

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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|                     |   |                 |
|---------------------|---|-----------------|
| Frank Muth,         | } | Error to        |
| Plaintiff in Error. |   |                 |
| vs.                 |   | Atlantic County |
| Rufus Booye,        | } | Circuit Court.  |
| Defendant in Error. |   |                 |

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J. J. Crandall for Plaintiff.  
Thompson & Cole, for Defendant.

The first assignment is abandoned.

Second—It will be seen p. 4 and 5 of case—that Vaughn 10  
was appointed—umpire between the Arbitrators—not the  
parties to the controversy.

It will be seen that this is all the authority given in the  
submission. The agreement to “perform the award or any  
two of them” is in that part of submission touching the  
condition of the bond. It is plain this part of the submis-  
sion about the bond is functus—because the award was  
not made before April 14th, hence so much of the submis-  
sion as relates to the bond exclusively—is in the same con-  
dition as though the bond provision and the whole of it 20  
had never been inserted.

The Arbitrator was not appointed for and never accept-  
ed any duty between the parties. And the consent of the  
parties to such an appointment cannot fairly be stretched  
beyond its terms.



Again Vaughn was never appointed at all—for the reason that the ceremony of his investiture did not take place till July 1st, two months after the Arbitrators were by the agreement authorized to meet. Every other meeting must have been pursuant to their own appointment on the necessity of the situation.

10 These subsequent meetings sought to have been acted on by all the arbitrators, Vaughn the umpire with the other two. The appointment of a subsequent day for hearing was an official act and must be participated in by the whole board. But it nowhere appears that they appointed any time for meeting.

*Reade vs. Dutton*, 2 Mees & Welsby 69

*Watson on Arbitrations* 86

*Harris vs. Norton* 7 Wend, 534

Third—This assignment argues itself.

*Mason vs. Wallis*, 10 Barn & Cress 107

And the question occurs—how did the element of consent to the hearing sometime after Vaughn was sworn p.  
20 5 come into evidence?

The award is silent as to the hiatus between April 14, A. D. 1902 and the hearing—No notice of hearing. No adjournments recorded. The consent that Vaughn be umpire between the Arbitrators cannot be tortured into significance for the reason that the arbitrators did not make any record of its fact or effect. They made no effort to preserve their jurisdiction.

The submission was under seal and if extension of time be waived by parol—there should be some evidence of it.

It has been held where the original submission is by deed—that the extension of time must be by instrument under seal.



*George vs. Farr* 46 N H 171, 5 id 223  
*Russel on Awards* 6th Ed. 150  
*Bennett vs. Watson* 29 L. J. Exch. 357.  
*Re Morphet* 2 D. & L. 967

We do not contend that the parties may not be estopped—from contesting extension of time by their actions—But here is nothing in protest—but the bare fact that the defendant Muth did not absent himself—did not let the matter go by default. How he got there does not appear. Extrinsic evidence will not be allowed.

10

2 *Wend.* 567; 1 *Hill* 319; 9 *Johns* 38

Fourth—The award must be within the letter of the terms of submission—If it discloses on its face or by the evidence and both that the arbitrators did not affirmatively act within the terms of the submission—The award will be strictly construed and be void.

*Leslie vs. Leslie*, 5 Dick 103 & 157  
*Hoagland vs. Veghte* 3 Zab 92 & 95

The award purports to be based on the evidence—p. 6 and the evidence returned with this writ becomes a part of the award for the purposes of this controversy in this Court.

*Bell vs. Price* 1 Zab 32  
*Ryon vs. Hodges* 17 Vr. 539

As stated in (a) of the fourth reasons—no question of liability was submitted—unless it be included in “as well as all matters in difference between them concerning the “properties.” There appears to have been no difference between them except what is included in the word “amount.”

30

A ministerial act—which is not subject to an arbitration fiat.

*Car vs. Smith* 5 Q. B. 128  
*Kelley vs. Crawford* 5 Wall 785



But they award liability to pay—they award that there is due to said Rufus Booye—and they award a fiat of liability to pay on the 20th day of September next.

*Egleston vs. Taylor* 45 U. C. Q. B. 479

*Benwell vs. Huxman* 1 C. M. & R. 935

3 *Dwight P. C.* 500

This implies liability after all set-offs are computed—a balance due, not the value of the work and materials.

*Armstrong vs. Cayley* 2 Cham. (U. C.) 128

10 *Sampson vs. Young* 52 N. H. 52.

They took the totals in the bills respectively—just as presented—(see bills)—and turned them into an indebtedness and awarded payment. No evidence of deliberation or calculation. No evidence of investigation.

How much for work?

How much for materials?

The submission is—"Work done and materials furnished—  
"ed upon the tenements," The award says—p. 6 line 20—  
"work done and materials furnished to and for the use of  
20 "said Frank Muth on premises." Boscobel \$1,788.85. Again  
at line 26—"And for work done and materials furnished at  
"132 St. James Place"—\$336.83.

But the next two findings—are different—they are "for  
"work done and materials furnished on the premises 18  
"So. Kentucky avenue" \$344.72 and "for work done and  
"materials furnished on Catholic Parsonage" \$709.08.

The submission—is on a *quantum Valebant* as to what is the value of the work done and materials actually applied to these several buildings?

30 In the latter two cases—the finding of an amount—which includes the work and materials may be within the submission—but the former two are evidently not, "to and  
"for the use of Muth at the premises." may or may not be and hence they are not within the submission.



The value of the work and materials applied to these tenements are by the submission conceded to be due—but the work and materials furnished to and for the use of Muth at the premises—are not. Plainly not. They in legal hermenentics imply an entirely different controversy. The question whether they were so furnished to Muth as to make him liable for payment was not submitted. And to inject the additional form or ingredient into furnishing for the use of Muth to round out liability—that they were furnished at the premises—justifies the inference—that the arbitrators had departed from the plain object of the submission—simply quantum valebant calculations on the buildings themselves and explored for elements imparting liability for work and materials not applied on or imparted to the specific buildings. And because this inference is justifiable—the arbitrators have exceeded the terms of submission. 10

The true theorem is ennuiciated in

*Leslie vs. Leslie* 5 Dick—107

“Nothing, it seems to me, can be clearer, both as a principle of sound law and plain natural justice, than, that where two persons submit, in plain and clear terms, one particular dispute or coneroversy to the determination of a third, as their judge, his authority must be considered to be inflexibly limited to a decision of that one particular matter, and that any attempt by him to pass judgment upon any other question must be held to be unauthorized and beyond his power, and consequently without the least legal force.’ 20

Citing authority.

It will be seen by Sec. 2 of the award p. 7 that the arbitrators acted consistently with the above interpretation *i. e.*—that all possible controversies were included. 30



They say "respecting a claim for work done and materials furnished by the said Booye to the said Muth in and for the premises described in this award." The claim was in no sense submitted.

But they interpret the submission themselves p. 6 line 3. They say "agree to submit all matters in difference between them." And upon inspection it will be seen that the award is consistent with this assumption of all controversies—direct and collateral—and it will be more obvious when we examine Sec. 2 of the award—

- 10 (b) "That the said sum is in full discharge and satisfaction only of the demands by either of the said parties against the other respectively respecting a claim for work done," &c.

Whatsoever claim Muth may have against Booye is not submitted. What authority did they have to award any fiat of discharge or satisfaction?

Because they have assumed such authority—it conclusively demonstrates that they proceeded upon a wholly erroneous theory of the scope of the submission.

- 20 If there be an absolute right of recovery for work done and materials furnished for a building—this right is so incompatible with any right for a recovery of any damages for the nonfulfillment of any express or implied contract as to the time, quality or quantity of the work and materials—that damages cannot be recovered—as they will be deemed *res adjudicate* in the judgment for the work and materials.

*Dunham vs. Bower* 77 N. Y. 76,

*Blair vs. Bartlett* 75 N. Y. 150,

*Gates vs. Preston* 41 N. Y. 113,

*Haslack vs. Myers* 2 Dutch 284,

*Ellis vs. Hamlan* 3 Taunt. 52,

30

- (c) This subdivision is exhausted in the previous illustrations.



The fact that "All actions, suits, controversies, quarrels, "and demands whatever between them respectively respecting said premises from the date of submission to us "aforesaid be no further prosecuted," only intensifies the inference that the arbitrators paid no attention to the terms of submission. They were for Booye.

(d) The investigation as to payment by the \$1,000 note—pages 13, 14, 47, 48 and 51, further intensifies the inference that the arbitrators ignored the scope of the submission.

10

Fifth—Assignment. Touching this note Booye himself testifies—p. 13.

Q. Have you had any payments?

A. Not in cash, no, sir, I have had one note.

P. 14. Q. On what account did you give credit for this \$1,000?

A. On general account right through.

P. 47. Of the materials which you furnished there at that time, do you know how much Mr. Muth was indebted to you at that time?

20

A. \$439.76.

P. 48. Where did you credit the \$1,000 note?

A. To Mr. Muth's general account.

Q. Has any part of the \$1,000 been credited on account of these items here in controversy?

A. Not in particular.

P. 50. Q. How much do you expect him to have credit here of that \$1,000?

A. On these jobs?

30

Q. Yes: on these jobs under arbitration here.

A. Let him take the full amount he owes me and take one thousand dollars from the whole lot and he gets credit for \$1,000. That is the only way I see.



Now where Booye said that the \$1,000 was not credited on any of these 4 properties in particular—this statement is clearly fraught with the admission that Muth?—was entitled to that credit and that it was or ought to be credited on the total for the whole in general and more especially where re says so in his last answer. In the uncontradicted testimony—Booye took the \$1,000 and applied it on these demands—and the arbitrators—found a balance—\$1,000 more than Booye claimed. Bourgeois one of the  
10 arbitrators p. 46 simply asked Booye

Q. What is the amount of your claim for these jobs,—you have there, how much do you claim there is due for the Boscobel?

A. \$1,788.84.

Q. St. James Place?

A. \$386.83.

Q. 18 So. Kentucky avenue?

A. \$344.72.

Q. Now the Church?

20 A. \$709.18.

Question on the same page.

Q. When did you receive the \$1,000?

A. I received a note about Dec. 13. By looking at the bill for the Boscobel p. 100—the account commences Nov. 14 previously. So of the bill for the St. James Place p. 102.

Now how can the arbitrators—find a balance—just equal to a cent of the above claims?

Booye is not asked to compute a balance. In the face of  
30 this postulated payment of \$1,000—one-third of the award—the arbitrators find a balance due just equal to the footing of the Bills. On the hypothesis that the arbitrators were stupid—they made a gross mistake. Supposing them to be endowed with ordinary intelligence—they intentionally abdicated their sworn and honorable function of im-



partiality and did Muth to the extent that partiality could be pushed by the nearest sub-servant of Booye. Supposing them capable of artistic Chicane, their raw gross fraud tends to impeach their skill in the art.

Sixth.—For the purpose of this present investigation—the award and the evidence must be read together, and the award includes the evidence, and must be justified by it.

First as to the Priest's Church Bill p. 97.

See evidence of Booye p. 15 to 22—Muth's 62 to 63. There are no charges for material worth investigating.

Booye says p. 22—

10

Q. You furnished nothing but the labor?

A. No.

Conceding the item of laying 69,432 rough brick p. 98, bill of this property at \$5½ \$321.87 to be correct, where is the decent justification for charging—\$709.18—less the \$321.87 for laying the rough brick—or the difference \$497.31 for laying the face brick?

How many face brick were there. Mr. Shimpf who measured them pages 77 and 78 says 8658. Mr. Muth says the same thing p. 63. Booye p. 28 utterly refuses to give an estimate—so we are confronted with a charge of \$497.- 20  
30 for laying 8658 pressed brick or 5 2-3 cents a brick or \$56.00 per thousand. Can any form of dressing make this fraud palatable?

The attempt is made to make this charge conscionable by giving it the form of days' work. The bill shows that bricklayers were paid 50 cents per hour or \$4 for 8 hours.—a days' work. By actual calculation 59 days work of bricklayers were charged—for laying these 8658 brick or 147 brick per day of 8 hours—or 18 bricks in 60 minutes—or 30  
one brick in 3 minutes. Mr. Schimpf says p. 79—that it is worth \$15 per M and Mr. Walker says \$16 per M p. 55. Mr. Schimpf says 300 is a days work.



Now at \$16 per M 8658 brick should cost \$144.50 which taken from \$497.30 leaves \$352.80 for helpers—Mr. Muth finding all material and appliances.

Laying rough brick is billed.....\$381.87  
Laying the pressed brick at \$16 per M.....\$144.50  
Help, say.....\$50.00

We have \$576.37; which taken from \$709.18—leaves \$132.81 which cannot be accounted for at all except on principles of gross partiality—fraud.

- 10 Now let us look at the Boscobel bill p. 100. Now it will be noticed that the 5 first items are for brick—as though Booye had furnished brick on the Boscobel.

Now it was conceded by all parties at the hearing that the charges for brick before December 13th the date of the note pages 46 and 47 was material furnished for other buildings, which was so far outside of the submission—that nobody investigated them.

Booye says p 21—in answer to Umpire Vaughn,

Q. And you furnished all the rough brick?

- 20 A. No; we did not furnish all the rough brick—My father furnished some and Mr. Muth had some of his own.

Q. What were you to furnish besides the labor for the laying of the rough brick at the Boscobel and the Church for five dollars and seventy-five cents and five dollars and a half a thousand.

A. We didn't furnish anything but the mortar.

Q. Were you to furnish the mortar?

A. Yes; furnished the mortar and lay the brick for five dollars and a half.

- 30 Then on page 46:

Q. When did you receive the \$1,000?

A. I received the note December 13.

Q. Had you done any work for Mr. Muth before he gave the note?



A. I had been working at three or four places for him.  
Q. You worked for him up to the time he gave you the note?

A. No; I furnished materials at other jobs.

Q. What other jobs?

A. Michigan avenue.

Q. Before December 13th?

A. Yes.

Q. Before December 13th did you work on any other jobs—outside of these two for Mr. Muth?

A. Yes; I furnished material.

Q. Before that time?

A. Yes.

Q. Are they paid for yet?

A. I never got any of it if they are.

Now after this testimony it was thought that the materials—the brick charges in November—had been established as having been furnished on properties other than the specific ones within the submission. That Booye had simply made a mistake. So they were no further investigated and they did not appear till—the arbitrators had by their award covered all matters in difference. These bricks were never furnished and they were included in the award to get the claim for furnishing to other jobs—within the award—and the bond given by Muth which was an afterthought of the fertile brains of the arbitrators.

But the bill will bear further examination.

Page 66 Mr. Muth says there were rough brick at the Boscobel main building 73,118—back up back walls 17,123 and 1,140 under the concrete—91,381 rough brick at \$5.75 per M.—\$525.44. The charge in the bill is laying 98,642—\$567.10, a clear fraud of \$41.67.

The No. of face brick is 18,033, which reckoned at the maximum price of \$16 per M.—\$288.52—Making a total of \$813.44.



But suppose we allow for all the brick charged in the bill \$284—add that to the cost of laying the rough brick \$525.44,—we then have a total of \$819.44, which subtracted from the award and face of the bill \$1,788.84 leaves \$969.40 to cover the laying including hod carriers, &c., of 18,000 pressed brick. \$54 per M as a penalty for days work. \$16 by the job and \$54 by the day is simply outrageous. But if we take off the first five claims of brick which was delivered in November and not to the Boscobel at all to wit:  
10 \$225.50, we have \$1,194.90—to cover the cost of laying 18 M pressed brick or \$66 per M.

So of the other two jobs. The same grotesque results will appear upon examination. Hence to vindicate the award under the submission there should have been a separate finding in each case—of the materials independent of the work. There should appear some where in the award that they deliberated upon each quantity of the submission—The materials and the work on the specific properties.

Sixth.—This is a clear inference from the evidence and bills exhibited.

Seventh Assignment.—Is Mr. Booye's testimony of any  
20 account in any forum—especially in a Court of Conscience?

His witness Mr. Walker, says p. 56

Q. What share of the time was Mr. Booye around there when the work was going on around the Boscobel?

A. Once a day at least.

Q. How long would he stay?

A. Probably ten, fifteen or twenty minutes.

Q. Is that all he would stay there during the day?

A. Yes, sir.

30 Q. What part of the time was Mr. Booye around the building of the Church?



A. About the same; just came and see if things were going right; and ask if we wanted any material and then go away.

Q. How could he keep time?

A. It is very hard for me to tell you Mr. Booye's business;—it is indeed.

Q. Didn't you say you kept the time for one week?

A. Well, I kept the time on the Boscobel in regard to how many men was there for about a week, and I gave it to Mr. Booye.

10

Q. When? At the end of the week?

A. No, sir;—every night, and then I says to Rufus will I continue the time of the men? and he says No, John I will attend to it.

