

New Jersey Court of Errors and Appeals.

WILLIAM B. BEMENT and JAMES DOUGHERTY, trading, &c.,

vs.

THE TRENTON LOCOMOTIVE AND MACHINE MANUFACTURING COMPANY.

*In case.
Judgment on Verdict.*

P. L. VOORHEES,
Att'y.

[Filed November 22, 1865.]

As yet of the twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

Witness George H. Brown, esquire, judge, R. C. Belville, clerk.

Mercer County Circuit Court, of the twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

Mercer county, ss.—The Trenton Locomotive and Machine Manufacturing Company, builders and owners of a certain building, against which a building lien is claimed, 10 were summoned, the process in this case having been returned with the following endorsement thereon, *viz*: “Duly served on Joseph C. Potts, late vice president of the Trenton Locomotive and Machine Manufacturing Company, R. L. Hutchinson, sheriff,” that the said the Trenton Locomotive and Machine Manufacturing Company, defendants, might answer William B. Bement and James Dougherty, trading under the name, style, and firm of Bement & Dougherty, the plaintiffs in this suit, of a plea of trespass on the case upon promises; and thereupon the said plaintiffs, by Peter 20 L. Voorhees, their attorney, complain for that whereas the

said defendants, builders as aforesaid, heretofore, to wit, on the tenth day of December, in the year of our Lord one thousand eight hundred and sixty-two, at Philadelphia, to wit, at Trenton, in the county of Mercer, and within the jurisdiction of this court, were indebted to the plaintiffs in the sum of twelve thousand dollars, for divers goods, wares, and merchandise, machinery, chattels, and effects, before that time sold and delivered to the said defendants, at their special instance and request; and whereas, also, the said de-

10 fendants afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, were indebted to the said plaintiffs in the further sum of twelve thousand dollars, for work and labor, care and diligence, of the said plaintiffs, by them, the said plaintiffs, before that time done and performed, and bestowed in, upon, and about the business of the said defendants, and for the said defendants, at their special instance and request, and also for divers materials and other necessary things by the said plaintiffs before that time found and provided, and used and

20 applied, in and about the work and labor of the said defendants, at their like special instance and request; and in twelve thousand dollars, for money lent by the plaintiffs to the defendants, at their request; and in twelve thousand dollars, for money paid by the plaintiffs to and for the use of the said defendants, at their request; and in twelve thousand dollars, for money received by the said defendants for the use of the plaintiffs; and in twelve thousand dollars for interest for the forbearance by the plaintiffs, at the said defendants' request,

30 plaintiffs; and in twelve thousand dollars, for money found to be due from the said defendants to the plaintiffs, on an account stated between them and the said defendants afterwards, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the last mentioned premises respectively, then and there promised to pay the said last mentioned several moneys, respectively, to the plaintiffs on request; yet the said defendants have disregarded their promises, and have not paid any of the said moneys, or any part thereof, to the plain-

40 tiffs' damage twelve thousand dollars, and therefore they

bring their suit, &c. And the said plaintiffs aver that the said debt is, by virtue of the provisions of an act of the legislature of the state of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, 1853, and the various supplements to said act, a lien upon a certain building and lands of the said the Trenton Locomotive and Machine Manufacturing Company, to wit, the said building is erected for the purpose of manufacturing, and is a brick building six hundred feet long by seventy-eight feet wide, 10 part of said building being one story, a part two stories and a part three stories in height, with a building in the rear attached and making part thereof; the said building is situate in the city of Trenton, in the county of Mercer, and state of New Jersey, and the said lot or curtilage whereon the same is erected is situate, lying, and being in the city of Trenton aforesaid: beginning at the southeasterly corner of Broad street and the Sandtown road, and running thence southerly, along Broad street, six hundred and twenty-one feet; thence (2) at right angles to Broad street north, fifty- 20 seven degrees east, one hundred feet; thence (3) northwesterly and parallel with Broad street, twenty-five feet; thence (4) north, eighty-five degrees east, one hundred and thirteen feet and a half, to a corner in the basin; thence (5) north, thirty-three degrees west, along the westerly side of said basin, three hundred and sixty-seven feet eight inches, to the northwesterly corner of said basin; thence (6) along the northerly side of said basin, north eighty-five degrees east, three hundred and forty-eight feet, more or less, to the line of land of the Delaware and Raritan Canal Company; thence 30 (7), by their land northerly, to the Sandtown road; and thence (8), by the said Sandtown road, to the place of beginning—together with all the rights and privileges, at all times for ever hereafter fully and freely to enter the said basin, and to use the same in common with the owners of the remaining wharf fronts on said basin, excepting always the right of way for a railroad, reserved to Edward Cooper and Abram S. Hewitt, their heirs and assigns, in and by the deed herein after mentioned, over a strip of land twenty-five feet in width, being part of the tract hereby granted, and in said deed par- 40

