,00 due him.—That said buildings and machinery are situated upon certain lands in the County of Washington, described in petition.—That said lands were originally owned by Thurman and one Gunn, who conveyed the same to Shipley & Barber—who conveyed the same to McClurken; and, that afterwards, said Harvey B. Lucas, who was made a defendant to the petition, attempted to take and hold possession of the premises, without having any title known to petitioner—but which, if said Lucas ever had, was never recorded, and is therefore void. The petition then prays that the said premises be sold to satisfy the demand of said Logan.

13 At the October Term, aforesaid, of said Court, one Afflack obtained leave to interplead, and filed his petition accordingly, and afterwards, at the May Term, 1855, of said Court, said petition of said Afflack, in the nature of a bill of interpleader, was dismissed.

6 At the May Term, 1855, Harvey B. Lucas, one of the plaintiffs in error, and defendant in the Court below, filed his answer without oath, in which he states that he knows nothing of the accounts between the defendant in error, Logan, and the plaintiff in error, McClurken, but sets forth a legal title to the premises and possession of the same, before he obtained title to the same.

7 The defendant, McClurken, did not, in fact appear, either by himself or Attorney, but the defendant, Lucas, appeared by Bond & White and filed the above answer.

21 At the May Term, 1855, of said Court, the defendants in error obtained a reference to the Master, to take the proofs and make compensation. It further appears, from the Record that, before plaintiff in error, Lucas, answered petition, he interposed a demurrer to petition, which was overruled, and no notice is taken of the answer of Lucas in the record.

The petitioners' account is appended to the report of the Master, and appears to be
6 incorporated in the record, but is not marked "filed;" nor does the demurrer or the
7 answer of Lucas appear to be marked "filed." Master reports the evidence of Robert H. Grant, who proves contract between McClurken and Logan only, and Miles B. Thurman,
16 who proves Lucas & McClurken's title to the premises, by parol: also, Thomas B. Afflack's
17 evidence, who proves that Logan made contract for boarding, boarded with, and paid
18 him; and also, that Lucas controlled the property after the work was done on it. James I. Logan also testified, as appears from Master's report, that Edmiston worked on the
19 building, in petition mentioned, some eighteen days, and that such work was worth from $1,50 to $1,87½ per day.

The Master did not certify the evidence to the Court, but reported that from the statements of the witnesses, aforesaid, the plaintiff in error, McClurken, was indebted to
18 the defendant in error, Logan, in the sum of $48,37½ for work, and $11,60 for board, and
19 that he was indebted to Edmiston in the sum of $27: whereupon, the Court rendered a judgment in favor of said Logan, for $60,35, and in favor of Edmiston for $23,25, against
21 the premises, in said petition described, and ordered said premises to be sold, and that a
22 special execution issue therefor.

[5718-LD]

The cause is now brought into this Court and is sought to be reversed for the following errors assigned upon the record, to wit: 1st. Because the said Court rendered a judgment in favor of defendant in error, Joel A. Edmiston, without any petition being previously filed by him, and without his being made a party plaintiff as required by the Statute in regard to mechanics' liens. 2nd. Because the said Court overruled the demurrer of the plaintiff in error, Lucas, to petition filed by defendant in error, Logan. 3rd. Because the said Court erred in allowing the petition of said Logan to be withdrawn and continuing cause. 4th. Because the said Court ordered a reference to the Master to take proofs, instead of setting the cause down to be heard upon bill and answer, as to said plaintiff in error, Lucas, there being no replication filed by petitioner Logan as required by law. 5th. Because the Court ordered a reference to the Master to take evidence, without any summons or process being served upon the plaintiff in error, McClurken, in the suit commenced by said Logan. 6th. The Court rendered a judgment against the plaintiff in error, McClurken, without any process being served on him, or appear and by him. 7th. The said Court rendered a judgment upon the report of the Master, when the cause was not referred to the Master to report, but to take the evidence and make computation. 8th. The Court rendered a judgment against the plaintiff in error, McClurken, without taking any rule against him to answer, or without the said McClurken being in default. 9th. The Court rendered judgment against the plaintiffs in error without any process being served upon either of them—in the suit commenced by said Logan against the plaintiffs in error. 10th. The Court erred in rendering a judgment in favor of the defendant in error, Logan, against the plaintiff in error in a suit for mechanic's lien, for board and lodging, and for hauling. 11th. The Court erred in receiving oral testimony of title in the plaintiffs in error to the premises in petition described; which are the grounds of error relied on by the plaintiffs in error to reverse the judgment of the Circuit Court of Washington County.