Q. Yet he was not there more than ten or fifteen minutes of the day?

A. That is so far as I know; I cannot say exactly to the moment—but as near as I know.

Again Mr. Booye says p. 49.

Q. How many men did you have working on these several jobs in question? 20

A. That is another question I cannot answer.—I have so many men.

Q. Can't you tell about?

A. My gang of men varies. Sometimes I have thirty and thirty-four men at different places. Sometimes I would not have so many and maybe more.

Q. Are these all the books he keeps?

A. When I went home at night I entered it on my original blotter. 30

Q. You kept a time book didn't you?

A. But I would take it home at night and post it in my original blotter.

Q. You had a pocket time book??

A. I did at that time.



Q. Haven't you got it yet?

A. I wouldn't know where to go and hunt for it.

Q. Don't you know where it is?

A. No.

Q. Isn't that an important question?

A. I think not; my charge is made directly in that.

Again on p. 26 and 37.

Q. Did you furnish the material that is charged on the books and set out in the bids?

10 A. Yes, sir.

Q. What price did you charge for the materials that you furnished?

A. I charged the market price there also—

See also p. 20.

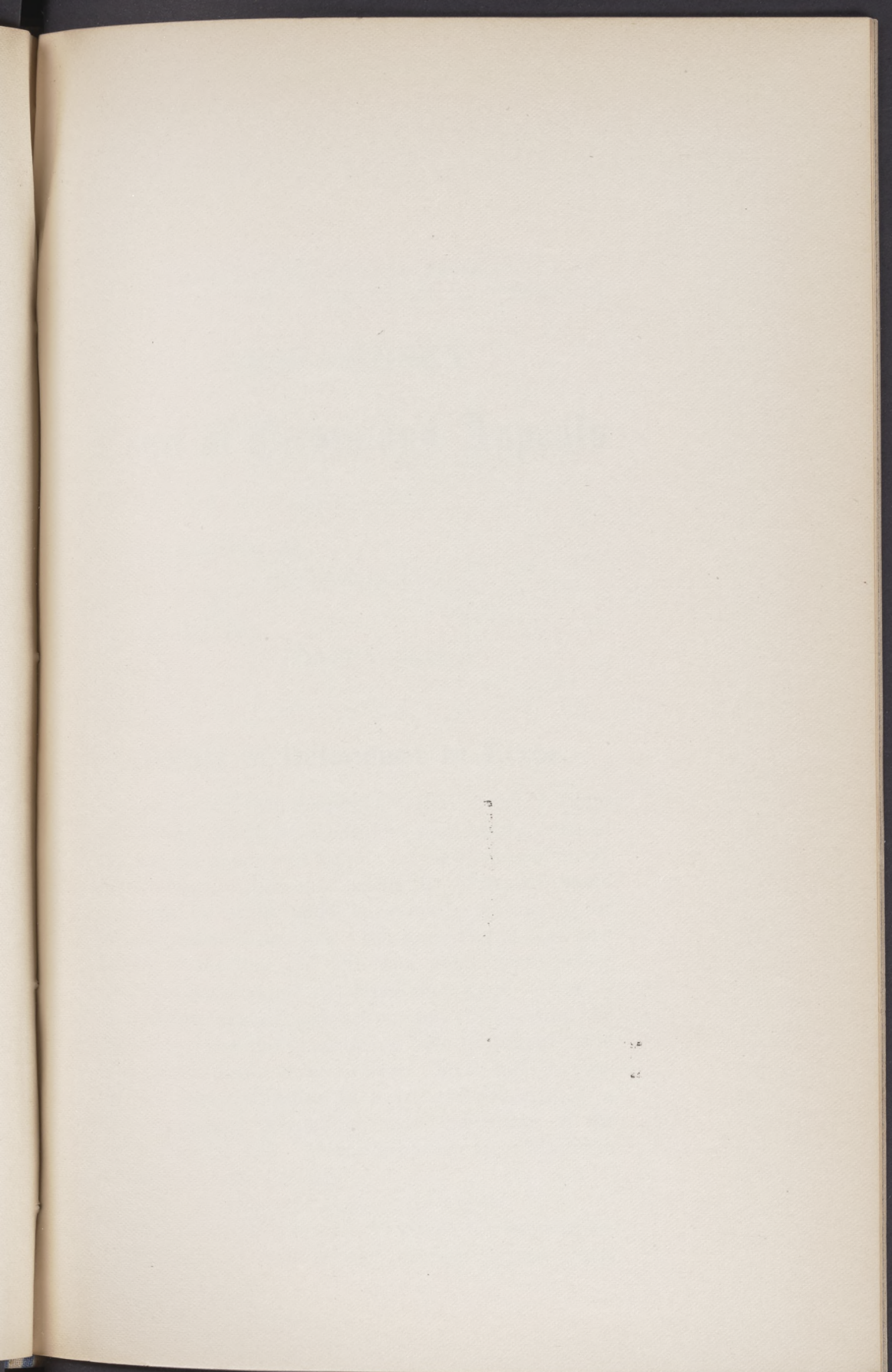
His testimony from p. 37 to 44 discloses—That he is too evasive, too unreliable to be entitled to any consideration whatever.

20 Eighth Assignment.—The awarding of execution is unauthorized by law. The rule of Court only applies to the submission, not to the award. The award can only be enforced in one of three ways: 1st, Attachment for contempt of the rule to abide by the award; 2nd, suit on the award; 3rd, suit on the bond.

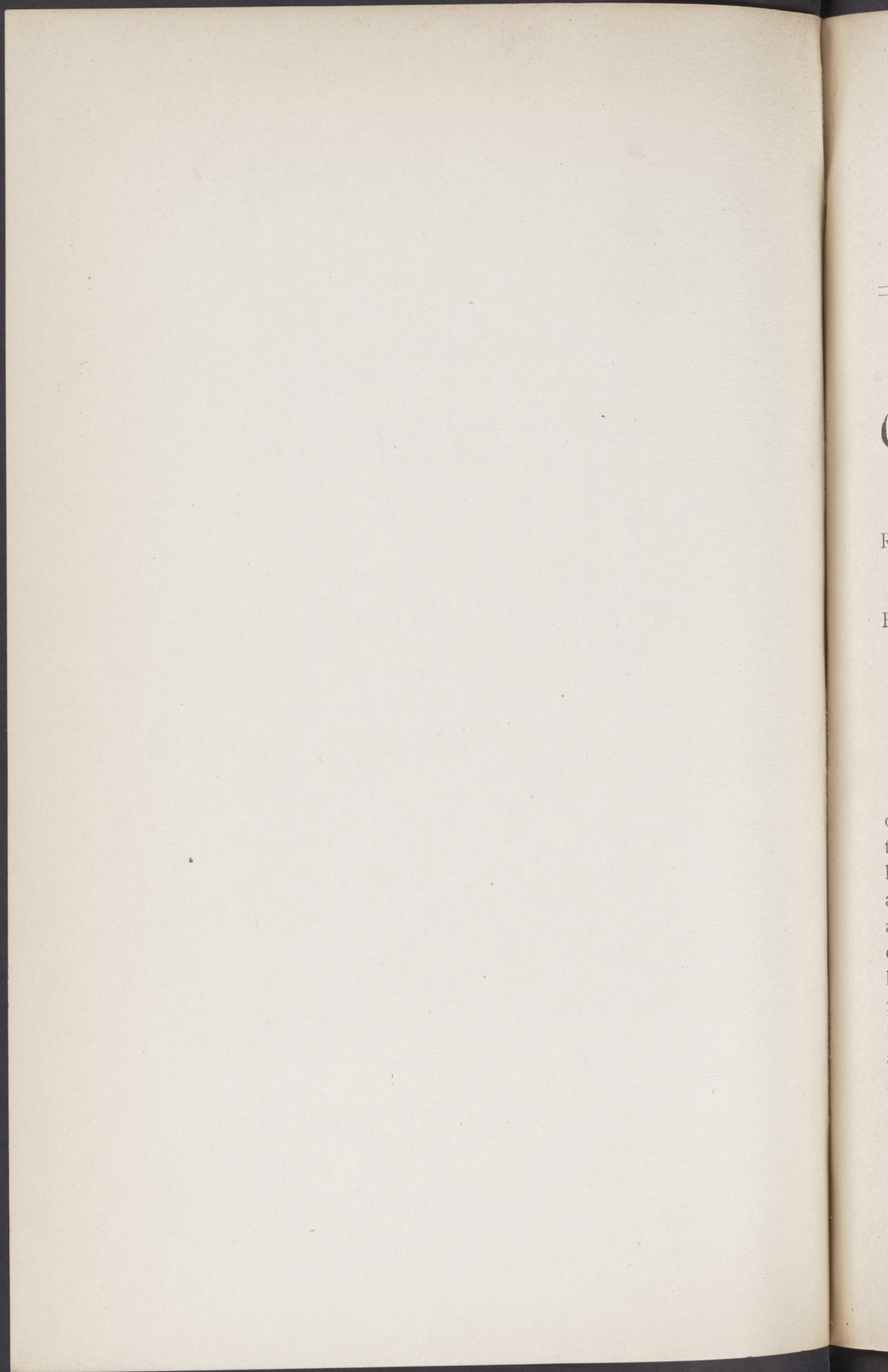
The award must be set aside.

J. J. CRANDALL,  
For Plaintiff.











## NEW JERSEY

# Court of Errors and Appeals

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|                            |   |
|----------------------------|---|
| RUFUS BOOYE, JR.,          | } |
| <i>Defendant in Error,</i> |   |
| <i>vs.</i>                 |   |
| FRANK MUTH,                |   |
| <i>Plaintiff in Error.</i> | } |

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### Points of Defendant in Error.

There is nothing in the record to show that J. J. Crandall, before whom the arbitrators were sworn, was, at the time, the attorney of Muth. In the absence of proof, his subsequent appearance before the arbitration board as counsel for Muth cannot be related to the time of the administration of the oath. But conceding he was such counsel at the time the oath was administered before him, that fact does not invalidate the award. There is no authority against such action, and if there was, the failure to raise the question or take advantage until after the award was a clear waiver. Muth and his counsel both appeared before the board and participated in the proceedings throughout, with knowledge of the claimed invalid oath. It was competent for a Master in Chancery to take the oath.

*Ruckman v. Ranson, 6 Vr. 560.*

It has been held that even the failure to swear the arbitrators may be waived; much stronger the case where



the oath is actually administered. Moreover, the reason here discussed was not included among the reasons on the rule to show cause, and should not therefore be considered. At most it was a mere irregularity.

## II.

The submission provides for the appointment of an umpire by the arbitrators. Vaughn's appointment as umpire was assented to by Muth in writing and in the language of the submission. The award which is technically drawn, is signed by the arbitrators and umpire. It is now too late to seek advantage of the defect, if any, after sitting throughout the proceedings without murmuring. As the question is not jurisdictional, Muth must be charged with a waiver.

*Graham v. Graham*, 12 Pa. St. 128;

*Price v. White*, 27 Mo. 275;

*Knowlton v. Homer*, 30 Me. 552;

*Everett v. Charlestown*, 94 Mass. 93.

## III.

Had the award been made within the time named, but four days would have been allowed between the date of submission and the making of the award. The umpire was not appointed until July 1st, 1902, months after the day named for the making of the award, and, as stated, Muth expressly consented in writing to the appointment. As to this phase, there was also a waiver.

## IV.

The award is within both the letter and spirit of the submission. Both submission and award are drawn according to the statute and approved forms. The submission recites: "Witnesseth that differences have arisen as to the amount due and owing by the first party (Muth) to the second party (Booye) for work done,



materials furnished in and upon the tenements known as the Boscobel, No. 125, 127 and 129 South Kentucky avenue, etc., and the parties hereto agree, and by these presents do submit the amount which first party shall pay second party as for his work done and materials furnished upon the aforesaid premises for first party as well as all matters in difference between them concerning the properties aforesaid, etc." An inspection of the record will disclose that the evidence taken was limited to the named controversy and the award uses the language of the submission.

Evidence was taken pro and con respecting the transactions between the parties as related to the premises in question. There was proof taken and considered regarding the thousand-dollar note. This answers, we think, the fourth assignment.

#### V.

It is admitted that Muth was not credited with the thousand-dollar note, but the evidence of Booye is that it was credited on the open account with Muth which was not involved in the submission. On this phase the arbitrators believed Booye. The finding of the fact concludes Muth.

#### VI.—VII.

The sixth and seventh assignments deal with questions of fact passed upon by the arbitrators adversely to Muth. The evidence justifies the finding. This court will not weigh the evidence.

#### VIII.

The execution is no part of the record. If an execution issued without authority, it may be stayed. The award itself does not allow execution. Only the award is under review by this proceeding.



## IX.

None of the errors assigned can be considered in this proceeding. The grounds upon which award may be set aside are named in *Stoll v. Price*, 1 Zab. 32, and none of the grounds so named are manifest on the face of the award, which is all there is before the Court.

See *Taylor v. Sayre*, 4 Zab. 647;

*Runyon v. Hodges*, 17 Vr. 359;

*Bell v. Price*, 2 Zab. 578.

The evidence taken before the arbitrators is not before the Court and cannot be, under *Runyon v. Hodges* and *Bell v. Price*.

THOMPSON & COLE,  
*Attorneys for Defendant in Error.*



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# New Jersey Court of Errors and Appeals

THE LAST RESORT IN ALL CAUSES.

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|                 |   |                                                         |
|-----------------|---|---------------------------------------------------------|
| FRANK MUTH,     | } | Error to<br>Circuit Court<br>for County<br>of Atlantic. |
| Ptff. in Error. |   |                                                         |
| vs.             |   |                                                         |
| RUFUS BOOYE,    |   |                                                         |
| Deft. in Error. |   |                                                         |

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J. J. CRANDALL,  
For Plaintiff.

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THOMPSON & COLE,  
For Defendant.

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State of New Jersey, ss.



The State of New Jersey to Hon. Charles E. Hendrickson, Judge of the Circuit Court for the County of Atlantic and the Circuit Court for said County of Atlantic greeting:—

Because in the record and proceedings and also in giving judgment upon the rule to show cause why the award of arbitration issued the twenty-ninth day of August last past between Rufus Booye, Junior, and Frank Muth, should not be set aside and for nothing holden 10 manifest error has intervened to the damage of Frank Muth prosecuting said rule.

We being willing in this behalf to correct the error if any there shall be and that speedy justice be done him said Frank Muth.

Command you that if judgment be thereon given and the matter of the award be terminated, then that you distinctly and openly send the record, evidence on the rule considered, and proceedings aforesaid with all things touching the same to our Court of Errors and Appeals 20 in the last resort in all causes to be held at Trenton on the fifth day of January, nineteen hundred and three.

And this writ that the records and proceedings aforesaid being inspected we may further cause to be done thereupon, for correcting that error what of right ought to be done.

Witness Hon. William J. Magie, Chancellor at Trenton, this nineteenth day of December, A. D., 1902.

(Signed) S. D. DICKINSON,

Clerk. 30

J. J. CRANDALL,  
Attorney.



10

Judge.

## 30

HARRY RAUP,  
Notary Public.



THIS AGREEMENT, made this fourteenth day of April A. D., 1902, by and between Frank Muth, of the City of Atlantic City, New Jersey, of the first part and Rufus Booye, Jr., of the same place, of the second part.

WITNESSETH: That differences has arisen as to the amount due and owing by the first party to the second party, for work done, material furnished in and upon the tenements known as Boscobel No. 125, 127 and 129 South Kentucky avenue, Atlantic City.

No. 132 South St. James Place, No. 18 S. Kentucky 10  
avenue, and the Catholic Parsonage, No. 1417 and 1419  
Pacific avenue, all in said Atlantic City, and the parties  
hereto agree and by these presents do submit the amount  
which first party shall pay second as for his work done  
and materials furnished upon the aforesaid premises for  
the first party as well as all matters in difference between  
them concerning the properties aforesaid to an award  
and final determination of George R. Bourgeois, Esq.,  
and James F. Levering, arbitrators with full power in  
case said arbitrators so elect to choose a third party as 20  
umpire and the said parties further mutually agree with  
each other that first party does upon the delivery of these  
presents covenant to execute and deliver to the second  
party with good and sufficient surety in the sum of five  
thousand dollars and the second party covenants likewise  
to execute to the first party good and sufficient bond  
with good and sufficient surety in the sum of two thous-  
and dollars with the condition in each that each will  
stand to and abide perform the award and determination  
of the said arbitrators or any two of them so that the same 30  
be in writing made and signed by said arbitrators or any  
two of them and ready to be delivered to the said parties  
or such of them as shall demand the same on or before  
the nineteenth day of April A. D. 1902, and the said



parties do agree that the said arbitrators meet at room twenty-six, Law Building, on Saturday next without further notice and afterwards, if necessary, at such times and places as they shall appoint.

And the said parties do agree that the submission may be made a rule of Court, the Circuit Court, for the County of Atlantic upon the application of either party.