ticularly described, being the same tract of land and premises conveyed to Aaron H. Vancleve, William R. McKean, Joseph C. Potts, and Isaac Dripps, by Edward Cooper and Abram S. Hewitt, by deed bearing date the first day of February, in the year of our Lord one thousand eight hundred and fifty-three, and by the said Aaron H. Vancleve and wife, William R. McKean and wife, Isaac Dripps and wife, and Joseph C. Potts conveyed to the said the Trenton Locomotive and Machine Manufacturing Company, by deed bearing date the
 10 eleventh day of July, in the year of our Lord one thousand eight hundred and fifty-six, and including a small lot or piece of land conveyed by William Hunt and wife to Thomas R. Wilson, and subsequently, by the said Thomas R. Wilson, to said Aaron H. Vancleve, William R. McKean, Isaac Dripps, and Joseph C. Potts, and by the said Aaron H. Vancleve and wife, William R. McKean and wife, Isaac Dripps and wife, and Joseph C. Potts to the said the Trenton Locomotive and Machine Manufacturing Company in the above mentioned deed, this lien being claimed for certain fixed
 20 machinery, gearing, and other fixtures for manufacturing purposes put and erected in said above described building.

And the said defendants, the Trenton Locomotive and Machine Manufacturing Company, as owners as aforesaid, by E. Mercer Shreve, their attorney, come and defend the wrong and injury, when, &c., and say nothing in bar or preclusion of the said action of the said plaintiffs, whereby the said defendants, as builders as aforesaid, remain undefended against the said plaintiffs; wherefore the said plaintiffs ought to recover against the said defendants, as builders as aforesaid,
 30 their damages on account of the premises, but because it is unknown to the court here what damages the said plaintiffs have sustained on occasion thereof, and because it is convenient and necessary that there be but one taxation of the damages in this suit; therefore let the giving of judgment in this behalf against the said defendants, as builders, be stayed until the trial of the said issue above joined between the said plaintiffs and the said defendants, as owners as aforesaid. And as well to try the said issue, as to inquire of and assess the
 40 of the non-performing the above promises and undertakings

by the said defendants, as builders as aforesaid, let a jury thereupon come of twelve, &c., by whom, &c., who neither, &c.; and the said cause being continued from term to term by *viceunes non misit breve*, until the second Tuesday of January, in the year of our Lord one thousand eight hundred and sixty-five, at which day, before our Judge of our Circuit Court, at Trenton, come the said parties aforesaid, by their attorneys aforesaid; and the jurors of the jury, whereof mention is above made, being summoned, also come, and who, to speak the truth of the matters above contained, being 10 chosen, tried, and sworn as to the issue above joined, say, upon their oath, that the said building and curtilage, in the plaintiffs' declaration mentioned and described, is not liable to the said debt in the said declaration mentioned, and that they assess the damages of the plaintiffs, by reason of the non-performance by the defendants, as builders as aforesaid, of the said promises and undertakings in the said declaration mentioned, at the sum of four thousand four hundred and fifteen dollars and seventy-eight cents, over and above their costs and charges by them about their suit in this behalf 20 against the said defendants, as builders as aforesaid, expended, and for those costs and charges to six cents.

Therefore it is considered that the said plaintiffs do recover against the said defendants, as builders as aforesaid, their said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed, and also the sum of forty-five dollars and sixteen cents, for their costs and charges by the court now here adjudged against the said defendants, of increase to the said plaintiffs and with their assent, which said damages, costs, and charges, in the whole, amount to the sum 30 of four thousand four hundred and sixty dollars and ninety-four cents. And the said the Trenton Locomotive and Machine Manufacturing Company, in mercy, &c.

And it is also considered by the said courts here that the said plaintiffs take nothing by their said writ as against the said defendants as owners as aforesaid, but that they and their pledges to prosecute, be, in mercy, &c.; and that the said defendants, as owners, do go thereof without day, &c. And it is further considered by the said court here that the said defendants, as owners as aforesaid, do recover against the said 40

plaintiffs the sum of nineteen dollars and thirteen cents, for their costs and charges by them about their defence in this behalf laid out and expended, by the court now here adjudged to the defendants, as owners as aforesaid, with their assent, according to the form of the statute in such case made and provided; and that the said defendants, as owners as aforesaid, have execution thereof.

Judgment signed the second day of February, in the year of our Lord one thousand eight hundred and sixty-five.

10

M. BEASLEY.

State of New Jersey, Mercer county, ss.—I, Robert C. Belville, clerk of the Circuit Court in and for said county, do hereby certify that the foregoing is a full and true transcript of the judgment and proceedings in the above stated cause, together with all things touching and concerning the same, as fully and entirely as the same remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, this eighteenth day of November, A. D. eighteen hundred and sixty-five.

R. C. BELVILLE, *Clk.*

New Jersey, ss.—The State of New Jersey to the Circuit Court of the county of Mercer greeting: Forasmuch [L. s.] as in the record and proceedings, and also in the giving of judgment of a plea which was in our court before you, wherein William B. Bement and James Dougherty, trading under the name, style, and firm of Bement and Dougherty, are plaintiffs, and the Trenton Locomotive and Machine Manufacturing Company, builders and owners, are defendants in a certain action of trespass on the case upon promises, manifest error has intervened, as is said, to the great damage of the said William B. Bement and James Dougherty, trading, &c., as aforesaid, as by their complaint we are informed: we being willing that the error (if any there be) should in due manner and form be corrected, and due and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, that then without delay you distinctly and openly send, under your seal, the

record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, as heretofore, on the third Tuesday of November next, wheresoever they shall be in said state, together with this our writ, that the record and proceedings aforesaid, being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness the Honorable Henry W. Green, Chancellor of the state of New Jersey, at Trenton, this twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-five.