NELSON & JOHNSON, *for Plaintiffs in Error.*

No ~~55~~ 12

Abstract

Filed Nov. 25. 1857

A. Johnston Clk

12

McKenzie & Lucas
vs
Logan & Edmiston } error to Washington

Montana Supreme Court
1st Grand Division at Mt Vernon A.D. 1858

This appeal Henry B.
Lucas Plaintiff in error in the above
Cause - states the supposed release
of Errors filed in the above Cause
was as he has been informed
by J. L. McClure his Co defendant
obtained from him by ~~[illegible]~~ by
the Counsel for defts in error
representing to him that the filing
of the release would not injure
or prejudice appellants Case in the
least & that he McClure had no interest in
the Case. That said release was filed
at the instance of Orson B. Kellog
or by his attorney for the benefit of
J. Kellog & that said Kellog has
withdrawn all interest in said
Cause as will appear from the
accepted release or agreement
in the nature of a release which
was signed by J. Kellog in this affidavit

pleaded. That the said release of S. McClurken was done by him with a view to aid said Talley & that the title to said property in the Petition for a lien described was in this appellant and that McClurken had no interest whatever in it at the time nor had the S. applicant any interest whatever in it at the time the Judgment in the Westmoreland Circuit Court was rendered which appellant asks to reverse in the Court. and that S. McClurken has informed this appellant repeatedly that he would withdraw it if it would prejudice this appellants case one bit as he was advised it would not & further this appellant says not

Subscribed & sworn
before me this 11th
day of Nov 1852
Noah Johnston Clk

J. C. Blair

IN THE SUPREME COURT, STATE OF ILLINOIS,
For the 1st GRAND DIVISION,
November Term, 1857.

JAMES L. MCCLURKEN and HARVEY B. LUCAS, *Pl'tff's in Error,*
vs.
JAMES LOGAN and JOEL A. EDMISTON, *Def'd'ts in Error.*
} *Error to* WASHINGTON.

ABSTRACT OF PLAINTIFFS' CASE.

PAGE 1 This was a Petition for Mechanic's Lien, filed by the defendant against the plaintiffs
2 in error, in the Washington Circuit Court, at the October Term thereof, 1854, and on the
10th day of July, 1854, a summons issued from said Court against plaintiffs in error, to
5 answer a petition filed by James Logan, Thomas B. Afflack and Joel A. Edmiston, to enforce
a Mechanic's Lien, which was returned served on the defendants. At the same Term, the
petitioners asked leave to withdraw the petition, which was allowed, and the cause was
9 continued to the next Term of the Court.

12 At the May Term, 1855, of said Court, the petitioner, Logan alone, filed another petition to enforce a Mechanic's lien against the same defendants—which petition states that the petitioner made a contract with defendant McClurken to perform certain work and labor on a Woolen Factory and the machinery therein, for which said McClurken promised to pay petitioner $1,50 per day for as many days as he should work on said building, and to board petitioner besides, and that petitioner worked thirty-two and one-half days, or thereabouts, for said McClurken, and that his board was worth during that time, $2,50 per week—making in the aggregate, the sum of $60,35 due petitioner; that petitioner re-
12 ceived $5,35 on account from said McClurken, which left a balance of $55,00 due him.—That said buildings and machinery are situated upon certain lands in the County of Washington, described in petition.—That said lands were originally owned by Thurman and one Gunn, who conveyed the same to Shipley & Barber—who conveyed the same to McClurken; and, that afterwards, said Harvey B. Lucas, who was made a defendant to the petition, attempted to take and hold possession of the premises, without having any title known to petitioner—but which, if said Lucas ever had, was never recorded, and is therefore void. The petition then prays that the said premises be sold to satisfy the demand of said Logan.

13 At the October Term, aforesaid, of said Court, one Afflack obtained leave to interplead, and filed his petition accordingly, and afterwards, at the May Term, 1855, of said Court, said petition of said Afflack, in the nature of a bill of interpleader, was dismissed.

6 At the May Term, 1855, Harvey B. Lucas, one of the plaintiffs in error, and defendant in the Court below, filed his answer without oath, in which he states that he knows nothing of the accounts between the defendant in error, Logan, and the plaintiff in error, McClurken, but sets forth a legal title to the premises and possession of the same, before he obtained title to the same.