In witness whereof, the said parties have hereto set their hands and seals, the day and year first aforesaid.

10

FRANK MUTH, (Seal).  
RUFUS BOOYE, JR., (Seal).

Sealed and delivered in the presence of  
J. J. CRANDALL.

State of New Jersey, }  
County of Atlantic, } ss.

We, George A. Bourgeois and James P. Levering, the arbitrators within named, do hereby swear that we will faithfully and fairly examine the matter in difference between the parties within named, and make a just and true  
20 award according to the best of their skill and understanding.

GEORGE A. BOURGEOIS,  
JAMES F. LEVERING,

Sworn and subscribed to before me, April 19th, 1902.  
J. J. CRANDALL.

M. C. C.

We, the within named George A. Bourgeois and James F. Levering do hereby appoint, and the within named Frank Muth and Rufus Booye, Jr., do hereby consent



to the appointment of S. Hudson Vaughn as umpire between the above named arbitrators.

Witness our hands and seals this first day of July, A. D., 1902.

GEORGE A. BOURGEOIS,  
J. P. LEVERING,  
FRANK MUTH,  
RUFUS BOOYE, JR.

I do hereby consent to act as arbitrator pursuant and under the above appointment.

10

S. HUDSON VAUGHN.

State of New Jersey, }  
County of Atlantic, } ss.

S. Hudson Vaughn, being duly sworn on his oath, says that he will faithfully and fairly examine the matter in difference between the parties within named and make a just and true award according to the best of his skill and understanding.

S. HUDSON VAUGHN.

Sworn and subscribed before me this 31st day of July, 20 A. D., 1902.

HARRY I. RAUP,  
Notary Public.

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#### ATLANTIC COUNTY CIRCUIT COURT.

In the matter of the arbitration }  
between } Award.  
Rufus Booye, Jr., and Frank Muth. }

Award between Rufus Booye, Jr., and Frank Muth made this twentieth day of August in the year nineteen hundred and two.

30



The aforesaid parties having, by their agreement made on the fourteenth day of April, in the year nineteen hundred and two, agree to submit all matters in difference between them to the award and final determination of George Bourgeois and James F. Levering as arbitrators, with power to choose a third party as umpire, and the said arbitrators having selected S. Hudson Vaughn as umpire, and the said arbitrators and umpire having been first duly sworn to faithfully and fairly hear and examine the matters in difference between the said parties, and make a true award, according to the best of their skill and ability, and having heard the allegations and proofs of the parties, and considered the same, we, the subscribers, George A. Bourgeois, James F. Levering and S. Hudson Vaughn the said arbitrators, do hereby make and publish our award of and concerning the matters to said arbitrators submitted, as follows: On the evidence before us.

1. We find there is due to the said Rufus Booye, Jr., from said Frank Muth for work done and materials furnished to and for the use of said Frank Muth on premises in Atlantic City, New Jersey, known as the Boscobel, the sum of seventeen hundred, eighty eight dollars and eighty four cents.

And for work done and materials furnished at 132 S. St. James Place, said city, the sum of three hundred thirty-six dollars and eighty-three cents.

And for work done and materials furnished on the premises 18 South Kentucky avenue, said city, the sum of three hundred forty-four dollars and seventy-two cents.

And for work done and materials furnished on Catholic Parsonage, 1417 and 1419 Pacific avenue, said city, the sum of seven hundred nine dollars and eight cents.



And in all the sum of three thousand one hundred and seventy-eight dollars and forty-seven cents.

And we do award that the said Frank Muth do pay to the said Rufus Booye, Jr., he said sum of three thousand one hundred and seventy-eight dollars and forty-seven cents on or before he twentieth day of September next.

2. We do award that the said sum is in full discharge and satisfaction only of the demands by either of said parties against the other respectively, respecting a claim for work done and materials furnished by the said Booye to the said Muth in and for the premises described in this award, and that all actions, suits, controversies, quarrels and demands whatever between them respectively respecting said premises from the date of the date of the submission to us aforesaid be no further prosecuted. 10

And that the parties hereto do pay to the arbitrators the sum of sixty dollars to be bourne and paid equally between them for the costs of this arbitration.

In Witness Whereof, we have hereunto set our hands and seals the day and year first aforesaid. 20

GEORGE A. BOURGEOIS, JR., (Seal).

S. HUDSON VAUGHN, (Seal).

J. F. LEVERING, (Seal).

Signed, sealed and delivered in the presence of  
SAMUEL C. KULP.



ATLANTIC CIRCUIT COURT.

In the matter of the arbitration  
between  
Rufus Booye, Jr., and Frank Muth. } Rule.

Upon reading and filing the affidavit or John J. Crandall, the subscribing witness to a certain agreement between the said Frank Muth and Rufus Booye, Jr., made on the fourteenth day of April, in the year nineteen hundred and two whereby they agreed to submit certain matters in difference between them to the arbitration of George A. Bourgeois, Jr., and James F. Levering and to the umpirage of a person to be chosen by said George A. Bourgeois, Jr., and James F. Levering and whereby they further agree that their said submission shall be made a rule of Court a copy of which agreement is annexed to said affidavit and filed therewith. It is ordered by the Court that the said agreement be entered of record and that the said Frank Muth and Rufus Booye, Jr., shall submit to and finally be concluded by the arbitration that shall be made concerning them by the said arbitrators and umpire pursuant to such submission.

Entered on the twenty-second day of August in the year nineteen hundred and two on a motion of Thompson & Cole, attorneys of the said Rufus Booye, Jr.

Let this rule be entered.

C. G. GARRISON, Judge.



## ATLANTIC COUNTY CIRCUIT COURT

In the Matter of Arbitration of  
Rufus Booy's, Jr.,  
and  
Frank Muth.

Before  
Geo. H. Bourgeois,  
S. Hudson Vaughn,  
J. S. Levering,  
Arbitrators.

On submission under seal, Award and rule of Circuit Court for Atlantic County.

It is alleged by Frank Muth, one of the parties to the above Entitled Arbitration that the Award upon which a rule is entered thereon in said Court, and the said rule entered thereon should be set aside and for nothing holden for the following reasons, to wit:

First.—The authority of the arbitrators Bourgeois and Levering expired on the nineteenth day of April, A. D. 1902 and award made on the 20th day of August following is void.

Second.—The subject matter submitted presents no such controversy as authorized arbitration. It presents but the simple question of value for work done and material furnished and calls for no exercise of judgment; it presents a simple question.

Third.—It fully appears that the arbitrators so misinterpreted the agreement of submission as to include all matters in difference between the parties and the awarding that all quarrels and demands whatsoever between them respectfully respecting said premises from the day of the date of submission to us aforesaid be no further prosecuted evinces that they did not confine their investigations to the subject matter of the submission.



Fourth.—The award is void as it fully appears that the same was not made by the umpire.

Fifth.—The award is void for the reason that it dose not appear by the award that the time for making the same had been in any wise extended.

Sixth.—The award is void for uncertainty, as there is not finding as to the value of the work and the value of the materials separately.

10 Seventh.—The award does not disclose any finding of facts to show indebtedness incurred before the date of submission.

Eighth.—The award is so excessive on inspection of the evidence submitted to the arbitrators as to evince and demonstrate that the arbitrators exercised no judgment whatever, gross bias in favor of Booye and so inequitable and unjust as to demonstrate partiality and corruption.

20 Ninth.—The award is void for the reason that arbitrator Bourgeois is a lawyer in active practice in Atlantic City, and in the course of his conduct and deliberation in the making of said award me deliberately and avowedly espoused the cause of Booye as a partisan and client of his and exercised his skill and finesse to influence the other arbitrators, and by refusing to act as the agent of both parties and employing his skill professionally to influence the other arbitrators to make the award in favor of Booye excessive, inequitable and unconscionable—wherefore it should be set aside.

30 Whereupon, on motion of John J. Crandall, it is ordered that said Rufus Booye, Jr., do show cause before the Circuit Court for the County of Atlantic at Mays Landing on the ninth day of September next at eleven o'clock A. M. or as soon thereafter as Counsel can be heard why the award and



rule of Court thereon entered by said Booye be not set aside and for nothing holden.

Done this twenty-ninth day of August A. D., 1902.

Let this rule be entered in the minutes.

C. G. GARRISON,  
J. S. C.

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Harry I. Raup, Stenographer, was duly sworn.

RUFUS BOOYE, JR., Sworn

BY MR. COLE:—

Q. What is your business?

A. Contractor and builder.

Q. You are the plaintiff in this suit against Muth? 10

A. Yes, sir.

Q. This arbitration matter?

A. Yes, sir.

Q. Have you had some dealings with Mr. Muth

A. Yes, sir.

Q. Have you had some dealings respecting the property or properties that are named in this agreement, to arbitrate the difference between you and him?

A. Yes, sir.

Q. You keep books 20

A. Yes, sir.

Q. Have you your books here

A. Yes, sir.

Q. Where are they?

(Books produced.)

Q. Are these books that you produce all of the books in which there is any record of transactions with Mr. Muth respecting the properties here in question?

A. Yes, sir.



- Q. Who kept these books  
A. I kept them myself.  
Q. What do you call them? By what name do they go?  
A. Just a general sort of books for my business.  
Q. Don't they have a name?  
A. Day book and ledger.  
Q. They are marked, are they not?  
A. Yes, sir; I don't know about the day book.  
Q. There is printing on the book  
A. Yes, they are marked.
- 10 MR. COLE:—We offer them for identification now, both the day book and the ledger.  
Q. Which book is the book of original entry  
A. The blotter there.  
Q. Did you make all of the entries that are made in the blotter and day book and ledger against Mr. Muth in the transactions in question here?  
A. Yes, sir.
- 20 Q. I show you the bills, Rufus Booye, Jr., against Frank Muth one for work and materials 18 S. Kentucky avenue; one for the church property; one for St. James Place; one for Boscobel, and I ask you in whose handwriting is those bills?  
A. Mine.  
Q. Did you copy these items that are on the bills from your book?  
A. Yes, sir.
- 30 Q. They were correctly copied?  
A. Yes, sir.  
MR. COLE:—I offer the bills at this time for identification.  
Q. Was the work that is set out in the four bills marked for identification done by you for Mr. Muth?  
A. Yes, sir.  
Q. On the properties named in the bills?



- A. Yes, sir.
- Q. Was the material that is named in those bills furnished by you to him for those properties?
- A. Yes, sir.
- Q. Have you had any payments?
- A. Not in cash, no, sir. I have had one note.
- Q. Has the note been paid?
- A. I don't know whether it has or not; there was a renewal last time.
- Q. Well, assuming the bills here to be correct, is the full amount of those bills due you? 10
- A. Yes, sir, that is, understand, that \$1,000 note wasn't paid on no special job; it was just a general account, at least I suppose so.
- Q. Did you get a note for \$1,000 from Mr. Muth?
- A. Yes, sir.
- Q. When was that?
- A. I can tell by my books.
- Q. Well, look.
- A. Note dated December 13, 1901. 20
- Q. Have you had any cash at all from him?
- A. Not on account of any of this work.
- Q. Does he owe you other monies than that included in these particular jobs?
- A. Yes, sir.
- Q. Where is that note now?
- A. I suppose it is in the bank.
- Q. Well, is it in the bank unpaid, or is it still alive, not yet due?
- A. It came due and it was renewed; I endorsed it for renewal. 30
- Q. Has the last renewal come due yet?
- A. No, sir.
- Q. Was it renewed for One thousand dollars?
- A. No.



Q. How much?

A. There was \$250 paid on it.

Q. Did you get the two hundred and fifty dollars?

A. I had the note discounted and the renewal was made and paid into the bank, I suppose. Mr. Muth took care of the note.

Q. Have you given credit on this account?

MR. CRANDALL:—This note has been paid.

Q. On what account did you give credit for this \$1,000?

10

A. On a general account, right through.

Q. But not on any of these accounts here in question?

A. No, sir.

Q. Now, the charge that you have made for the work that you did and materials that you furnished on the respective jobs in question, were they made in accordance with your contract with Muth?

MR. CRANDALL:—I object. First find out what the contract was and then what he did.

Q. Now, Mr. Booye, which was the first of the four jobs that you began work on?

20

A. The job at the church; some roof work on the church.

Q. What is the name of that church?

A. The Priest's cottage.

MR. CRANDALL:—On St. James Place?

MR. COLE:—No, the church on Pacific avenue.

Q. You mean the residence.

A. Yes, sir.



Q. What did you do on the property you call the church property?

A. Put the foundations up there; put up the piers, the roof work and face work around the front.

MR. CRANDALL:—Go over them again

A. The roof work and the foundations and the face work. It is all a foundation but the piers underneath; the main building foundation, piers and porch.

Q. What was your agreement with Mr. Muth respecting the laying of the brick for the church property? 10

A. I was to lay the brick there for five dollars and a half, and the face—

Q. Five dollars and a half what?

A. A thousand, and six dollars and a half for the front work, with the understanding that the front work, was to be a hard brick and a spread joint.

MR. BOURGEOIS:—What is it, in fact

A. The work is all buttered work. The front work is buttered work.

MR. BOURGEOIS:—What kind of brick 20

A. This Ventnor Company's brick.

Q. In your bill for the laying of the brick, that is the rough brick, you have charged how much

MR. CRANDALL:—That don't make any difference. The bill has nothing to do with it; what the result is, not what the bill is. The contract was five and a half for the rough brick. If the bill, no matter if it is six or eight or



ten or two or four dollars why it would cut no figure at all. He isn't going to testify here a violation of his own contract.

MR. COLE:—I want to show that he is charging on the bills, which I will offer in evidence, precisely what the contract was.

MR. CRANDALL:—He told you what the contract was; it was five dollars and a half. I object to his stating what was charged in the bill, without he modifies the contract. If that isn't the contract, back out and say what the contract is. I make this objection now. I want the ruling of this Board.

MR. BOURGEOIS:—I think that we ought to have it because if he has in fact charged what he says the contract was, that will help us a little.

MR. LEVERING:—Mr. Crandall, do you object to the question being asked whether the books show this amount or not?

MR. CRANDALL:—Read the question.

20 (Question read by Stenographer.)

MR. CRANDALL:—If he says more or less, that is foreign to this question. He has sworn that he was to get five dollars and a half.

A. Five dollars and a half.

Q. Now, Mr. Booye, what kind of brick did you in fact lay at the church building for the face work?

A. Why, these Ventnor people's brick, they are called sand and cement, or supposed to be.

Q. Did you lay them with the buttered joints?



A. Yes, sir.

Q. Were they the kind of brick that you agreed to lay for six dollars and a half a thousand?

A. There was no special agreement as to the kind of brick, but it was to be a spread joint. No special brick specified.

Q. Did you or not lay the brick, that is the face brick, with the kind of joint that you agreed with Muth you would lay?

A. No sir.

10

Q. Why didn't you?

A. Because he wanted them made with a buttered joint.

Q. Who did?

A. Mr. Muth.

Q. And that is the kind of joint they were laid with?

A. Yes, sir.

Q. Is it less expensive or more expensive or equally expensive to lay a brick with a buttered joint or a spread joint?

A. More expensive to lay it with a buttered joint. 20

Q. Were these Ventnor bricks that you laid a hard brick?

A. No, they were not.

Q. Were they a soft brick?

A. They were a rotten brick.

Q. Now before you began to lay the face brick on the church job did you have an agreement with Mr. Muth about the laying of brick on some other job?

A. Yes, sir, the same kind of brick.

Q. On what job?

30

A. The Boscobel.

Q. What do you mean when you say the same kind of brick?

A. The same kind that were used at the Boscobel.

Q. Did you lay rough brick at the Boscobel?



A. Yes.

Q. And did you have an agreement as to how much you were to charge for them?

MR. CRANDALL:—Keep on this church until you get through.

MR. COLE:—I have to go to the Boscobel.

A. Yes, sir.

Q. What was the agreement?

A. The agreement there was that the price should be five  
10 dollars and seventy-five cents a thousand.

Q. And in your bill, which has been marked for identification, how much did you charge for the rough brick laying?

A. Five dollars and seventy-five cents.

Q. What was your agreement, if any, with Mr. Muth, respecting the laying of the face brick which was the Ventnor brick at the Boscobel?

A. That was agreed that the face brick at the Boscobel should be done by the day.

20 Q. Was that agreement that the face brick at the Boscobel were to be laid by the day, made before you began the laying of the face brick on the Boscobel job?

A. Yes, sir.

Q. And you say that you laid the same kind of brick on the Boscobel as on the Church job?

A. Yes, sir.

Q. What, if any, reason was there why you didn't agree to lay the brick, that is, the face brick, on the Boscobel by the thousand?

30 A. Because we couldn't agree on a price. He told me that he had a price from Mr. Turner for the face work, and he told me Mr. Turner's price, and I advised him to get Mr.



Turner to do it for the price, and then we came to an agreement to get it done by the day.