P. L. VOORHEES, *Att'y.*

W. S. JOHNSON, *Clk.*

The record and proceedings whereof mention is within made, together with all things touching and concerning the same, I do hereby certify to the Court of Errors and Appeals, as within I am commanded.

[L. s.] Witness my hand and the seal of said Circuit Court, at Trenton, this eighteenth day of November, A. D. 1865.

R. C. BELVILLE, *Clk.*

New Jersey Supreme Court.

June Term, 1865.

The Trenton Locomotive and Machine Manufacturing Company

ads.

William B. Bement and James Dougherty, partners, &c.

In matter of lien.

Case certified from Mercer Circuit.

This case having been certified from the Mercer Circuit, 30 for the advisory opinion of this court upon certain questions involved therein, and the court, after hearing counsel thereon, being of opinion that the lands and buildings in question are not subject to the lien in this case—

It is ordered, that said Circuit Court be so advised, and that the clerk certify accordingly. The costs of defendants in this court on said proceeding to be paid by plaintiffs.

On motion of

E. MERCER SHREVE,

Deft's Att'y.

I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of said court at the 10 term and in the cause above stated.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Trenton, this [L. s.] eleventh day of October, A. D. eighteen hundred and sixty-five.

CHARLES P. SMITH, *Clerk.*

Mercer County Circuit Court.

February 2, 1865.

20 William B. Bement and James
Dougherty, trading, &c., as Be-
ment & Dougherty,

vs.

The Trenton Locomotive and Ma-
chine Manufacturing Company.

State of the case.

[Filed February 15, 1865.]

30 This action was brought to recover the amount due upon a lien claim, filed by the plaintiffs against the defendants, as builders and owners of a certain building and lot or curtilage whereon the same is erected, for certain fixed machinery, gearing, and other fixtures, for manufacturing purposes, put up and erected in said described building. The lien in this case was filed and docketed the first day of January, A. D. eighteen hundred and sixty-three. The affidavit annexed to the lien was made by James Dougherty, one of the claimants, on the twenty-ninth day of December,

A. D. eighteen hundred and sixty-two, and the bill of particulars annexed to the lien was for articles furnished by the claimants at various dates from the twenty-eighth day of January, to the thirteenth day of November, A. D. eighteen hundred and sixty-two (*pro ut* the said lien, &c.) The declaration in this case was for—1, goods, wares, &c., sold and delivered by the plaintiffs to the defendants; 2, work and labor done and materials provided by the plaintiffs for the defendants; 3, money lent, money paid, money had and received. Interest and account stated. The plea was, that 10 the land and buildings were not liable to the said debt (*pro ut* the pleadings, &c., in said case).

On the trial of the cause before the jury, the plaintiff offered in evidence, and proved as follows:

1st. The lien claim, with the endorsements thereon, from which it appeared that the claim was filed and docketed January first, A. D. eighteen hundred and sixty-three, and that the summons to enforce said lien was sealed and issued November the thirtieth, A. D. eighteen hundred and sixty-three, which endorsements and dates were admitted by the 20 defendants.

2d. The lien docket of said Mercer county, the said lien claim being docketed on the 98th page thereof.

3d. Copy of deed conveying said premises described in the lien claim to the defendants, by Aaron H. Vaneleve and others, by deed recorded in Mercer county clerk's office, in Vol. 34 of Deeds, page 468, &c., which title was also admitted by the defendants.

By *James Dougherty*. I am one of the plaintiffs in this suit; William B. Bement is my partner; we are still copartners 30 doing business at the corner of Twenty-first and Callowhill streets, in the city of Philadelphia; we caused this lien to be filed. And being shown the lien filed in this case, saith—this is my signature to the affidavit to this lien claim; our firm furnished the machinery mentioned in the bill of particulars to this lien claim to the Trenton Locomotive and Machine Manufacturing Company. The most of the goods were furnished at the dates mentioned in the bill of particulars; there were three deliveries of machinery after the thirteenth day of November, A. D. eighteen hundred and sixty- 40

two, the last date mentioned in the bill of particulars annexed to the lien claim ; the last of those three deliveries was on the third day of December, A. D. eighteen hundred and sixty-two ; those three deliveries were shipments of machinery from Philadelphia to the defendants, made on the nineteenth and twenty-fourth days of November, and the third day of December, A. D. eighteen hundred and sixty two. [Papers being shown to witness] he says—these are the three receipts signed by parties receiving machinery on vessels at Philadelphia, to be transported to the defendants at Trenton. The machinery mentioned in this bill of particulars was delivered to the defendants ; I saw it put up in their works. Mr. Potts, vice president of the company, admitted to me they had received the machinery from us ; Mr. Burt, also connected with the company, admitted they had received the machinery ; we have a letter from Mr. Burt, in which he says they have received the machinery, and that he will see us paid for it ; part of the sum claimed when the lien was filed has been paid since the lien was filed ; the amount now due upon the lien is represented by these notes of the company to us, with the interest upon the notes ; the notes are all there, dated May the twelfth, A. D. eighteen hundred and sixty-three ; one is for one thousand dollars, payable thirty days after date thereof, one is for one thousand dollars, payable sixty days after date thereof, and the other is for two thousand and thirty-eight dollars and forty-seven cents, payable ninety days after the date thereof ; the prices mentioned in the bill of particulars are the prices upon which the goods were furnished ; the dates in the bill of particulars are correct, except that in a few instances they may be charged a few days before the delivery of the goods. The agreement with this company was that they should pay cash for the machinery, but sometimes, when I was in Trenton, they would give me notes, and order some machines to be made, and include the machines ordered in the settlement ; and notes in such cases we charged, the machines as of the date of the settlement and notes, and delivered them afterwards.