7 The defendant, McClurken, did not, in fact appear, either by himself or Attorney, but the defendant, Lucas, appeared by Bond & White and filed the above answer.

21 At the May Term, 1855, of said Court, the defendants in error obtained a reference to the Master, to take the proofs and make compensation. It further appears, from the Record that, before plaintiff in error, Lucas, answered petition, he interposed a demurrer to petition, which was overruled, and no notice is taken of the answer of Lucas in the record.

The petitioners' account is appended to the report of the Master, and appears to be
6 incorporated in the record, but is not marked "filed;" nor does the demurrer or the
7 answer of Lucas appear to be marked "filed." Master reports the evidence of Robert H. Grant, who proves contract between McClurken and Logan only, and Miles B. Thurman,
16 who proves Lucas & McClurken's title to the premises, by parol: also, Thomas B. Afflack's
17 evidence, who proves that Logan made contract for boarding, boarded with, and paid
18 him; and also, that Lucas controlled the property after the work was done on it. James I. Logan also testified, as appears from Master's report, that Edmiston worked on the
19 building, in petition mentioned, some eighteen days, and that such work was worth from $1,50 to $1,87½ per day.

The Master did not certify the evidence to the Court, but reported that from the statements of the witnesses, aforesaid, the plaintiff in error, McClurken, was indebted to
18 the defendant in error, Logan, in the sum of $48,37½ for work, and $11,60 for board, and
19 that he was indebted to Edmiston in the sum of $27; whereupon, the Court rendered a judgment in favor of said Logan, for $60,35, and in favor of Edmiston for $23,25, against
21 the premises, in said petition described, and ordered said premises to be sold, and that a
22 special execution issue therefor.

[8718-63]

IN THE SUPREME COURT, STATE OF ILLINOIS

The cause is now brought into this Court and is sought to be reversed for the following errors assigned upon the record, to wit: 1st. Because the said Court rendered a judgment in favor of defendant in error, Joel A. Edmiston, without any petition being previously filed by him, and without his being made a party plaintiff as required by the Statute in regard to mechanics' liens. 2nd. Because the said Court overruled the demurrer of the plaintiff in error, Lucas, to petition filed by defendant in error, Logan. 3rd. Because the said Court erred in allowing the petition of said Logan to be withdrawn and continuing cause. 4th. Because the said Court ordered a reference to the Master to take proofs, instead of setting the cause down to be heard upon bill and answer, as to said plaintiff in error, Lucas, there being no replication filed by petitioner Logan as required by law. 5th. Because the Court ordered a reference to the Master to take evidence, without any summons or process being served upon the plaintiff in error, McClurken, in the suit commenced by said Logan. 6th. The Court rendered a judgment against the plaintiff in error, McClurken, without any process being served on him, or appear and by him. 7th. The said Court rendered a judgment upon the report of the Master, when the cause was not referred to the Master to report, but to take the evidence and make compensation. 8th. The Court rendered a judgment against the plaintiff in error, McClurken, without taking any rule against him to answer, or without the said McClurken being in default. 9th. The Court rendered judgment against the plaintiffs in error without any process being served upon either of them—in the suit commenced by said Logan against the plaintiffs in error. 10th. The Court erred in rendering a judgment in favor of the defendant in error, Logan, against the plaintiff in error in a suit for mechanic's lien, for board and lodging, and for hauling. 11th. The Court erred in receiving oral testimony of title in the plaintiffs in error to the premises in petition described; which are the grounds of error relied on by the plaintiffs in error to reverse the judgment of the Circuit Court of Washington County.

NELSON & JOHNSON, *for Plaintiffs in Error.*

[8718-4]

12 No ~~55~~ 12

McClurken et al

vs

Logan et al

Error to Washington

Filed 25 Nov 1857

A. Johnston Clk

No 55

Joseph McClerkan & Others
vs
Jones Logan et al

Ordered that this cause be transferred to the supreme Court of first Grand division and that the same then stand for one argument and that certiorari be issued by the clerk of the 3d Grand division to the clerk of the circuit court to send up a complete record & particularly a copy of the petition of intervpleader

J D Caton

O L Dickinson
Sidney Breese

[8718-65]

No ~~55~~ 12

Order of Deportation

For Pt Jarvis
this order directs

how the rate
shall be disposed
of

No 12 — 12

Nov. Term 1859.

M'Clurken et al
vs
Lucas et al

Error to Washington

Rev. & Remanded.

8718