MR. BOURGEOIS :—How much did he say Mr. Turner would do it for

A. Ten dollars.

MR. BOURGEOIS :—Face brick?

A. Yes, and I advised him to have Turner to do it.

Q. And it was after that conversation that it was agreed to lay these bricks by the day?

A. Yes.

Q. And you say that the bricks that you laid at the church were the same kind as at the Boscobel?

A. Yes.

Q. Now, in your bill for the face brick at the Boscobel and the laying of the brick at the Boscobel and the church, what have you charged?

A. I have charged him by the day; whatever time there was for the men's time.

Q. And was the charge that you made the usual charge per day for laying such brick?

A. Yes, sir.

MR. BOURGEOIS :—How much did you charge?

A. Four dollars for bricklayers and two and a quarter for laborers.

Q. Mr. Booye, you made the charge on the books for the men's time in these two jobs?

A. Yes, sir.

Q. Do those books show correctly the number of days which the bricklayers and laborers worked on those two jobs?



A. Yes, sir.

Q. You made the charge yourself?

A. Yes, sir.

Q. When did you make the charge on your books for the men's time and the materials you furnished?

A. Those charges were made at night when I went home.

Q. The night of the day that the work was done and the materials furnished?

10 A. No, that doesn't apply to the materials, because materials I couldn't charge for until I got my bills.

Q. Was all the materials that is charged for in the bill of the church job and the Boscobel furnished by you for these jobs?

A. Yes, sir. The labor was done and materials furnished through me.

Q. What charge have you made for the materials furnished, that is, did you make the usual charge for such materials?

20 A. Yes.

MR. BOURGEOIS :—Were you responsible for the materials?

MR. VAUGHN :—Did you furnish the brick?

A. No; I furnished some of the rough brick at the Boscobel, but not the face brick. They came from Ventnor.

Q. Then you didn't furnish all the material?

A. Everything but the face brick and the cement. I furnished rough brick there and lime and sand and some stone used in the contract that I didn't furnish.

30 Q. Did your contract call for furnishing mortar for the brick?

A. For the rough brick that was in the contract.



Q. What was your contract price for the mortar?

A. I should furnish the mortar and lay the brick for five dollars and seventy-five cents a thousand.

Q. You haven't charged for the mortar?

A. He is only charged for the materials that were used in the work outside of the contract.

MR. VAUGHN:—Mr. Cole, let us find out what his agreement was, what he was to furnish in his agreement, what materials he did furnish.

Q. You may state that, Mr. Booye. The arbitrator 10 wants to know what materials you were to furnish and what you did furnish, that is, in the laying of the brick.

MR. VAUGHN:—Take one piece at a time. Take the rough brick.

A. We agreed on the prices of the brick, the rough brick that I furnished.

MR. VAUGHN:—And you furnished all of the rough brick?

A. No, we didn't furnish all the rough brick; my father furnished some and Mr. Muth had some of his own. 20

Q. What were you to furnish besides the labor for the laying of the rough brick at the Boscobel and the church for five dollars and seventy-five cents and five dollars and a half a thousand?

A. Why we didn't furnish anything but the mortar.

Q. You were to furnish the mortar?

A. Yes, furnish the mortar and lay the brick for five dollars and a half.

MR. VAUGHN:—That is lime and sand?



A. Yes, lime and sand.

Q. What were you to furnish with it? Were you to furnish anything with the face brick at the Boscobel or the church?

A. I wasn't to furnish anything; my men were hired by him the same as if they were hired by anybody.

MR. VAUGHN:—You were to furnish the mortar for the face brick at the church?

A. No.

10 Q. You furnished nothing but the labor?

A. No.

Q. What were you to get for the face brick at the church?

A. I was laying the face brick for six dollars and a half and they were to be a hard brick and a spread joint; that was for labor only.

Q. Didn't you understand that the work was to be done the same as it was in the old building that was torn down?

A. No, sir. As to rough brick?

20 Q. The building after it was moved. Wasn't your price including the work the same as it was before it was moved, to put it up in the condition as before it was moved?

A. No; they were to use a hard brick.

Q. Weren't they a hard brick in the old building?

A. Yes.

Q. Weren't they a buttered joint in the old building, stretcher walls?

A. I don't know whether they were or not.

30 MR. COLE:—You are speaking now about the church job, of course.



A. Yes. I knew the work at the church was to be a spread joint and buttered brick.

MR. BOURGEOIS:—What charge did you make on the church job? You charged five dollars and a half for the rough work; what did you charge for the face work?

A. Charged him by the day, because we had come to an agreement about those brick.

Q. I don't mean for the Boscobel. I mean for the church.

A. I charged him by the day for that work.

10

Q. And the Boscobel also?

A. Yes, sir.

Q. Before you began laying any brick on the church job you agreed upon a different kind of brick before you did the Boscobel job?

A. Yes, sir.

Q. Is that the situation?

A. Yes, sir.

Q. Coming to the St. James Place, what did you do there?

20

A. Why, I laid the rough brick there and the same kind of face brick that we used at the church and Boscobel.

Q. With respect to the church job and the Boscobel job was the St. James Place before them or after them?

A. After them.

Q. Now, did you have an agreement with Mr. Muth respecting the laying of the rough brick at the St. James Place?

A. Yes, sir.

Q. What was your contract?

30

A. The price there was five dollars and fifty cents for rough brick for the mortar and laying it, five dollars and a half a thousand.

Q. Was that what you charged?



- A. Yes.
- Q. What was your agreement, if any, for the laying of the face brick?
- A. There was no agreement.
- Q. And how much did you charge for the laying of the face brick?
- A. Charged him by the day.
- Q. Same price as you charged for the Boscobel and church job?
- 10 A. Yes, sir.
- Q. How long was it after you had begun to lay the face brick at the Boscobel or the church when you began to lay them at St. James place?
- A. I don't just remember how long.
- Q. About? Can you form an idea?
- A. Well, I can't. It was doing work all over at the time. I can't remember.
- Q. Did you do all of the work and put it in the number of hours and furnish the brick that are charged in this bill
- 20 that has been marked for identification?
- A. Yes, sir.
- Q. Did you furnish some material that was used in that building?
- A. At the St. James Place?
- Q. Yes.
- A. Yes, we furnished—well, the materials were furnished through—that is, the mortar.
- Q. And what price have you charged for materials furnished by you outside of the brick?
- 30 A. He is charged there with the market prices.
- Q. Did you furnish the materials on the order of Muth for that building as charged in this bill?
- A. Yes, sir. And there was work done there at St. James Place, after it was up, it was taken down by Mr. Muth's orders and rebuilt, and to make some changes that the people wanted.



Q. You charged him by the day for tearing it down and putting it back?

A. Yes, sir.

Q. Now, the work at 18 S. Kentucky Avenue; was that the last work?

A. That was the last work, yes, sir.

Q. What did you do there?

A. I was putting the rough work there, the foundations, and the face work there also.

Q. Had you an agreement for the face brick laying? 10

A. No, sir.

Q. Had you any agreement for the rough brick?

A. No, sir.

Q. Was anything at all said between you and Muth about any of that work?

A. I had just ordered them to go ahead and do it.

Q. What kind of brick did you lay for face brick?

A. They were a Winslow brick; brick that he selected from samples.

Q. How much did you charge for the laying of the rough brick at 18 S. Kentucky Avenue? 20

A. He is charged for that whole work for building fire places and materials, and we charged by the day for we were working under difficulty; the movers were in our way.

Q. And did you charge him the going prices?

A. Yes, sir.

Q. How long was it, if you know, after the other three jobs were begun before you began work on No. 18 S. Kentucky Avenue?

A. I don't remember how long, but it wasn't very long; 30 shortly after.

Q. Did you furnish all of the labor and put in the number of hours that are set out in the bill and charged on your books?

A. Yes, sir.



Q. Did you furnish the material that is charged on the books and set out in the bills?

A. Yes, sir.

Q. And what price did you charge for the material that you furnished?

A. I charged the market prices there also.

Q. Now, Mr. Booye, these arbitrators may know, but I want the record to show the difference, if any, in the expense for laying these Ventnor brick and the laying of a  
10 hard brick; just tell in your own way.

A. Well, in a Ventnor brick, those brick were soft and rotten, and my men often had to pick up five or six bricks before they could find one fit to lay. And often after they were laid, after they would find one fit to lay, and they would set the trowel in the brick in the wall and maybe a brick two or three courses under that would have to be taken out, and in a hard brick we would take a hard brick up and trowel it and lay it; that is all there is to it.

Q. Then does it take a longer time to lay one thousand  
20 of the Ventnor brick than it would one thousand hard brick?

A. Yes, sir. I called Mr. Muth's attention to that and he said that those people would allow them for the bats.

Q. What people did he mean?

A. The Ventnor Brick people.

MR. BOURGEOIS: Did you have to take the wall down after it was up?

A. Yes, we had to take sections of it out several times, where their own weight would break in the wall.

Q. What job?

30 A. Boscobel and the church and St. James. I called Mr. Levering's attention to that, and he said that the bricks were turned out on a crooked pallet and they had a streak.

Q. Did you submit a bill to Mr. Muth for this work before this arbitration began?

A. Yes, sir.

Q. When was that, do you remember?



A. I don't remember the date, no, sir. I went down to see Mr. Muth to try to get a payment, and it seemed to make him angry, because I wanted money and he made a remark something about forcing a settlement, and demanded his bills and I sent them to him, and the next I heard was this matter here.

Q. How long was it after you submitted the bills before you heard he was disputing them?

A. Some time afterwards.

Q. Did he ever come to you personally and tell you that the bills were not correct? 10

A. No, sir.

Q. Were the bills you submitted to him copied from the books here?

A. Yes, sir.

Q. And the bills were the same as those offered in evidence?

A. Yes, sir.

Q. Did he ever, to you, personally dispute any of those items as to the work done or the materials furnished or the correctness of the bill? 20

A. No, sir.

MR. COLE: I want to offer these books in evidence and I will also offer these bills.

MR. CRANDALL: I object to the books. The bills, of course, are not evidence, but I object to the books. He hasn't shown that he had any timekeeper or anything. He said he put it down at night, but he hasn't shown that he had a foreman or boss.

THE WITNESS: I did the timekeeping myself. 30

Q. And you made those charges of the time that these men made in the books of your own personal knowledge?

A. Yes, sir.



MR. CRANDALL: The books are introduceable in evidence.

CROSS-EXAMINATION.

BY MR. CRANDALL:

Q. Now, this church, as I understood you to say, you agreed to lay the brick for five dollars and a half a thousand; that is the rough brick?

A. That is the rough brick, yes, sir.

Q. What is the charge for it?

10 A. Where is the rest of the bill?

Q. Here it is. (Producing bill.)

A. Laying 69,432 bricks.

Q. Did you measure the brick after they were in the wall?

A. Yes, sir.

Q. How many bricks were laid independent of days work? Do you know how many brick were laid of the press brick or the Ventnor brick?

A. No, sir; not of the face brick as you call them.

20 Q. You have no idea?

A. No, sir; didn't measure them.

Q. Well, couldn't you give an estimate by the amount of lime and sand you used?

A. No, sir; I haven't any idea as to the number. I just charged the same for the work; haven't any idea as to the number in there.

Q. You paid the men the same price you charged Mr. Muth?

(Objected to.)

30 Q. Did you pay the men the same price you charged Mr. Muth?



MR. COLE: I object. It is not a matter of your concern whether he did or didn't. If there wasn't any express contract he had a right to charge Mr. Muth whatever was the market price; if he got the labor for a good deal less or less than it was worth, that is his business. He had a right to charge the going price of labor, for whatever it was worth.

Q. How much brick ought a competent man to lay in a day?

A. That is very hard to decide; no man can answer that question. It all depends upon the kind of brick that is used. 10

MR. LEVERING: What he means probably is what you base your contract on, making the contract. You have some basis to work from in making the contract.

MR. COLE: There is no contract involved here as to any figure for a specific thing, for a specific job.

MR. CRANDALL:—That is anticipating the cross-examination. We will see.

Q. This St. James Place was an old house put in a new place, wasn't it? 20

A. Yes, sir.

Q. The bricks in the old foundation were put in the new one?

A. Some of them were.

Q. And all those that were good enough, were used, were they not?

A. Well, I can't answer that question. Mr. Muth intended to bring those brick over there.

Q. You saw the house before it was moved, didn't you?

A. Whose house have you reference to now?

A. I am talking about the St. James job; in other 30



words, in the church property, the understanding was that he should use the old brick?

A. That is, the old rough brick?

MR. BOURGEOIS: Was the St. James Place house moved? Was that house moved? They used the old bricks in the church.

MR. CRANDALL: Yes, and in the St. James Place, too.

MR. BOURGEOIS: And which were moved?

10 A. Both moved.

Q. Well, the first property that you talked about, the first bargain that you had with Mr. Muth was in respect to the church property?

A. Yes, sir.

Q. Then, as I understand you started out with Mr. Muth five dollars and fifty cents for one and six and a half for the other?

A. That was conditionally, understand. The five and a half price was all right, but the other price was conditioned.  
20

Q. Didn't you state in your direct examination that you in the first place agreed to lay the brick in the church property for six and a half?

A. Yes, and I do yet, but I tell you that they were under certain conditions that they were to be a hard brick and a spread joint.

Q. But you knew what brick they were?

A. No.

Q. Why not?

30 A. Because they hadn't been sent there.

Q. Didn't you know they were the foundation of the old building?



A. Yes, the rough brick; I knew that. There is no dispute about that as I know of.

Q. Was there any face brick or rough face brick under the porch of the old building that was to be used?

A. You refer to the church building, I presume?

Q. Yes.

A. Yes, there was some brick; they were a hard brick.

Q. And you knew that?

A. I knew that they were hard brick?

Q. Yes.

10

A. Yes.

Q. And you knew that they were to be used?

A. No, I didn't understand that at all.

Q. You didn't?

A. No, sir.

Q. What did your six and a half a thousand apply to?

A. It applied to a hard brick and a spread joint of mortar. Do you understand that difference between a spread joint and a buttered joint of mortar?

Q. Yes, I understand it. When you come to lay the brick you found they had fetched the Ventnor brick and it gave you a good deal of trouble to make a spread, smooth joint?

A. They weren't a hard brick. They weren't what he agreed to furnish.

Q. Well, now is it worth twice as much to lay these as though they had been hard?

A. Yes, I would want three times as much and more too.

Q. Get yourself down and find out whether they would be worth four times as much?

30

A. For that kind of stuff they furnished, I would want four times as much.

Q. You would want twenty-six dollars a thousand for laying them? Do you say that they were worth twenty-six dollars a thousand for laying them?

A. I wouldn't lay them for any less.



- Q. Did you figure up the day's work and see what you charged Mr. Booye they would amount to a thousand?
- A. No, sir.
- Q. Nor you don't know the number of brick?
- A. No, sir; not the face brick.
- Q. And how many items do you charge him in the church property? You charged him, then for the rough brick, at five dollars and a half?
- A. Yes, sir.
- 10 Q. And you charged him by the day for the face brick?
- A. Yes, sir.
- Q. And is that all there is to the church property? Is that the whole of your charge?
- A. Let me explain.
- Q. Is that all the controversy?
- A. No.
- Q. What then?
- A. My men were there on a lot of patching up where the men had tore out fire places, etc.; that is charged by
- 20 the day; that is always considered.
- Q. How much is that?
- A. You will find it there in the bills. He is charged right in the days work with it all.
- Q. It is charged separate then?
- A. No, it is charged in with the rest.
- Q. Were the men that you engaged in the piece work engaged in the inside rough brick?
- A. No, sir.
- Q. Did you have an entire different set of men from
- 30 those that laid the rough brick and the face brick?
- A. You mean a different gang?
- Q. Yes.
- A. Yes. There was a gang on the front, and a gang on the rough.
- Q. And those on the front brick didn't work on the rough and those on the rough didn't work on the front?



A. No, sir.

Q. Well, then as I understand the whole of your testimony is that there is 69,432 bricks at five dollars and a half and day labor for laying press brick and the patching up?

A. Yes, sir.

Q. Is that all there is of it, so far as the church is concerned?

A. Something, understand on the front work. The foundation work is charged by the day, because it came under the head of day work.

Q. How much was there of this front work or rough brick foundations?

A. I cannot tell you just what there was all around the porch and front building.

Q. You said you knew how much there was.

A. We didn't measure them.

Q. If you measured the rough brick under the foundation then didn't you measure the press brick too?

A. We didn't measure the press brick under the foundation. The foundations I have reference to is the rough brick, the foundation under the brick is under the wall.

Q. You didn't measure them at all?

A. No, it was charged by the day.

Q. If you charged them by the day and had already had charged for 68,432 (69,432?) at five and a half, you have duplicated that charge?