On cross-examination saith : In our regular business we make our entries and charges on the delivery of the goods ; but in this case, when the articles to be made were settled for, we charged them as of the time of the settlement, and

delivered the goods afterwards. When they ordered machines, and settled for them, we charged them without reference to their being furnished; then our shipping book showed when they were delivered. There was some irregularity in settling with and charging this company, as they were to pay cash, but they would want time. No irregularity in our books as to other transactions. If you bought machinery from us to be shipped in two or three days, and you paid us for it, we would charge the machinery to you at the time of the payment, as it was necessary to have the charge before we could give you the credit. The shipments of November the nineteenth and twenty-fourth, and December the third, A. D. eighteen hundred and sixty-two, are all of machinery included in the bill of particulars under date of November the thirteenth, A. D. eighteen hundred and sixty-two, that being the date of the last settlement with the company. I was aware of these facts on the twenty-ninth day of December, one thousand eight hundred and sixty-two, when I made the affidavit to the lien claim.

On examination in chief saith: At the time of the charge of November the thirteenth, A. D. eighteen hundred and sixty-two, I had settled with the company, and had the company's notes for all the machinery charged of that date, and I had given the company a receipt for their notes for machinery delivered and to be delivered. We charged the machinery of that date, although not delivered, so as to balance the credit of the notes. The last of the machinery charged on the thirteenth day of November was delivered on the third of December, A. D. eighteen hundred and sixty-two. At the time I made the affidavit to the claim, my attention was not called to the date in the bill of particulars. I was then aware of this discrepancy, and if my attention had been called to it, I would have corrected it. We had assurances from Mr. Burt and Mr. Potts that the claim would be paid about the thirteenth day of November, A. D. eighteen hundred and sixty-three, and that caused us to delay issuing the writ to the last moment. The notes we now have are not the original ones; these were given in renewal of the original ones.

By *John W. Francis*. I am book-keeper and clerk, employed by Bement & Dougherty. I have their shipping book

with me ; by it, I can tell where the last goods were shipped to the defendants in this case ; the last shipment was made December the third, A. D. eighteen hundred and sixty-two ; on that day two items, charged in the bill of particulars on the thirteenth day of November, were shipped. The shipment before that was on November the twenty-fourth ; that was for one of the items charged in the bill of particulars on the thirteenth day of November. The shipment before that was on the nineteenth day of November ; that was for one
 10 of the items charged in the bill of particulars on the thirteenth day of November, A. D. eighteen hundred and sixty-two. The entries in this book are correctly made of the time of the shipping of the goods.

On cross-examination saith : This book is not kept by me ; it is kept by the shipping clerk, whoever he is ; I have nothing to do with this book, except to copy from it ; I did not make these entries in this book ; I cannot, of my own knowledge, tell when goods charged as shipped November the nineteenth were actually shipped ; two articles were
 20 shipped November nineteenth ; I know they are same as those charged in bill of particulars November the thirteenth from looking at books ; articles shipped November twenty-fourth is same as charged in bill of particulars November thirteenth, A. D. eighteen hundred and sixty-two—I think no doubt about it ; I say positively that machine shipped November twenty-fourth is charged in bill of particulars under date of November the thirteenth—only one machine shipped November twenty-fourth. The machines shipped December third are same as charged in bill of particulars on
 30 the thirteenth day of November—I am sure one of them is, can't speak positively as to the other. I think the other machine shipped December third is charged November the thirteenth, but I am not positive about it ; I did not have anything to do with shipping these goods—I took no charge—I might have assisted, but I have no recollection of it. I think that at the same time we were making similar machines to some of these for other people ; we made some machines for this company we did not make for others ; we had shipped similar machines to the defendants before ; we had
 40 not been shipping similar machines to different parties at this time ; we had shipped machines similar to some of these

machines to other parties—I recollect this from keeping different accounts for similar machines, but I cannot tell when these shipments were made; we do not charge goods until furnished, unless some special reason for doing otherwise. I think most of the other goods furnished the defendants were charged at the time they were shipped; I recollect other cases of charging goods before delivering them, but not to the defendants.

On re-examination in chief, saith: In all cases where goods have been charged, and delivered afterwards, it was on account of a settlement or payment for the goods before the delivery. The entries in this book were made by Mr. McNelly; he was a clerk in the employment of the plaintiffs; I am chief book-keeper, and all the books come under my supervision, and are, I think, kept correctly.

The defendants, by their counsel, objected to all evidence tending to prove that the machinery was furnished at different dates from those stated in the bill of particulars annexed to the company's claim, and this objection was made before evidence received by the court.

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No evidence was offered by the defendants.

A verdict was ordered by the court to be found for the plaintiffs for four thousand four hundred and fifteen dollars and seventy-eight cents, the amount due upon the lien claim at this time, subject to the opinion of the court upon a case certified to the Supreme Court. If the Supreme Court shall be of the opinion that the building and curtilage in the said lien claim and declaration in this case described are subject to the said lien, that then a special judgment shall be entered upon said verdict for the debt and costs, to be made of the building and lands in said declaration described, otherwise there shall be a general judgment entered upon the said verdict against the defendants, and that either party shall have leave to turn this case into a special verdict, and bring a writ of error thereon within one term after judgment.

30

JOHN VAN DYKE,

Just. Sup. Court.

PETER L. VOORHEES,

Att'y of pl'tffs.

E. MERCER SHREVE,

Att'y of defendants.

Lien Claim and Endorsements

IN THE OFFICE OF THE CLERK OF THE COUNTY OF MERCER.

William B. Bement and James Dougherty, trading under the name, style, and firm of Bement & Dougherty,

vs.

The Trenton Locomotive and Machine Manufacturing Company.

} *Lien claim.*

Mercer county, ss.—Be it known, that William B. Bement
 10 and James Dougherty, both of the city of Philadelphia, in
 the state of Pennsylvania, and trading under the name, style,
 and firm of Bement & Dougherty, file this their claim, for
 the payment of six thousand nine hundred and thirty dollars
 and seventy-eight cents, with interest thereon, against all
 that certain building and lot or curtilage whereon the same
 is erected and herein after particularly described, which said
 sum is a debt contracted and owing by the said the Trenton
 Locomotive and Machine Manufacturing Company, a body
 politic and corporate under the laws of the state of New
 20 Jersey, to the said William B. Bement and James Dougherty,
 trading as aforesaid, for labor performed and materials fur-
 nished by them, within one year last past, for the erection
 and completion of said building; and it is claimed to be a lien
 on the said building and the said lots or curtilage whereon
 it is erected.

I. The said building is erected for the purposes of a man-
 ufactory, and is a brick building six hundred feet long, by
 seventy-eight feet wide, part of said building being one story,
 a part two stories, a part three stories in height, with a build-
 30 ing in the rear, attached thereto, and making part thereof.
 The said building is situate in the city of Trenton, in the
 county of Mercer, and state of New Jersey, and the said lot
 or curtilage whereon the same are erected is situate, lying,
 and being in the city of Trenton aforesaid: beginning at the
 southeasterly corner of Broad street and the Sandtown road,
 and running thence, southerly along Broad street, six hun-

dred and twenty-one feet; thence (2) at right angles to Broad street, north fifty-seven degrees east, one hundred feet; thence (3) northwesterly, and parallel with Broad street, twenty-five feet; thence (4) north, eighty-five degrees east, one hundred and thirteen feet and a half, to a corner in the basin; thence (5) north, thirty-three degrees west, along the westerly side of said basin, three hundred and sixty-seven feet eight inches, to the northwesterly corner of said basin; thence (6) along the northerly side of said basin, north, eighty five degrees east, three hundred and forty-eight feet, 10 more or less, to the line of the land of the Delaware and Raritan Canal Company; thence (7), by their line northerly, to the Sandtown Road; and thence (8), by said Sandtown road, to the place of beginning: together with all the right and privilege, at all times for ever hereafter, fully and freely to enter the said basin, and to use the same in common with the owners of the remaining wharf fronts on said basin, excepting always the right of way for a railroad, reserved to Edward Cooper and Abram S. Hewitt, their heirs and assigns, in and by the deed hereinafter mentioned, over a 20 strip of land twenty-five feet in width, being part of the tract hereby granted and in said deed particularly described, being the same tract of land and premises conveyed to Aaron H. Vancleve, William R. McKean, Joseph C. Potts, Isaac Dripps, Edward Cooper, and Abram S. Hewitt, by deed bearing date the first day of February, in the year of our Lord one thousand eight hundred and fifty-three, and by the said Aaron H. Vancleve and wife, and William R. McKean and wife, Isaac Dripps and wife, and Joseph C. Potts conveyed to the said the Trenton Locomotive and Machine 30 Manufacturing Company, by deed bearing date the eleventh day of July, in the year of our Lord one thousand eight hundred and fifty-six, and also including a small lot or piece of land conveyed by William Hunt and wife to Thomas R. Wilson, and subsequently by the said Thomas R. Wilson to the said Aaron H. Vancleve, William R. McKean, Isaac Dripps, and Joseph C. Potts, and by the said Aaron H. Vancleve and wife, William R. McKean and wife, Isaac Dripps and wife, and Joseph C. Potts to the said the Trenton Locomotive and Machine Manufacturing Company in the above 40 mentioned deed, the lien being claimed for certain fixed

machinery, gearing, and other fixtures for manufacturing purposes, put and erected in said above described building.

II. The name of the owner of the said lot and curtilage whereon the said building is erected is the Trenton Locomotive and Machine Manufacturing Company, who hold, or claim to hold, an estate in fee simple therein, subject to the right of way of certain persons across the same, or some part thereof.

III. The name of the party who contracted the debt, and for whom and at whose request the labor was performed and the materials furnished for which this lien is claimed, is the Trenton Locomotive and Machine Manufacturing Company.