A. Yes, but that wasn't included in the measurement; that was skipped when I measured that work?

Q. Then you have lost the laying of that brick there except by the day?

A. Except by the day, yes, sir, but that is Mr. Muth's advantage?

Q. (MR. VAUGHN): How about the backing up?

A. There was no backing up. It was only four inches thick. And I think there were a few pilasters, a few bases.



Q. Was that all laid by the day?

A. All charged by the day in this work.

BY MR. COLE:

Q. Do you pretend to say that you cannot give any estimate at all of the front or press brick?

A. No, sir; I haven't the slightest idea.

BY MR. CRANDALL:

Q. You have got some idea of the dimensions of the wall; you know how thick the wall is?

10 A. Yes, I know how thick, but I don't know the size.

Q. How thick?

A. Four-inch wall.

Q. How high does it average?

A. I cannot tell that; I don't know; haven't any idea.

Q. Don't you know how long?

A. Haven't any idea of the length. Part of the wall is a circular wall.

Q. You can measure with a tape line, can't you?

20 A. What is the use of measuring; the work was charged by the day.

Q. In other words, it don't make any difference how much it cost by the day he was obliged to pay for it?

A. I don't say that.

Q. Then if it cost him thirty or forty dollars a thousand he would have to pay it?

A. You just asked me what I wanted to lay those bricks and I told you.

Q. How long after you made this bargain was it that  
30 you made the bargain at the Boscobel?

A. I don't remember.

Q. It was a month, wasn't it, at least?



A. I would answer your question if I knew, Mr. Crandall.

Q. About?

A. I don't remember.

Q. Won't you turn to your books and see if the books will show it?

A. I don't know whether the books will show or not. (Examines book.) I cannot tell.

Q. You cannot tell after referring to the books?

A. No, sir.

Q. How long before you commenced there was the time before you commenced work at the Boscobel property? You commenced work there at some time, didn't you?

A. Yes, sir.

Q. And you commenced work at the Boscobel at some other time?

A. Yes.

Q. How long?

A. Which work have you reference to?

Q. Any of the work; any of the work at all.

A. We were working at both jobs at the same time.

Q. I mean the beginning. How long after you began work at the church was it before you began at the Boscobel?

A. Very near a month's difference in the time.

Q. How long after did you commence the press brick in the Boscobel? When did you commence the press brick work in the Boscobel?

A. Do you want the date of that?

Q. Yes.

A. This charge is made November 30th, but you understand the concrete work that went under this front work was charged by the day, because that was taken in by the day.

Q. In other words, you commenced November 30th on the press brick work?

A. That is for the concrete bottom.



Q. That is where the press work begins?

A. Yes, sir.

MR. VAUGHN: That is in the Boscobel?

A. In the Boscobel, yes, sir.

Q. That was the foundations?

A. The concrete for the foundations.

Q. 30th of November?

A. Yes, sir.

10 Q. What day, Mr. Booye, was the press brick work started on the church job?

A. There is a charge made there December 18th, but that is concrete work, or something for the heater pit.

BY MR. COLE:

Q. You had already laid the press brick in the church before that?

A. No, sir.

Q. Hadn't you laid the press brick in the church?

A. That wasn't commenced till after the Boscobel.

BY MR. CRANDALL:

20 Q. Don't you know that you laid the press brick at the Boscobel first?

A. The footing there, the concrete footing, was charged first for the front work.

Q. Didn't you lay press bricks at the Boscobel first before you laid the others?

A. This work here, this day's work at the Boscobel, is charged for, his concrete footing and he is charged for day's work at the church; he is charged at the church for pitch or something.

30 MR. BOURGEOIS: What date was that?

A. December 23; here is another one on the 24th.



Q. Isn't it a fact now, that you didn't keep any regular time?

A. The regular time as to what?

Q. As to anything.

A. Yes, sir; I did.

Q. Well, then, wouldn't it show when the press brick was laid at the Boscobel?

A. The work that he is charged for by the day was press brick at the Boscobel and his concrete work there, the work that was done outside of his rough work, which was charged for by the thousand. 10

Q. MR. VAUGHN: Do you keep a time book?

A. Yes, sir.

Q. MR. VAUGHN: Is that here?

A. No.

Q. Who kept the time on these jobs? Did you have a foreman?

A. I had a foreman there, yes, sir.

Q. What is his name?

A. John Walker.

Q. Is he here? 20

A. Yes, sir.

Q. And is he the man who kept the time and gave you the time?

A. No, I would get my time and compare my time.

Q. With his?

A. Yes. I would say such and such a man's time was right and then I would compare it with his to make sure that it was all right.

Q. You say the price on the rough brick work at the Boscobel was five dollars and a half? 30

A. No, five seventy-five; we agreed on that.



Q. Where is that charge here on this bill?  
A. There it is.  
Q. Laying 98,642 rough brick? Were there 98,642?  
A. That is what I measured it.  
Q. That is what you measured it?  
A. That is what is there.

Q. MR. BOURGEOIS: Where was this work?

A. Boscobel.

MR. VAUGHN: That was done by the thousand?

OI A. Yes, five dollars and seventy-five cents.  
Q. How about the rough brick back of the face brick on the Boscobel?  
A. That was charged by the day.  
Q. How many face brick did you lay? The only job there is laying the rough and the face brick; that is all the work that was done?  
A. Rough brick and face brick and concrete there.  
Q. A little concrete?  
A. You would find a good bit.  
20 Q. What are the dimensions of the concrete work?  
A. I don't know, because he had my men on the front.  
Q. He didn't have your men at all. You had his men under your contract.  
A. He had these men on the front.  
Q. He had these men, I know, to lay them.  
A. These men were hired to Mr. Muth by the day, the same as I would hire to you or some one else.  
Q. The only thing I want to know is the size of the concrete work.

30 MR. COLE: Explain the matter as you started.



MR. CRANDALL: Not on cross-examination. I asked him this simple question, the dimensions of the concrete work. What is the dimensions of the work that you filled with concrete?

A. There are several there. I offered you an explanation, and you shut me up.

Q. I ask you how many there are?

A. You shut me off both times.

Q. All I want to know is the size.

A. I cannot give you the size. That is concrete work 10 in the heater room and boiler room and both of these places he would take the men on the front and would say, "I want these men to go back here, and do so and so," and I would charge for the men that he took by the day.

Q. On top of the concrete work, on top of the boiler that was rough brick that was used there, wasn't it?

A. On top of the boiler?

Q. No; under the boiler on top of the concrete.

A. Rough brick used? It was concrete used there.

Q. No brick at all? 20

A. Brick walls around the side.

Q. Press brick or concrete?

A. Rough brick.

Q. Did you lay them by the day or—

A. The rough work under the concrete was by the thousand.

Q. How many thousand went there?

A. Around these walls?

Q. Yes.

A. I don't know how many we have there. 30

Q. Then in your estimate of the rough brick, you included them? You took that in?

A. In the measurement it was not customary to make every section of a wall—

Q. What I want to know is, is this rough brick cal-



culated here to take in all the rough brick except such as was taken of the press brick in the front?

A. No.

Q. You laid them all by the thousand?

A. No; that isn't right. The work was in the house, in the new chimney was charged by the day, but they weren't taken in the estimate of the rough work.

MR. LEVERING: Were they rough brick in the chimney?

10 A. Rough brick?

Q. Yes.

A. They weren't press brick nor face brick.

MR. LEVERING: The same as we use in the walls outside of the building?

A. I don't know whether they were or not. They were just a hard brick.

Q. Then you laid for five and a half a thousand?

A. Which?

Q. In the chimney and around.

20 A. No, I didn't say I laid them for that. My price, five dollars and seventy-five cents, was for under pinning, not building any chimneys.

Q. Five dollars and seventy-five cents for rough brick for underpinning?

A. Yes, sir.

Q. Then as I understand it, you got underpinning, and then you have got all the balance charged by the day?

A. That is the underpinning, the rough walls underneath the house.

30 Q. And then the rest charged by the day?

A. Yes.

Q. How many face brick did you lay?



A. I haven't the least idea of how many there are.  
Q. Haven't any idea at all?  
A. Don't know; haven't any idea at all.  
Q. I asked you about the church. I come now to the Boscobel.

A. I don't know.  
Q. What is it worth a thousand to lay that rough brick in the Boscobel—I mean that press brick—how much worth a thousand?

A. They were the same kind. 10  
Q. I asked you how much it was worth?  
A. I told you I wouldn't have anything to do with them for twenty-six dollars a thousand. If a man gave me that kind of brick to lay I would throw the job up.

Q. Did you keep an account of taking down some piers and building them up again?

A. No, sir.  
Q. Didn't keep an account?  
A. No, sir.  
Q. Why not? 20  
A. Because I had no occasion to.  
Q. Who did it?  
A. Who did what?  
Q. Then the only thing that you have an accurate knowledge is the number of rough brick that you charged him and the number of days?

A. Yes, sir.  
Q. That is all?  
A. Yes, sir.  
Q. Whether the men laid ten bricks or one hundred 30 bricks or a thousand bricks a day?

A. I didn't agree that they would lay any certain amount of bricks in a day; I didn't agree as to what they would do or what they wouldn't do. It is hard to tell what a man can do by the day.



- Q. Now, the St. James Place; what was the agreement there?
- A. That was five dollars and a half and to furnish the mortar and to lay the rough brick there to the underpinning.
- Q. How many rough brick?
- A. You will find it in the book there.
- Q. 24,782 at \$5.50, under the charge of January. What kind of press brick were used?
- A. Same grade of press brick as the Boscobel.
- 10 Q. Have you any idea how many press brick were laid?
- A. No; some were laid, and at Mr. Muth's orders, plans were changed and taken down again.
- Q. What do you mean, alterations?
- A. A section of the wall gave out, extended out, and we took it down and put it up again.
- Q. How long did that take?
- A. I don't know that.
- Q. How much of it was there?
- A. There was one-half of the front.
- 20 Q. The front is divided into two sections and the porch goes between the two; which was taken down?
- A. The section toward the boiler.
- Q. How many brick in that section?
- A. I don't know.
- Q. Don't you know how high it is?
- A. No; not now I don't.
- Q. Don't you know how long?
- A. No.
- Q. Nor what the thickness of the wall is?
- 30 A. I know the thickness of the wall, but that wouldn't help me any.
- Q. What is the thickness of the wall?
- A. Four inches.
- Q. Do you know how many days that took?
- A. No, sir.



Q. Didn't charge that by itself?

A. No, that was charged right in the days work, with the rest of the front. My men took the work down at his orders, and cleaned the brick and then laid them again.

Q. 18 S. Kentucky Avenue; what was the contract in that respect?

A. No contract there at all?

Q. What did you do there?

A. Well we put in the walls, the rough walls and footing, and fixed up the hearths, the fire-places.

Q. How many rough brick were laid there?

A. I don't know.

Q. You say there was no contract?

A. That work was all charged by the day.

Q. I see it is charged by the day, but was there any agreement that they should be charged by the day, the rough brick?

A. No agreement was made; he ordered me to go there with the men and do it.

Q. And do it the same as the other jobs?

A. No, he didn't say that.

Q. Well, five and a half is a fair price on rough brick?

A. I got stuck; that is why I asked him more.

Q. Is five dollars and seventy-five cents enough?

A. It is if you can't get any more.

Q. Is six dollars enough? How many rough bricks were laid?

A. I don't know.

Q. How many pressed brick were laid?

A. I don't know that either. I can tell you by looking at the bill.

Q. Didn't you charge Mr. Muth with the bricks?

A. That is what I just told you. I can tell you the pressed brick that was laid. There was three thousand delivered there, twenty-five hundred at one time and five hundred at another, sent there by Mr. Muth's orders.



- Q. Were they all laid there, or don't you know?
- A. The supposition is they were. That amount was ordered by Mr. Muth from me and they were delivered there; if some one carried them off I don't know.
- Q. Did you count them when they came there?
- A. No, sir, but I paid for them just the same.
- Q. You paid for them?
- A. Yes, sir, I paid for them.
- Q. Did you leave any there when you left?
- 10 A. No, sir, there was none there when I left.
- Q. That is three thousand hard brick?
- A. They are what we call Roman brick?
- Q. Any other kind of brick there?
- A. Rough brick, no face brick.
- Q. Did you furnish the rough brick?
- A. No, he furnished them himself.
- Q. How many thousand of the rough brick were there?
- A. I answered that question a while ago. I said I didn't know.
- 20 Q. But there was three thousand of the Roman brick?
- A. Yes.
- Q. What is it worth to lay three thousand of Roman brick?
- A. That all depends upon the kind of work you want.
- Q. What is it worth to lay it, what you did lay?
- A. Well, I don't know. The people were ordered to go there and do the work, and they were working under difficulties.
- Q. What did you charge by the thousand for these
- 30 Roman bricks?
- A. Twenty-eight dollars, isn't it?
- Q. The brick then, so far as the Roman brick are concerned, is eighty-four dollars, and the other brick you don't know anything about how many there were?
- A. I don't know, no, sir.
- Q. Were there ten thousand?



A. Mr. Crandall, if I had any idea, I would have told you.

Q. BY MR. BOURGEOIS: About these Ventnor brick, could you lay them with a spread joint?

A. Not very well, no, sir.

Q. Why?

A. Because they were soft, and they are brick that have to be handled very carefully.

Q. You wouldn't be able to settle them?

A. No, because they wouldn't stand their own weight. 10

Q. Won't you tell me in which of these jobs you placed concrete footing?

A. In the Boscobel job, and that was concrete footing for the brick work there, and the boiler rooms had concrete bottoms, and the different rooms in back.

Q. Any concrete in the church job?

A. Yes, in the heater.

Q. Not in the footing?

A. No, sir.

Q. In the St. James Place footing? 20

A. No, sir.

Q. At 18 S. Kentucky Avenue?

A. No, just ordinary footing.

Q. What about those piers that were taken down and put up again?

A. Those piers were run up and were covered. They were covered positively to my knowledge and they didn't have the caps there for them, and they left the rain beat in on them; this work was done in cold weather and they bulged the piers out and broke in pieces. 30

Q. What job was that?

A. The Boscobel.

Q. How many were there?

A. I think there was four.



Q. What is the amount of your claim for these jobs you have there, how much do you claim is due to you for the Boscobel?

A. \$1788.84.

Q. St. James Place?

A. \$386.83.

Q. 18 S. Kentucky Avenue?

A. \$344.72.

Q. Now the church?

10 A. \$709.18.

Q. Now, is Mr. Muth indebted to you in any other sum than these four accounts?

A. Yes, sir.

Q. For what amount?

MR. CRANDALL: We object.

Q. Is it as much as one thousand dollars or more?

MR. CRANDALL: What has that to do with it?

MR. BOURGEOIS: There is evidence of a note here for one thousand dollars.

20 MR. CRANDALL: The question is, what is the finding of the arbitrators, and take one thousand dollars out; the balance belongs to him.

Q. When did you receive the one thousand dollars?

A. I received a note about December 13th.

BY MR. LEVERING:

Q. Had you done any work before for Mr. Muth, before you gave him the note?

Q. I had been working three or four places for him.



Q. You worked for him up to the time he gave you the note?

A. No; I furnished material at other jobs.

Q. What other jobs?

A. Michigan Avenue.

Q. Before December 13th?

A. Yes.

Q. Before December 13th did you work on any other jobs outside of these two for Mr. Muth?

A. Yes, I furnished material.

10

Q. Before that date?

A. Yes.

Q. Are they paid for it?

A. I never got any of it if they are.

BY MR. BOURGEOIS:

Q. You got the note?

A. Yes.

Q. And if he paid the note, it is paid for?

A. Yes, sir.

Q. Do you know how much there was of that?

20

A. Of which?

Q. Of the materials which you furnished there at that time. Do you know how much Mr. Muth was indebted to you on the 13th of December, 1901?

A. \$439.76.

Q. That was for what?

A. Materials and work done at Congress Street and materials furnished at the Boscobel; they had been materials furnished there previous to that.

Q. Did you give your note for more than was due to you?

30

A. Well, I can't tell anything about that, because my men had been to work on this work.

Q. Where?



A. At the Boscobel and different places, and they hadn't been charged only after it was done; whatever piece work was done. This work was by the thousand and hadn't been charged at that time.

MR. LEVERING: Didn't this one thousand dollar note go in part payment of the Catholic Church and the Boscobel, wasn't that what it was for?

A. No.

MR. COLE: Where did you credit the one thousand dollar note?

A. To Mr. Muth's general account.

BY MR. COLE:

Q. Was any part of the one thousand dollars credited on account of these items here in controversy?

A. Not in particular.

Q. Can you state about when you began the first work of the four jobs in question, and when you completed the last of the four jobs?

A. The press work, the work that was done by the 20 thousand, wasn't charged until it was done. It was finished and a memoranda made up and charged and I have no record of just when it was because it was not necessary that I should keep one.