IV. The following is a bill of particulars of the aforesaid materials furnished by the said William B. Bement and James Dougherty, trading, &c., as aforesaid, the prices at which, and the time when the same were furnished, giving credit for all credits made thereupon, and all deductions that ought to be made therefrom, and exhibiting the balance justly due to them, the said claimants, from the said the Trenton Locomotive and Machine Manufacturing Company.

The Trenton Locomotive and Machine Manufacturing Company in account with Bement & Dougherty, Dr.
1862.

Jan. 28,	To a No. 1 gear cutting machine,	\$330 00
Feb. 18,	“ 5 sets No. 1 milling machine castings, at \$82,	410 00
“	“ working drawings of above machine,	25 00
“	“ boxing,	2 50
March 3,	“ 5 sets No. 1 milling machine castings, at \$82,	410 00
30	“ boxing,	2 50
“ 20,	“ J. F. Flagg, for work done,	12 25
April 2,	“ one No. 3 milling machine,	350 00
“	“ 3 four spindle drilling machines, at \$300,	900 00
“	“ 2 three “ “ “ light, at \$200,	400 00
“	“ 2 reamers for centres of No. 1 M. M. spindles,	16 53
40	boxing,	1 00

1862.			
April 17,	To one set drilling jige and one reamer for M. M.,	\$33	51
" 19,	" Green's bill of handles,	3	00
May 21,	" 4 No. 3 milling machines, at \$350,	1400	00
"	" 3 two spindle edging machines, at \$550,	1650	00
"	" self-operating feed attached to above, 2, at \$50,	100	00
"	" one broaching,	350	00
	Carried forward,	\$6396	29 10
The Trenton Locomotive and Machine Manufacturing Com- pany in account with Bement & Dougherty, Dr.			
1862.	Amount brought forward,	\$6396	29
May 21,	To 2 No. 1 clamp milling machines, at \$200,	400	00
"	" boxing,	4	50
June 17,	" 8 No. 21 milling machines, at \$325,	2600	00
" 20,	" 2 four spindle drilling machines, at \$300,	600	00
"	" 2 guard slitting machines, at \$225,	450	00 20
"	" 4 No. 1 milling " at \$325,	1300	00
" 30,	" 4 No. 3 " " at \$350,	1400	00
"	" one No. 3 " " at \$350,	350	00
"	" one hand slitting machines for screw heads,	225	05
"	" 12 sets No. 1 pend. hanger castings, 247 lbs., at 4½c.,	11	12
"	" 12 wrought iron stems in do., at 25c.,	3	00
"	" boxing,	1	00
July 31,	" one trip hammer,	250	00 30
"	" 3 rotary edging machines, at \$600,	1800	00
"	" 3 sets of fixtures for bands, boxing,	250	00
Aug. 19,	" trunnion machine,	2545	66
" 30,	" one No. 2 clamp milling machine,	325	00
Oct. 3,	" one gun stocking machine for bands, and one gun " " for trim- ming between do.,	2100	00

Nov. 12,	To 4 No. 3 milling machines, at \$350,	1400 00
“ 13,	“ one set of swivel machines,	800 00
“	“ one eccentric lathe for bayonets,	325 00
“	“ one do. machine for tips,	250 00
“	“ one do. bayonets,	250 00
	Carried forward,	\$24039 57
	The Trenton Locomotive and Machine Manufacturing Company in account with Bement & Dougherty,	Dr.
1862.	To amount brought forward,	\$24039 57
10 Nov. 13,	“ 3 No. 3 milling machines, at \$350,	1050 00
	CR.	
Jan. 31,	By cash,	\$5400 00
May 15,	“ “	2250 00
June 14,	“ “	2000 00
“ 30,	“ “	3000 00
July 18,	“ “	1200 00
Aug. 5,	“ bills receivable,	2500 00
	Deductions, March 3d,	30 00
	“ June 20th,	120 00
20	Merchandise, “ 1st,	28 55
	“ Nov. 13th,	332 86
	Coal,	870 31
	“	77 50
	“	258 92
	“	56 56
	Allowance by Partee & Co.,	34 09
	Balance due Bement & Dougherty,	6930 78
		<hr/>
		\$25098 57 \$25089 57

30 State of New Jersey, Camden county, ss.

James Dougherty, being duly sworn, deposes and saith, that he is one of the firm of Bement & Dougherty, named in the above lien claim, and agent of said firm in this behalf; that the above bill of particulars is for materials furnished by them, the said claimants, in the erection and completion of the building in said claim described at the times therein mentioned, and that the amount claimed therein, with interest thereon from the average date of the twenty-fifth day of January now next ensuing, is justly due and owing to the said claimants from

the said the Trenton Locomotive and Machine Manufacturing Company.

JAMES DOUGHERTY.

Sworn and subscribed at Camden, in the county of Camden, this twenty-ninth day of December, A. D. 1862, before the subscriber, a master in Chancery of New Jersey.

PETER L. VOORHEES.

(ENDORSED.)

Mercer Circuit Court.—William B. Bement and James Dougherty, trading, &c., *v.* the Trenton Locomotive and Machine Manufacturing Company, claim for building lien. P. L. Voorhee Att'y.—Filed and docketed January 1st, 1863, in Book A of Mechanic's Liens for Mercer county, page 98. R. C. Belville, *Clk.*

Summons on the within claim sealed and issued November thirtieth, A. D. eighteen hundred and sixty-three. R. C. BELVILLE, *Clk.*

A true copy of the original lien claim, with the endorsements thereon, as the same remains on file in my office.

R. C. BELVILLE, *Clk.* 20

Writ of Summons.

Mercer county, *ss.*—The State of New Jersey to our sheriff of our county of Mercer greeting:

We command you to summon "the Trenton Locomotive and Machine Manufacturing Company," builders [L. s.] and owners, to appear before the Circuit Court in and for the county of Mercer, at Trenton, in said county, on the twelfth day of December next, that the said the Trenton Locomotive and Machine Manufacturing Company may answer unto William B. Bement and James Dougherty, trading under the name, style, and firm of Bement & Dougherty, of a plea of trespass on the case upon promises, to their damage twelve thousand dollars, as is said, for which said William B. Bement and James Dougherty, trading &c., as aforesaid, claim a building lien upon a certain

building and lands of the said the Trenton Locomotive and Machine Manufacturing Company, to wit: The said building is erected for the purpose of a manufactory, and is a brick building six hundred feet long, by seventy-eight feet wide; part of said building being one story, a part two stories, a part three stories in height, with a building in the rear attached, and making part thereof. The said building is situate in the city of Trenton, in the county of Mercer, and state of New Jersey, and the said lot or curtilage

10 whereon the same are erected is situate, lying, and being in the city of Trenton aforesaid, beginning at the southeasterly corner of Broad street and the Sandtown road, and running thence southerly along Broad street six hundred and twenty-one feet; thence (2), at right angles to Broad street, north, fifty-seven degrees east, one hundred feet; thence (3) north-westerly, and parallel with Broad street, twenty-five feet; thence (4) north, eighty-five degrees east, one hundred and thirteen feet and a half, to a corner in the basin; thence (5)

20 north, thirty-three degrees west, along the westerly side of said basin, three hundred and sixty-seven feet eight inches, to the northwesterly corner of said basin; thence (6) along the northerly side of said basin north, eighty-five degrees east, three hundred and forty-eight feet, more or less, to the line of the land of the Delaware and Raritan Canal Company; thence (7), by their line northerly, to the Sandtown road, and thence (8), by the said Sandtown road, to the place of beginning, together with all the right and privilege, at all times for ever hereafter, fully and freely to enter the said basin, and to use the same in common with the owners of

30 the remaining wharf fronts on said basin, excepting always the right of way for a railroad, reserved to Edward Cooper and Abram S. Hewitt, their heirs and assigns, in and by the deed herein after mentioned, over a strip of land twenty-five feet in width, being part of the tract hereby granted, and in said deed particularly described, being the same tract of land and premises conveyed to Aaron H. Vancleve, William R. McKean, Joseph C. Potts, and Isaac Dripps by Edward Cooper and Abram S. Hewitt, by deed bearing date the first day of February, in the year of our Lord one thousand eight

40 hundred and fifty-three, and by the said Aaron H. Vancleve

and wife, William R. McKean and wife, Isaac Dripps and wife, and Joseph C. Potts conveyed to the said the Trenton Locomotive and Machine Manufacturing Company, by deed bearing date the eleventh day of July, in the year of our Lord one thousand eight hundred and fifty-six, and including a small lot or piece of land conveyed by William Hunt and wife to Thomas R. Wilson, and subsequently, by the said Thomas R. Wilson, to the said Aaron H. Vancleve, William R. McKean, Isaac Dripps, and Joseph C. Potts, and by the said Aaron H. Vancleve and wife, William R. 10 McKean and wife, Isaac Dripps and wife, and Joseph C. Potts to the said the Trenton Locomotive and Machine Manufacturing Company in the above mentioned deed, this lien being claimed for certain fixed machinery, gearing, and other fixtures for manufacturing purposes put and erected in said above described building, and in what manner you shall execute this our writ then and there make known to our said court, and have you then there this writ. Witness the Honorable George H. Brown, Judge of our said court at Trenton aforesaid, this thirtieth day of November, in the 20 year of our Lord one thousand eight hundred and sixty-three.

R. C. BELVILLE, *Clerk.*

P. L. VOORHEES, *Att'y.*

(ENDORSED.)

Mercer Circuit Court, Wm. B. Bement & James Dougherty, trading, &c., v. The Trenton Locomotive and Machine Manufacturing Co.—Summons in case on lien.—P. L. Voorhees, 30 Att'y.—Ret'ble December 12th, 1863.—Duly served on Joseph C. Potts, late vice President of the Trenton Locomotive and Machine Manufacturing Company.—R. L. Hutchinson, sheriff.

A true copy of the original summons, with the endorsements thereon, as the same remain in my office.

R. C. BELVILLE, *Cl'k.*

New Jersey Court of Errors and Appeals.

William B. Bement and James Dougherty, trading, &c., as Bement and Dougherty,

vs.

The Trenton Locomotive and Machine Manufacturing Company, builders and owners.

Error to Mercer Circuit.

[Filed November 22, 1865.]