Q. Can't you tell about how much time intervened between the beginning of the first work and the ending of the last?

A. I can only tell as to the way the work was charged. The first charge was made November 11th.

Q. When was the last charge made?

30 A. April 19th, 1902.



Q. How many men did you have working on these several jobs in question?

A. That is another question I cannot answer. I have so many men.

Q. Can't you tell about?

A. My gang of men varies. Sometimes I have thirty or thirty-five men at different places. Sometimes I wouldn't have so many, or maybe more.

MR. VAUGHN: Are these all the books that he keeps?

MR. COLE: As I understand it, this is all he keeps. 10

A. When I went home at night I entered it on my original blotter.

Q. You kept a time book didn't you?

A. Yes; but I would take it home at night and post it in my blotter.

Q. You had a pocket time book?

A. I did at that time.

Q. Haven't you got it yet?

A. I wouldn't know where to go to hunt for it.

Q. Don't know where it is?

A. No. 20

Q. Isn't that an important question?

A. I think not. My charge is made directly in that.

MR. LEVERING: You don't seem to have them dated?

A. What is that?

Q. MR. LEVERING: Have you got those entries on the book dated?

A. Do you mean the days work?



MR. LEVERING:—The book that you took your copy from, your time book; your time book?

A. My blotter is dated, yes.

MR. COLE: He says that he put those in the book at night out of the time book in the blotter. The blotter shows the date, and he didn't any longer retain the time book. It was simply a memorandum.

BY MR. CRANDALL:

Q. You say Mr. Muth owes you, independent of these  
10 four cases under arbitration, something like three or four hundred dollars?

A. Do you mean at the present time?

Q. Independent. Besides these contracts here, he owes you three or four dollars?

A. I don't remember saying anything like that.

Q. In other words, you don't consider that he owes you on the Strumpf job or any job where he hasn't finished and didn't get the money? You agreed to wait until he got the money?

20 A. No, sir. I never made any such agreement.

Q. Wasn't it understood that you should wait until he got the money on this St. James job before you were paid?

A. No, sir; I never made such an agreement with him, positively no I did not.

Q. Turn to your book. It may figure in this one thousand dollars, do you pretend to say that on these four jobs you haven't got one thousand dollars of that note paid off.

30 A. If he has paid it he has got credit for that one thousand dollars in that general account.

Q. What do you mean. Does it take in Strumpf's account.



- A. Yes, it takes in all.
- Q. How much do you expect him to have credit here of that one thousand dollars?
- A. On these jobs?
- Q. Yes. On these jobs under arbitration here.
- A. Let him take the full amount he owes me and take one thousand dollars from the whole lot and he gets credit for the one thousand dollars. That's the only way I see.
- Q. Didn't Mr. Strumpf come to you and offer to pay the bills?
- A. He came and told me he paid Mr. Muth.
- Q. He told you he paid Mr. Muth?
- A. He tried to work a very cute trick.
- Q. He did? He and the other gentleman?
- A. I suppose——

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JOHN WALKER, Sworn.

DIRECT EXAMINATION.

BY MR. COLE:—

- Q. Were you in the employ of Mr. Rufus Booye, Jr.?
- A. Yes, sir.
- Q. How long have you been in his employ?
- A. As near as I can state, a year and a half.
- Q. What is your business?
- A. Bricklayer.
- Q. How long have you been a bricklayer?
- A. Twenty-five years.
- Q. Did you work for him while he was doing the work on the Boscobel and Eighteen South Kentucky avenue, St. James Place and the Church, here in question?
- A. Yes, sir.
- Q. Did you foreman these jobs?

20

30



A. I foremaned in this way; when he was away I looked out for his interest, but when he was there I didn't consider myself such.

Q. You were there in his employ at that time?

A. Yes, sir.

Q. Do you know the brick that was used in the facing of these several jobs?

A. Yes, sir.

Q. What were they known by?

10 A. The Ventnor Cement brick.

Q. Were they a soft brick or a hard brick?

A. Well, sir, they were a brick—it was in winter time that we got the brick, and the brick to the outside appearance wasn't very hard. You could take your hand and milt them off and when we would go to lay them and attempt to settle them down to a bed they would break.

Q. Now what is the particular difference in the laying of those bricks, so far as the expense is concerned, and the laying of a hard brick that wouldn't break?

20 A. In laying a hard brick you can lay about two-thirds more than you can of a press brick. That is what they term them, spreading between one another; you could probably lay three bricks while you laid one.

Q. Could you lay the Ventnor brick and give the spread joint for the same amount of money that you could a hard brick?

30 A. No, sir, and I will tell you why; for the simple reason in a hard brick, if you spread the mortar and you have to settle the brick to a bed, they have the strength to resist the settling; whereas, in laying the Ventnor brick, if you would spread and attempt to settle with the trowel handle to a bed, you would have to take up every two out of three, two out of three would break in two. That is my experience of the brick that we set at that time and the weather we had.



MR. BOURGEOIS:—

Q. Were those bricks Roman or Standard?

A. Standard.

Q. Don't you suppose you heard any conversation between Mr. Muth and Mr. Booye about the laying of these bricks?

A. None whatever.

Q. You never heard any talk between them at all about the laying of them?

A. No, sir, for I am a person; the business of anybody else doesn't concern me. I get right away. I don't want to mix up in it, and for that reason I don't know anything about it.

Q. Did you have anything to do with the measuring of this work?

A. Yes, sir.

Q. For whom did you measure it?

A. Mr. Booye, Jr., and I went over it specially, and then Mr. Schimpf and Mr. Booye and myself and Mr. Muth's foreman went over it.

Q. Did you agree?

A. Well, yes.

Q. As to the number of brick?

A. Yes, sir.

Q. Your measurement and that of Mr. Booye, Jr., how did they agree?

A. Well, when we measured, and the accounts were taken and afterwards Mr. Booye, Jr., told me that the accounts came out correct and that is about all I know.

Q. Now Mr. Walker, from your knowledge of the laying of the hard brick with the spread joint, and your knowledge and ability to lay the Ventnor brick, I ask you whether it would be reasonable to ask the contractor to lay the Ventnor brick for the same price per thousand as it would the hard brick?



MR. CRANDALL:—That isn't based on anything.

A. No, sir.

CROSS EXAMINATION.

BY MR. CRANDALL:—

Q. How much is it worth a thousand to lay the Ventnor brick?

A. That would depend where you had to lay them and how you had to lay them.

Q. For instance, the Ventnor brick laid under the church how much is it worth a thousand to lay them under the  
10 church?

A. There was a figure given to Mr. Muth and he wouldn't accept it, of eleven dollars.

Q. Would twelve dollars have been a proper price?

A. If they offered to lay them at eleven dollars, twelve dollars would be unreasonable.

Q. Who gave him that figure, Mr. Booye?

A. Mr. Muth told me personally that Mr. Booye told him that he would lay them at eleven dollars, and he says:  
20 "No, John, I won't give that, but I will let him do them by the day."

Q. Is eleven dollars a thousand a proper figure in your judgment?

A. I wouldn't take that job at eleven dollars.

Q. Would twelve dollars be a good figure?

A. Well, that depends upon the men; men experienced with them brick and the breakage, etc., no, sir, I wouldn't.

Q. I ask you if twelve dollars a thousand would be a proper compensation?

A. Well, for me personally, I wouldn't lay them for  
30 twelve dollars.

Q. Would you lay them for thirteen dollars?

A. No, sir, I wouldn't lay them for thirteen dollars.

Q. Would you lay them for fourteen dollars?



A. I wouldn't want to lay them under sixteen dollars, and then it would be nip and tuck whether I would get out at that.

Q. Do you know that Mr. Booye offered to lay them at eleven dollars?

A. Only from Mr. Muth's conversation, he gave it to me himself voluntarily, sir.

Q. How many brick of these Ventnor brick ought a man to lay in a day?

A. Not over three hundred, not to save his life. 10

Q. How much were bricklayers getting at that time?

A. Three dollars and a half.

Q. That was the going wages?

A. Yes, sir.

Q. Now, when you measured the bricks in the church—have you got that measurement now?

A. Me?

Q. Yes.

A. No, sir.

Q. How did you measure it, with a tape line? 20

A. Yes.

Q. How did you know that it agreed with Mr. Booye? Did you keep the figures in shape?

A. The only thing I know Mr. Booye took down the figures and Mr. Schimpf took down the figures.

Q. Is Mr. Schimpf here?

A. Yes, sir. And afterwards I asked Mr. Booye how the figures came out and he said all right, and that was all I know, sir.

Q. But didn't you see any figures? 30

A. Only at the time they were taken down; the dimensions.

Q. Did you see Mr. Booye take them down?

A. Yes, sir; and saw Mr. Schimpf.



Q. Have you any idea how many brick were used at the Boscobel?

A. No; I had no occasion to keep any accounts.

Q. Haven't you any idea at all?

A. No, sir.

Q. What share of the time was Mr. Booye around there when the work was going on around the Boscobel?

A. Once a day, at least.

Q. How long would he stay?

10 A. Probably ten, fifteen, twenty minutes.

Q. Is that all he would stay there during the day?

A. Yes, sir.

Q. What part of the time was Mr. Booye around the building at the church?

A. About the same; just come and see if things was going right, and ask if we wanted any material and then go away.

Q. How could he keep time?

MR. COLE:—I object.

20 A. It is very hard for me to tell you Mr. Booye's business; it is, indeed.

Q. Didn't you once say that you kept the time for one week?

A. Well, I kept the time on the Boscobel in regard to how many men was there, for about a week, and I gave it to Mr. Booye.

Q. When? At the end of the week?

A. No, sir; every night, and then I says to Rufus, "Will I continue the time of the men?" And he says, "No, John,  
30 I will attend to it."

Q. Yet he wasn't there any more than ten or fifteen minutes of the day?

A. That is as far as I know; I cannot say exactly to the moment, but as near as I know.



Q. Wasn't he up in Philadelphia several times when you were at work there?

A. I don't know.

Q. All you know he wasn't there?

A. All I know he was there.

Q. Then you haven't any figures on the brick on any of the properties?

A. That is none of my business.

Q. That is what I supposed. What did you measure them for? 10

A. At the request of Mr. Booye.

Q. It was your business at that time, wasn't it?

A. Yes, sir, holding the tape lines for Mr. Booye.

BY MR. COLE:—

Q. Who is Mr. Schimpf? Who did he work for?

A. Mr. Muth.

Q. What was he doing there on the occasion of this measurement?

A. Went to see, I suppose, if the figures were right.

Q. He is Mr. Muth's employe, is he? 20

A. Yes, sir.

Q. And how came he to go to make this measurement?

A. At the request of Mr. Muth, I suppose; I don't know, sir.

MR. VAUGHN:—Was he acquainted with the work that had been done?

A. No, only what he saw before him.

Q. He had never been on the job?

A. No, sir, not during construction.

MR. BOURGEOIS:—What efforts did you make to get 30 at the dimensions?



A. We took the heights and the lengths and the widths.

Q. What about the foundations?

A. The foundations, we took the depth and allowed for the spread.

Q. Did you dig down each of them and find out how deep they went?

A. No.

Q. What about the concrete work?

A. Well, the concrete work—the measurement?

10 Q. Yes.

A. Took no note at the time I was there.

Q. Now what about those piers? There was some testimony given about some piers that were taken down and put up again.

A. I was sent there to put in the concrete footings for the piers which I did, and the brick came on the ground, and I looked at the brick and after we started to lay them I saw that the bricks wouldn't stand the weights and every four we had to take up one, (that is giving them a big skip;) we  
20 didn't get over three feet high with the wall and I mentioned to Mr. Muth that these bricks wouldn't stand the weight; he looked at me and said "John, if you don't keep quiet, you will be discharged." Of course I shut up. I says to Mr. Booye, Jr., and Mr. Booye, Sr., "I am afraid of these bricks." I was worried, but nothing was said, and I was told to go on, which I did. The weather was freezing very hard, and they sent the cement there (I don't know in regards to the quality of it) and we put the cement in, and there was portions of work went up there; we would go in  
30 there in the morning, and say eight or ten from the top of the line, the bricks would crack, and of course instead of trying to gouge them out, I would take the piers down, and start up new, and Mr. Muth knew the condition of the weather and the material we were using, and he never said stop, but "go ahead; we want to get done;" and I thought



to myself, we will go ahead and there was brick there that wouldn't stand the weather and I said "those footings won't stand, I am afraid;" and he says "haven't you got any hard brick?" I says, "I don't know, I think there are some on the back." I said, "What about those bricks I have put in?" He says, "They are good enough; put them in," and what was I to do but go ahead, and he told me to begin those piers and I was afraid to do it.

Q. And what did you do?

A. We went ahead and we decided when we got up to 10 the girder line we wouldn't risk our lives and we didn't.

Q. What was finally done with them? Did you take them down entirely?

A. Mr. Cox was in Mr. Booye's employe, and the piers that were the worse started to crack down at either side. Rufus says, "You had better take them down." So we started and took them down and rebuilt it. Then we went on to another pier and was about to take it down when Rufus came along and threw up the job.

Q. He didn't finish the work, then?

20

A. No.

MR. VAUGHN:—How far had you gone then?

A. To the girder line.

Q. Was the other brick work all finished?

A. Everything was finished but the front. And another thing I would like to state. He knew we run the piers up to the girder line. We covered them up and the weather at that time was raining and snowing and so on, and them piers stood fully a week without cap stones on them, and they began to work on the work and run the frame work up two 30 stories high and left them piers open for the rain to beat in there and the water to freeze and of course the contraction and expansion didn't do the piers any good.

Q. Did it burst them?



A. Yes, sir.

Q. It was the piers you took up, but the veneering——

A. We were up to the girder line; we were up to the second story line.

Q. What do you know, if anything, about Muth taking the men away from the front of the building back to the concrete?

A. We would be working on the front and on that wall on the back of the porch and Muth's foreman would come  
10 and say "John, I want this done or that done," and I says to Mr. Booye, "How about Mr. Muth taking us off of this front work?" And Booye says, "Whatever he tells you to do, go do;" which we did. We put in a wall and built around the heater, and concreted and cemented and fixed up for a range and boiler.

Q. All this was on the Boscobel you are talking about?

A. Yes, sir.

MR. LEVERING:—Did you say that these bricks were  
20 too soft and wouldn't stand the weight; is that the idea?

A. Yes, sir.

Q. Well, do you know that the building was finished afterwards with the same brick and is still standing?

A. Yes, sir; but are they the same quality sent there first?

Q. Did those bricks break because they were too soft; before they had any cement on them; that is why they broke?

A. I don't know much about the bricks unless it was the  
30 expansion or the contraction.

Q. You stated that those bricks broke while you were putting them up?



A. Yes, I say that when we took a brick and attempted to settle it down to a point, if you tapped it, she was gone; any bricklayer knows that when you butter brick you must settle it to a bed, we buttered them.

Q. You stated that these bricks were soft and wouldn't stand the weight?

A. That is my opinion, sir.

Q. Why is it they are standing the weight today with a finished building and they wouldn't stand before?

A. I tell you as I suppose, due to action of weather expansion and contraction; one day it was cold and the next day warm. Did you ever take a brick and put it in the water and see how it would absorb—

Q. Did you ever see a brick that wouldn't absorb?

A. No, I never seen a brick that wouldn't absorb water, but I have seen bricks that will absorb water, but at the same time the weather won't take hold of them.

BY MR. CRANDALL:—

Q. You said the brick expanded and contracted?

A. As near as I know, yes, sir.

Q. A brick don't expand or contract. Is a brick any bigger—suppose you fill it with water, or rather put it into the water, measure it, and put into water again; has the brick expanded? Is the brick any bigger in its dimensions?

A. Not a clay brick, no.

Q. Is a Ventnor brick?

A. Well, if you will let me explain—

Q. I don't want any explanation.

A. I will say no.

Q. It is the hard, pungent—

A. I am trying to give you facts.

Q. I don't care.

A. Well, I can't give you any satisfaction then; if I can't explain I will keep quiet.



FRANK MUTH, Sworn.

DIRECT EXAMINATION.

BY MR. CRANDALL:—

Q. You are a party to this arbitration?

A. Yes, sir.

Q. Now you have a bargain with Mr. Booye about building this property called the church property.

A. Yes, sir.

Q. Now what was the bargain?

A. That he lay all my rough brick for five and a  
10 half a thousand and the press brick—

Q. What do you mean by "All my rough brick?"

A. All my rough brick on all the jobs.

Q. And all the rough brick was to be laid at five and a  
half a thousand?

A. Yes, sir.

Q. On all the jobs?

A. Yes, sir.

Q. You mean the jobs then in contemplation?

A. Yes.

20 Q. And did you have any conversation and explain to him where and all about it?

A. Yes, sir.

Q. What was said about the face brick

A. Why, Mr. Rufus Booye, Jr., came around. He was  
sent by his father to see me about laying the brick that was  
on the church property. I told him that we have to use up  
all the brick, but I will clean them and have them brought  
to the place and what he was to lay them for and furnish  
labor and mortar and sand, etc. So finally we come to the  
30 price; that was five dollars and a half a thousand.