10 And the said William B. Bement and James Dougherty, trading under the name, style, and firm of Bement & Dougherty, by Peter L. Voorhees, their attorney, come and say, that in the record and proceedings aforesaid and in signing the judgment aforesaid there is manifest error, in this:

First. That the said Circuit Court decided that the plaintiffs in error were not entitled to a special judgment for the debt and costs to be made of the building and lands in the declaration described.

20 *Second.* And also in that the said Circuit Court decided that the said building and lands in the said declaration mentioned were not liable to the said debt.

Third. And also in that the said Circuit Court decided that the said plaintiffs did not prove that the provisions of the act entitled "an act to secure to mechanics and others payment for their labor and materials in erecting any building" requisite to constitute a lien upon the building and lands in the declaration mentioned had been complied with.

30 *Fourth.* And also in that the said Circuit Court decided that the summons in this suit had not been issued within one year from the date of the last work done or materials furnished in the said claim for the lien in this case.

Fifth. And also in that the said Circuit Court decided that the said lien filed in this case could not be enforced against the building and lands described therein.

Sixth. And also in that the said Circuit Court decided that the said lien filed in this case was not a valid and subsisting lien upon the building and lands described therein.

Seventh. And also in that the said Circuit Court decided that the summons issued in this case had not been issued in proper time to enforce the said lien filed in this case upon the said building and lands described therein.

Eighth. And also in that the decision of the said Circuit Court is in other respects erroneous and contrary to law.

And the said plaintiffs, by Peter L. Voorhees, their attorney, pray that the judgment aforesaid, for the causes aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether for 10 nothing holden, and that the plaintiffs may be restored in all things which they have lost by occasion of said judgment.

P. L. VOORHEES,

Att'y for and of counsel with plaintiffs in error.

New Jersey Court of Errors and Appeals.

The Trenton Locomotive and Machine
Manufacturing Company, builders
and owners, defendants in error,

ads.

William B. Bement and James Dough-
erty, partners, trading as Bement &
Dougherty, plaintiffs in error.

} *Joinder in error.* 20

[Filed December 18, 1865.]

And the said the Trenton Locomotive and Machine Manufacturing Company, by E. Mercer Shreve, their attorney, come here into court and say, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and they pray that the said Court of Errors and Appeals, now here, may proceed to examine as well the 30 record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

E. MERCER SHREVE,

Att'y of defendants in error.

New Jersey Supreme Court.

June Term, 1865.

Bement & Dougherty

vs.

The Trenton Locomotive,
&c., Co.*In case.**Lien claim against defendants
as owners of certain build-
ings and lands.*

VREDENBURGH, J. This suit was brought on a book account for machines sold by the plaintiffs to the defendants, which was sought to be enforced as a lien upon the lands of
10 the defendants under the mechanics lien law.

On the trial the jury, under the direction of the court, found a verdict for the plaintiffs for \$4415.78, and the case was certified to this court for their opinion upon the question, whether the buildings and curtilage in the claim specified are subject to the lien.

The lien claim was filed on the first day of January, 1863. The date of the first item, as charged in the lien claim filed, is the 21st May, 1862. The date of the last item as charged in the same lien claim, is *November 13th*, 1862. The sum-
20 mons in the cause was issued on the 30th of November, 1863.

The defendants, as owners, resist the lien upon two grounds.

First. Because the summons was not issued within a year from the date of the last materials furnished in the claim filed.

The statute, *Nix. Dig.* 527, § 12, provides that no lien shall be enforced by virtue of this act unless the summons in the suit for said purpose shall be issued within *one* year from the
30 *date* of the last materials furnished in said claim, and the time of issuing such summons shall be endorsed on the claim by the Clerk upon the sealing thereof, and if no such entry be made within one year from such last date, such lien shall be discharged. It appears by the case, as stated here, that the date of the last materials furnished is the 13th of November, 1862, and the summons was not issued for over more

than a year from that date, to wit, on the 30th November, 1863.

For us to enforce this lien, therefore, would be to enforce what the statute in express terms says shall not be enforced. There was evidence tending to prove that part of the machinery, although charged on the 13th November, 1862, was not in fact delivered to the defendants until the 3d of December, 1862, which evidence was admitted by the court, although objected to by the defendants. But that is a question which is not submitted to us by the case. The only question submitted is, whether, upon the whole proof, as detailed in this case, the lands are subject to the lien. Admitting such proof, therefore, to have been admitted without objection, I am of opinion that the statute requiring the summons to be issued within a year of the date of last charge in the claim, as filed, cannot be evaded by proof that the articles were delivered afterwards. The lien must stand by the dates of the items, as stated in the claim filed. The statute expressly says, that unless the clerk shall enter on the claim the time of issuing the summons within one year of the last date of the items in the claim the lien shall be discharged. The statute evidently intended that the *date* of the last item in the claim, as filed, should be the *test*, and the only test of the continuance. 10 20

The rights of the parties become fixed upon the filing of the claim of the lien, and we have no more authority to alter those rights in this regard than we have to say that a last judgment shall have the first lien.

It is objected, in the second place, that there was no proof before the jury that the articles were such fixed machinery as to be the subject of a lien, but the conclusion to which we have come upon the first point raised renders it unnecessary to consider this. 30

Let the Circuit be advised that the said lands and buildings are not subject to the lien, with costs of the defendant in this proceeding to be taxed.