Q. Now your testimony contemplates three kinds of brick. Do you mean rough brick?



A. No, I say rough brick, five dollars and a half. Now I want to explain how the conversation happened in regard to the press brick. We were on the ground there, and the St. James property which we moved to the St. James Place owned by Charlie Baake, and Charles Baake's place had a press brick front on it and rough face press brick the same as the Ventnor brick, and I showed him those brick and he said that was worth six and a half a thousand. That was the conversation I had with him; that was the contract.

Q. Did you agree to give him six and a half a thousand? 10

A. Yes, sir.

Q. As I understand your recital of the agreement then, you was to pay him five dollars and a half for rough and all the balance six and a half?

A. The bricks for the two jobs, St. James and the Catholic parsonage, six dollars and a half; them two jobs came first.

Q. After that the Boscobel?

A. Yes.

Q. Then I understand you, you say that all of the calculation between you and Mr. Booye is to reckon the bricks, the one kind of bricks at five dollars and a half and the other six and a half for the two properties, the church and the St. James Place? 20

A. Yes, sir.

Q. Now how many brick were there in the church laid at five and a half? How many brick?

A. The rough brick on the church were 64,020.

Q. At five dollars and a half?

A. Yes, sir.

Q. How many press brick? 30

A. 8658.

Q. At six and a half?

A. Yes, sir.



Q. Well, is that all the controversy there is between you and Mr. Booye?

A. On this job and the St. James Place.

Q. Does this take in both of those jobs?

A. No, sir.

Q. As I understand you, this church or priest's house is 64,020 and the press brick 8658 at six and a half?

A. There is 5,244 rough brick under this wall in front.

MR. LEVERING:—Is that outside of these other figures?  
10

A. Yes, that is the rough brick.

MR. COLE:—In addition to the 64,000?

A. Yes, 5,244.

Q. Is that all there is then in controversy between you and Mr. Booye on the church?

A. Yes.

Q. And that is all about it?

A. Yes.

Q. And it was all done by contract?

A. Yes, sir.

20 Q. Now, we come to St. James Place. How many brick there; rough brick?

A. Main building, 23,210; chimney, 7,229; range, 1,140.

Q. How much did the contract call for laying those?

A. Five dollars and a half.

Q. Is that all the business you had with Mr. Booye?

A. There is face brick in this building.

Q. How much was he to lay the face brick for?

A. Six and a half.

30 Q. How many?

A. 3493 face brick.



Q. At six and a half?

A. Yes.

Q. Does that take in all the controversy as to that?

A. No.

Q. What else do you owe him for?

A. There was a wall there, a piece of porch wall which was taken down by Mr. Booye's men. I told him to do it and build the same again. I expected Mr. Booye to take that and to charge me by the day.

Q. To take that wall down?

10

A. Yes, and build that again. I expected that.

Q. How much was that?

A. I haven't figured that.

Q. What is the size of it?

A. About fourteen feet in length and three feet wide and eight feet high.

Q. Fourteen long, three wide and eight high?

A. As near as I can come to it.

Q. He was to take them down, and what to do with the brick?

20

A. Clean them and put them up again, because there were more bricks furnished there; well, a few more.

Q. Did you furnish all those bricks?

A. Yes, sir.

Q. So that he didn't furnish any brick or anything?

A. I furnished all the brick and cement.

Q. Then all the items in controversy here between you and him on the St. James Place is the rough brick, the face brick and taking down and clearing this fourteen feet wall, three feet wide and eight feet high?

30

A. Yes, sir.

Q. Is that all of it?

A. Yes, sir.

Q. Now, suppose we take up 18 S. Kentucky avenue.

A. Next comes the Boscobel.



Q. Well, we will go to the Boscobel.

A. I want to make a statement here. Before we started that job, Mr. Booye came to me and says he could not furnish the laying of the bricks for five dollars and a half; he ought to have five dollars and seventy-five cents. I told him what was the reason; because there was a great big wall; he could make time on it cheap work and rough work, and I was willing to give him five dollars and seventy-five cents; then of course I understood this price would go for all other work, that is, the 18 S. Kentucky Avenue; that was the understanding.

10 Q. Well, how many rough brick then were laid at five, seventy-five there?

A. 73,118 on the main building.

Q. What else?

A. Then there were 17,123 what backed up the wall.

Q. And that is the rough brick?

A. That is the rough brick in the Boscobel.

Q. How much was that a thousand?

A. Five dollars and seventy-five cents.

Q. Now, what else was to be done?

20 A. Well, there were rough face brick laid.

Q. What was the contract about laying the face brick?

A. The face brick were laid by the day. I come to see Booye and asked him how much he was willing to lay them brick for by the thousand.

Q. What brick?

A. The face brick. He knew the brick because we had been using them. I told him the Ventnor Company's brick.

Q. What do you mean by his having been using them?

A. It was understood that he was to use them on all the three jobs; use the Ventnor brick on day jobs; that is where the conversation took place.

Q. About the Boscobel?

A. Yes. In the first place he was going to use them



brick, them rough face brick, which is just as hard to lay as the other ones; all the witnesses here will tell that. When we come to the press brick I asked him how much he can lay them by the thousand. He didn't know.

MR. COLE:—You are talking about the Boscobel?

A. Yes. I says, I will see Mr. Turner and I can get them made at ten dollars a thousand and he says he didn't want them at all, and I says I didn't want to give the job to anyone else; he had been doing the rough work and to give me a price and he thought he could lay them for twelve dollars a thousand and I goes to work, and I says I can save money by having them laid by the day; and that ended the conversation, and they were laid by the day. 10

Q. How many bricks were laid?

A. 18,033.

Q. And that is all the face brick that were laid?

A. Yes, sir; Now there were some rough brick used, 1140; used on the concrete.

MR. BOURGEOIS:—Are they rough?

20

A. Yes, sir.

MR. COLE:—1140 on the concrete?

A. Underneath the concrete.

MR. VAUGHN:—As the bottom layer?

A. They were laid dry.

Q. What about taking down those piers?

A. On the Boscobel?

Q. Yes.



A. Why when we started to lay them brick, Mr. Crandall, the witnesses here will swear, that I requested Mr. Walker and his laborers to use all cement necessary or use all the cement if needed to make a job out of those piers. as they had to carry all the weight. Of course, I wasn't around there all the time. I instructed my foreman to look to it to be put up proper. Of course, there was bad weather.

Q. I want you to state what the fact is; what has the  
10 weather got to do with the cement?

A. I told him that it wouldn't make any difference, the bad weather, if they use all cement. So when they got up half way, of course, some of the bricks broke, but they wasn't broke because they were poor; they were broke because they used too much lime and sand in the mortar; the brick, there is no question about that.

Q. It was the lime and mortar that did it?

A. Yes; when they come to the piers they went to work and put up eighteen inches or two feet to make a nice job  
20 and when they got them high enough, they took mortar and dropped them in, and never tied the piers at all.

MR. LEVERING:—Those were the piers that carried the whole building?

A. Yes, sir. There was a great deal of fuss about those piers right along. I have asked Mr. Building inspector to come around here to-night. He would tell you that my work went up there before he had hardly started; that he was afraid of it; behind my back. I never knew a thing about it and Mr. Westcott came here and I took him down, and he  
30 tested the strenght of the brick, you know.

MR. VAUGHN:—Did he take one of those brick that were at the building?

A. Yes, and they were all the same.



MR. BOURGEOIS:—What kind of pressure?

A. Compression. Testing machine.

Q. But there was nothing to show their strength as regarded their support?

A. Yes, that is the same thing they showed. Now Mr. Wescott, after he saw the brick, was satisfied to let them go on with the work, you know, to build them piers. There was too much mortar in them and in the cold weather the brick expanded. The stuff was inside of the piers; it wasn't outside of the piers. They are up now and they never show 10 anything.

Q. How much did it cost to take those down and put them up?

A. I cannot tell exactly. I expect about two hundred dollars.

Q. What did Br. Booye say about it? Why didn't he do it?

A. Before Rufus Booye, Jr., came around, I got Mr. Booye, Sr., the job for moving and we were talking about the brick work and he said "Why don't you give my son the 20 job; he could wait for the money and wouldn't bother you;" and if he done just as he ought to, he should have come to me. Mr. Booye knows as well as I do that I sent for him to meet me at the Boscobel. He brought Mr. Booye, Jr., along and we took a pier down about two feet on the outside to show what kind of work was done on the inside of them. Mr. Booye says, "How much will it cost you to take them down?" "Thirty dollars?" I says, "I give ten dollars," that was all that was said. Of course the Ventnor company sent me a letter that it was very strange 30 that these things should happen for Mr. Booye. They sent me a man who can lay them brick, which they did, which the man had charge of after Mr. Booye left. There the



wall is up now and you cannot show me a crack in the whole business.

Q. How much did it cost you to make that change?

A. I haven't taken any time, because at that time I thought we could do it myself.

Q. How much?

A. I should say about two hundred dollars. I would measure it up exactly and find out. I have no statement here at all, but I could furnish that at any time.

10 Q. About two hundred dollars?

A. I should judge so.

MR. VAUGHN:—How did you have them done by the day?

A. Yes I had to use 8x8 yellow pine and support the building and take everything off and take those piers down and we took one down at a time, and then finally we got some more lumber. Our time got short to take down every one of them.

MR. BOURGEOIS:—One of them testified that you  
20 told them to build those piers up—

A. I didn't. Here is a man who will prove that. Their own bricklayer will prove that. I have always said, "Use plenty of cement." Don't you think I know that?

MR. BOURGEOIS:—I ask you whether you did or not?

A. I did not. I knew those piers had to carry all of the weight and any good bricklayer couldn't use any such stuff as that.

Q. That is all about the Boscobel then?



A. Yes, sir. There was some concrete done which Mr. Schimpf will testify to.

Q. Now, we come to 18 S. Kentucky Avenue; what was the bargain about that?

A. The bargain was five dollars and seventy-five cents per thousand.

Q. Any press brick?

A. Yes, sir. Press brick was laid by the day.

Q. How many rough bricks?

A. 22,421. 10

Q. Was that all the rough brick?

A. Yes.

Q. How many pressed brick were there?

A. 2387.

Q. Is that all the work done there?

A. Yes, sir.

Q. That ended it?

A. Yes; that is what we got to dispute over.

Q. Then when 22,421 is multiplied by five seventy-five and you have paid for laying 2,387; then your job is at an end? 20

A. Yes, sir.

#### CROSS-EXAMINATION.

BY MR. COLE:—

Q. You have testified to the number of rough and face brick that were laid on the several jobs on a piece of paper held in your hand?

A. Yes, sir.

Q. Whose writing is on that paper?

A. Mr. Schimpf's. 30

Q. What do you personally know of the number of face and rough bricks that were laid on those jobs?



A. I don't know anything about it, but I will explain. You must know this. when we had the first meeting here we decided that I shall send two men there, strange men; and Mr. Booye shall send two there to settle; two men.

Q. You personally had nothing to do with the measurement?

A. No.

Q. Is it not a fact that long before this question of arbitration came up that Mr. Rufus Booye, Jr., the plaintiff  
10 here, sought to have you go with him to make these measurements?

A. No, sir.

Q. Did he ever do it before?

A. No, sir.

Q. On what job did he begin to lay the Ventnor brick  
first?

A. On the Boscobel.

Q. And what job second?

A. The St. James Place and the church; they were put  
20 up together.

Q. When did Mr. Booye first know that he was to lay as face brick on the three jobs, the Boscobel, St. James Place and the church, these Ventnor brick?

A. When? On the Boscobel?

Q. On the Boscobel he first knew he had to use the brick for this work?

A. Yes.

Q. And on that occasion he refused to lay the Ventnor brick, for twelve dollars a thousand?

30 A. Yes, sir.

Q. And you then and there agreed to pay him by the day?

A. Only on the Boscobel.

Q. Was it after that that he agreed to lay the Ventnor bricks by the thousand?



- A. He didn't agree no more on that.
- Q. There was no other agreement afterwards?
- A. No, sir; because the bricks he was going to use on those two jobs, on the church and St. James Place, they were rough face brick.
- Q. But they didn't use those kinds of bricks?
- A. No, sir.
- Q. You used those Ventnor brick in the St. James Place and the church?
- A. Yes, sir. 10
- Q. In other words you used a different brick from what you were first going to use?
- A. Yes.
- Q. And the first time that Mr. Booye had any intimation that you were going to lay the Ventnor brick, he refused unless you paid him twelve dollars a thousand?
- A. Yes, sir.
- Q. And it was after that that he laid the brick on the two jobs here in question?
- A. Yes, sir; after that.
- Q. And there was never any other agreement about the face brick after the Boscobel contract was made? 20
- A. No, sir.
- Q. And as I understand the only question there is in controversy between you and Mr. Booye is as to the price to be paid for the face brick and the number of brick that were laid?
- A. The number of brick that were laid, yes, and the price of the face brick.
- Q. That is the only thing in dispute between you? 30
- A. Yes, sir.
- Q. It all comes down to that?
- A. Yes, sir.
- Q. In every other respect this is correct?
- A. There is more brick there than is charged.



Q. In every other respect save as to the number of bricks laid and the amount of the—

A. His bricks are not correct. Yes, sir; they are not correct. He charged me with more lime and sand there, too.

BY MR. CRANDALL:—

Q. Do you mean to say that the number of days charged there is correct?

A. No.

10 Q. He asked you if it was all right except the number of brick.

A. There is too many days.

Q. How much too many days?

A. I should judge quite a good many of them. It is for the arbitrators to say. He agreed to lay them for twelve dollars. They started on the front and then went back on the main building. Now, I am not supposed to pay the front brick and the rough brick by the thousand and pay him six dollars a day too. I don't expect to do that and that is why this arbitration has to come about.

20 Q. In other words you are willing to pay a proportionate amount for laying these bricks?

A. I will leave it to the arbitrators.

Q. A proportionate amount you are willing to pay, but you are not willing to pay five days work for one?

A. No.

MR BOURGEOIS:—What was the agreement as to the price for laying the chimney?

A. They were all rough brick. That rough brick was to be laid for five and a half.

30 Q. No special agreement as to the chimney at all?

A. None whatever.



Q. Is it customary to have a chimney built by the thousand?

A. Yes, when you make whole new walls under a building. It is different when you just build a chimney.

Q. He wouldn't get very much at building a chimney for five and a half a thousand?

A. No, sir.

Q. You say the chimney and that sort of thing wasn't mentioned?

A. No; five and a half for all rough brick.

Q. But you do admit it was small for just making a chimney?

A. Yes; not when you have big work like this. Well, I have no more to say. We had a bargain for five and a half for them rough brick to be laid.

MR. VAUGHN:—There was no agreement in writing for any of the work?

A. No, sir.

Q. No witness to it?

A. No, sir.

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WILLIAM SCHIMPF, Sworn.

DIRECT EXAMINATION.

BY MR. CRANDALL:—

Q. What is your business?

A. I am a bricklayer.

Q. How long have you been a bricklayer?

A. Thirty or thirty-five years, I guess.



- Q. In whose employ have you been for the past year or two?
- A. Part of the time I have been with Frank Muth.
- Q. Did you go in company with anybody and measure the bricks in the church property?
- A. I did.
- Q. Who went with you?
- A. Morris Griffith, Rufus Booye, Jr., and John Walker.
- 10 Q. And yourself?
- A. Yes.
- Q. How came you to go?
- A. Well, we met to that effect, I believe, for to go and measure it; Mr. Booye and myself, Mr. Walker and Mr. Griffith was along also.
- Q. You heard young Booye say that he had no idea as to the number of these brick in the church?
- A. I heard him say so here to-night, yes, sir.
- Q. Were the figures for him there?
- 20 A. I took the measurements and we figured that afterwards. We didn't figure that there.
- Q. Did he take the measurements?
- A. Yes.
- Q. Who else?
- A. I did; that is all, him and I.
- Q. Did you ever compare them afterwards?
- A. No, sir.
- Q. In the church, how many brick did you find, rough brick? Did you and Mr. Booye take the rough and face
- 30 brick?
- A. I don't think we took the face brick; he took the rough brick; but he said the other were days' work.
- Q. Did you take them?
- A. I did.
- Q. How many rough brick at the church?



A., 64,020.

Q. How many face?

A. 8658 and then there were 5244 in the footings under the face brick, around the porch.

Q. How much is it worth a thousand to lay those face brick there?

MR. COLE:—I object. There was either a contract or there wasn't.

A. Well, it is worth fifteen dollars a thousand to lay them. I wouldn't want to lay them for any less. 10

Q. You heard what the other man said, he said sixteen dollars?

A. Yes, I heard what he said and what Mr. Booye said.

Q. I don't care anything about that; but you heard Mr. Walker say it was worth sixteen dollars?

A. Yes.

Q. Did you and Mr. Walker have any conversation about it

A. No, sir. It is worth fifteen dollars a thousand to lay any smooth brick. 20

Q. Is it worth any more to lay these brick than to lay Mays Landing brick or any other press brick?

A. No, I think not. I would want that price to lay any press brick. I don't think they can be laid for any less.

MR. VAUGHN:—Isn't it a fact that there is more breakage in handling?

A. There is more breakage in the handling.

Q. Didn't it require more care in handling?

A. No; we laid them afterwards and we laid them before and since. Of course there is flaws and cracks in them 30 the same as others, but I don't think there is one-fourth or



one fifth. I didn't find it so when I put the front up at the Boscobel.

MR. VAUGHN:—Do these bricks cut as well as ordinary bricks?

A. Yes, sir; better. You can cut them all right.

MR. BOURGEOIS:—Aren't they all the same grade?

A. Seem to be. Once in a while you might find one with a kiln crack; of course where you find that and tap it it will break.

10 MR. BOURGEOIS:—Suppose you butter the brick and lay it and in settling it, it breaks; do you then throw it away?

A. Yes.

Q. And you are obliged to scrape off the mortar before you lay the next brick?

A. Undoubtedly so.

BY MR. COLE:—

Q. How many rough brick did you find on the St. James Place? Is that the same paper you have there that Mr. Muth testified from?

20 A. Yes.

Q. When you came to the Boscobel; what is it worth to lay these Ventnor brick in the Boscobel?

A. To go as high as the Boscobel went it is worth fifteen or sixteen or eighteen dollars a thousand to get them up there, understand there was a 4 inch wall and we had to get them up there about six stories from the ground. Of course the higher you go the more you want to lay them. It is a veneered wall.



Q. Do you know what Mr. Booye laid there? Did he lay above the front porch?

A. He laid up to the front porch and some of the piers were up. When I went there, there were two down, I guess, and one of them they had taken down and put up again.

Q. Do you pretend to say it is worth sixteen and eighteen dollars a thousand to lay them to the front porch?

A. I say it is worth fifteen dollars to lay them anywhere.

10

Q. Did Mr. Booye lay above the front porch?

A. I suppose he did; the piers were up, part way anyway.

Q. He laid nothing but the front porch except what was done at the piers?

A. That is all, I believe; there were two of them done, when I went there.

Q. What was the matter with the piers that were done?

A. They were in bad condition.

Q. What was the matter with them?

20

A. They weren't fit in properly.

Q. In other words, the mason work wasn't done properly?

A. No, sir; it was not.

Q. Was there anything the matter with the material?

A. The mortar didn't have cement enough in it; I don't know if it had any there at all, and the bricks were thrown in there on their ends and the joints were thrown in, the way it looked, the way they threw the mortar in.

Q. Is that a part of the mason's work, to mix the mortar properly?

30

A. It is a part that he should know what he is using in a job like that.

Q. Did you take those piers down?



A. Yes, and buttered them out clear down to the concrete.

MR. BOURGEOIS:—What is the size of the piers?

A. What they were filling in were about three bricks with about two foot scale and then the smooth work outside of that. That made the inside brick three.

MR. VAUGHN:—Did Mr. Muth furnish that cement?

A. So I heard There was plenty of it when I went there.

10 Q. What object would Mr. Booye have had not to put the cement in there?

A. That I don't know. There was plenty of it there. Whether it was an oversight in watching the labor, I don't know; but it didn't seem to have much in it, some of it, anyhow.

Q. Was that the reason that the piers had to be taken down?

A. I suppose it was. They didn't seem to be put up properly, because if they had been put up properly, the inside courses, whether there was any weight outside or not, would have held them.

Q. How many piers were there?

A. About eight or nine, I guess; I don't know exactly now.

Q. How much was it worth to put them up the way you put them up?

A. Well, I don't know exactly what it would be, because I don't know how many days we were at it.

Q. About how much?

30 A. I expect it was worth a couple hundred dollars as Mr. Muth said.



Q. MR. BOURGEOIS :—How high?

A. Laid up to the second story; away from the base up to the second story; the piers run up to the second story.

Q. That is about how many feet?

A. I should judge in the neighborhood of twenty feet. I don't know what the first story is.

Q. About twenty feet high?

A. I should judge about twenty feet high. Maybe a little higher or maybe not so high, but about twenty feet, I should judge.

10

Q. When you took measurements on 18 S. Kentucky avenue?

A. Yes.

Q. And so far as laying the press brick or rough brick is concerned, there was nothing particular about that at all; it was a straight job?

A. That is all that I seen.

MR. BOURGEOIS :—How many piers did you have to rebuild there?

A. We took them all down to the porch and some of them we took clear down to the foundation, and the others on the corner we took them down to the porch, and then I took all the inside out and put hard brick and good cement mortar in them.

MR. VAUGHN :—Do you mean to say that it cost two hundred dollars for that work?

A. Yes; the whole business; it wouldn't cost two hundred dollars to build the piers.

Q. Does it include the shoring up?

A. Yes, it includes all the work around there.

30



CROSS EXAMINATION.

BY MR. COLE:—

Q. How did you measure in order to ascertain the number of face brick that were used in the church?

A. With a line.

Q. Did you do that in the foundation to make the measurement in the church?

A. Yes, sir.

Q. And that is true of the other places?

10 A. Yes, sir.

Q. No difficulty to ascertain the number of face brick?

A. No, sir.

Q. Did you make the measurements before or after?

A. After, I think.

Q. Was Mr. Booye there, or had he gone?

A. Yes, he had gone.

Q. The face brick you mean?

A. Yes, sir.

20 Q. You don't know anything at all about the laying of these brick on the piers at the Boscobel; you weren't there when any of the work was done?

A. Not the first time, no. I went there when they were taken down.

MR. VAUGHN:—Was there any of those same press brick used in the construction of the new piers at the Boscobel?

A. Well, there might have been one now and then cleaned off, but very few.

Q. Why weren't they used?

30 A. Well, they were full of color. You know they were stained and they wouldn't have been fit. We used some of



them on the end of the building and Mr. Marion objected to them, and we stopped them. They seemed to be solid and all right, but they were stained.

Q. You used quite a number of these brick?

A. We used quite a number, till Mr. Marion ordered us to stop.

Q. They are still in the wall without being broken?

A. Yes, they are in the wall.

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RICHARD COX, Sworn.

DIRECT EXAMINATION.

10

BY MR. CRANDALL:—

Q. What is your business?

A. Bricklayer.

Q. How long?

A. I think this is the thirty-second year I worked at it.

Q. Were you engaged in the laying of the brick there at the Bosscobel?

A. At the first of their being built?

Q. Yes.

A. I was there for about two hours one day; worked on the back part, but no longer; on the first construction of them, about two hours, I should think in the afternoon.

Q. How is it you did not work longer?

A. I was sent to do other work.

Q. Did you have any conversation with Mr. Booye about the construction of these piers?

A. Not with Mr. Booye to the best of my recollection. I did with Mr. Walker. I expressed by opinion in regard to them to him.



Q. What was it?

A. Before they were started, I told him that much depended on the filling in of those piers; that in order to make a job to support that heavy work, care should be taken to fill them in properly.

Q. What did he say about it?

A. He said yes, that was a fact, it should be done that way.

Q. Did he obey your suggestion?

10 A. No; it didn't prove to be that way when they were examined afterwards. I wouldn't say that it was his fault, but they were badly constructed.

Q. Did you have any conversation with Mr. Booye about it?

A. Not that I recollect. I might have spoken to him about it, about their not being built properly. I don't recollect of ever saying anything to him.

#### CROSS EXAMINATION.

BY MR COLE:—

20 Q. Mr. Booye was your employer at the time you were first on this building?

A. Yes, sir.

Q. And you were dismissed by him, were you not?

A. Yes, but that was after the piers were being built.

Q. You were dismissed for condemning these bricks, weren't you?

A. No, they condemned themselves.

Q. Did they have anything to do with it?

A. It had; the result of it proved to be that, but not  
30 directly.

Q. You did condemn these bricks didn't you?

A. Which?



Q. The brick we are talking about.

A. The inside I did.

Q. You condemned these Ventnor brick?

A. I said they were soft and not capable of sustaining the weight.

Q. And for what you said about those brick you were discharged?

A. That might have been it and it might not.

MR. CRANDALL:—

Q. If the piers had been properly filled it would have been all right? 10

A. They proved afterwards when they were properly built that they were all right. They could have been constructed all right in the first place.

Q. The difficulty was in the first construction?

A. Yes.

BY MR. COLE:—

Q. Why did you say those bricks were soft?

A. Because they were.

BY MR. CRANDALL:—

20

Q. Is that anything against them?

A. I think it is, to be fair; I don't think Mr. Booye intended to do anything like that.

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RUFUS BOOYE, Jr., Recalled.

BY MR. COLE:—

Q. Before you went to measure the brick in question with Mr. Schimpf and Mr. Walker, had you ever sought Mr. Muth to have him go with you?



A. Yes, sir; on several occasions.

Q. What did he say?

A. Well, he made three or four promises and never kept them.

Q. Why did you want him to go with you and make the measurements?

A. Because we had a chance to do it before the floors were laid and we could have made our figures and both be there together.

10 Q. Under whose direction were the men, the bricklayers, who worked on the Boscobel?

A. They were practically under Mr. Griffith's orders here.

Q. And who is Mr. Griffith?

A. He was foreman for Mr. Muth. My orders to my foreman was whatever Mr. Muth wanted that they should do, as my former testimony on the stand.

20 Q. What have you got to say about the ability of Mr. Schimpf to measure the number of face brick that were in the church job?

A. I should think he was capable of doing it if he had had the chance.

Q. Did he have a chance?

A. No, because the floor was built.

Q. Did you make your measurements at the same time?

A. No, before they made theirs.

Q. What advantage had you in determining the number of bricks by the measurement from what they had?

A. I had a chance to get down to the footing.

30 Q. Did they make their measurements after the floors were in?

A. Yes.

Q. Then they didn't have the ability to get under the floors to take the measurement?

A. No it was only hearsay.



Q. And was it before the floors were in that you wanted Muth to go there and help to make the measurements?

A. Yes, sir.

MR. VAUGHN:—You say it was only hearsay?

A. They only had to take Mr. Griffith's word for it.

Q. You were there with them?

A. Yes, sir.

Q. When they measured?

A. Yes, sir.

Q. What he said, was that correct?

A. I couldn't say, because I couldn't get under there and see because I had taken the measurements before the floor was laid, but I couldn't remember what they were and those are my measurements in the bills. 10

Q. Why did you go there that day to measure?

A. Simply because Mr. Muth asked me.

Q. Did he ask you for any data as to the depth of the wall?

A. I couldn't tell him no depths.

Q. You gave him no information that day at all? 20

A. I couldn't.

A. Only as to where some of the walls were, but not as to the depths.

Q. You assisted all that you could?

A. Yes, and my foreman went there to assist him.

Q. Couldn't your foreman tell him the depths?

A. No, because the grades were lower some places than others.

BY MR. COLE:—

Q. Mr. Muth says that you agreed to lay all the rough brick for the five and a half and five seventy-five as the case was; is that so? 30



A. No, sir; it is not.

Q. What have you to say with respect to the custom of the trade with laying for the chimney? Is that included in the general charge for laying?

A. Where an old building is laid, it is customary to underpin the chimneys to what you could to build the new chimney outside of that; it was always customary to do that work by the day.

Q. And they were new chimneys were there?

10 A. Yes.

Q. Did you agree to lay all the rough brick including the chimney at five and a half or five seventy-five?

A. That was the underpinning that I agreed to do for five seventy-five.

MR. VAUGHN:—Have you had the data that you took off the rough brick?

A. I only had the figures there as I charged them. You mean the memo?

Q. Yes.

20 A. No, I took the measurements and marked them down and figured them up.

Q. You haven't those figures now?

A. No; they may be around my desk.

MR. LEVERING:—Didn't you go to the Boscobel with Muth's foreman and his bricklayer at our suggestion?

A. I think we did, yes, sir.

Q. That is why you went and that is why they went?

A. Yes, sir; went at your suggestion and Mr. Bourgeois. I believe everyone of them are capable of measuring it if anyone of them could get at it.



MORRIS GRIFFITH, Sworn.

DIRECT EXAMINATION.

BY MR. CRANDALL:—

Q. What is your business?

A. Carpenter.

Q. Were you present when this measurement was had?

A. Yes, sir.

Q. You heard the figures given by the other gentlemen?

A. Yes, sir.

10

Q. Are they correct?

A. Yes, sir.

Q. Now as to those piers; did you hear any conversation between Mr. Muth and Mr. Booye about the piers?

A. Yes, sir.

Q. What?

A. I have heard Mr. Muth tell Mr. Booye to be as careful as he could and use plenty of cement and not to use any Salmon brick inside.

Q. Where were you?

20

A. Right on the sidewalk opposite the Boscobel.

Q. You were a carpenter in the Boscobel?

A. Yes, sir.

Q. Right there all the time?

A. Yes, sir.

Q. And the carpenter work and the mason work was going on at the same time?

A. Yes, sir.

Q. Did you see Mr. Booye there to measure the brick wall before the flooring was down?

30

A. No, sir.

Q. Was he there to measure it before?



- A. It must have been at night.
- Q. He wasn't there in the day time?
- A. No, sir.
- Q. Is there any trouble about measuring it?
- A. No, sir.
- Q. Anybody can measure it?
- A. Anybody that knows how.

MR. BOURGEOIS:—Mr. Griffith, how did you get the location of the walls and size when you went there and  
10 measured it?

A. We dug down for the foundations on the outside and Mr. Walker and Mr. Booye and all come to the conclusion that we would take the wall through, because the foundation, as a rule, was down on the same level.

Q. How about the footing? How did you arrive at the number of bricks there was?

A. We dug it and measured how far it was.

Q. That wouldn't give you the width of the footings?

A. We went down so much farther.

20 Q. Just made a calculation? You couldn't find out?

A. Even if it was measured you couldn't find out.

Q. How about the cross walls? Were you able to get at all the footings?

A. Yes.

Q. The floor and nothing interfered with you?

A. We didn't see the footings because Mr. Walker said how big they were and I saw them before and there was no dispute over it.

MR. VAUGHN:—Did you dig down a long the wall?

30 A. Only one.

Q. What became of the measurements you made?

A. Mr. Schimpf had them.



MR. SCHIMPF, Recalled.

BY MR. BOURGEOIS:—

Q. Where are they Mr. Schimpf?

A. I didn't put them down in a book. I put them down on a piece of paper and lost it.

MR. GRIFFITH, Recalled.

BY MR. BOURGEOIS:—

Q. Did you simply help him measure it or did you go over it with him?

A. I went over it with him.

10

---

MR. WALKER, Recalled.

BY MR. BOURGEOIS:—

20

Q. Tell us about these measurements?

A. The only thing I did was to hold the tape line.

Q. Did you explain to them where the different walls were and the width and depth of those footings?

A. Yes, sir.

Q. You were foreman on those buildings?

A. Yes.

Q. And you worked there on those buildings all the time?

30

A. Yes.

Q. How many of them did you dig down?

A. To my recollection, we didn't dig down.

Q. Just took what you could remember?



A. Just from memory.

Q. How accurately do you suppose you could remember at that time of the depth of the wall?

A. At that time we calculated, if my memory serves me right two feet below the line.

Q. At that time you were satisfied with the depths you gave?

A. We were all satisfied with the depths that we gave. At that time it was more fresh in our mind than it is now.

10 Q. If you had made a mistake of only one course of brick it would have made a great difference. One course of brick would have made a good many?

A. Yes; one of those courses was twenty-four inches in width and that meant three bricks.

Q. Laying crosswise?

A. No; lengthwise and through the length of that building it is pretty deep and of course it would seem a good deal and some of them was only nine inches.

MR. VAUGHN:—Did you take any data that day?

20 A. No, sir; Mr. Booye took all the figures. I had nothing to do with putting them up, but it was agreed among the four of us that it was all right.



ATLANTIC COUNTY CIRCUIT COURT.

In the matter of Arbitration  
between  
Rufus Booye, Jr., and Frank Muth  
before  
George A. Bourgeois,  
J. S. Levering and  
S. Hudson Vaughn,  
Arbitrators.

On rule to show cause on the petition of Frank Muth  
why the award and the rule of Court entered pursuant  
to the submission should not be set aside. 10

For the rule, Mr. John J. Crandall  
Contia, Messrs Thompson & Cole.

Memorandum by  
HENDRICKSON, J.

The objection that the arbitrators were not lawfully  
sworn, because the officer administering the oath was  
the Attorney of one of the parties, will not be con-  
sidered because it was not within the reasons upon 20  
which the rule was granted. Under point one to the  
effect that the submission fixed April 19, 1902, as the  
limit for the making and signing of the award and  
hence the award made on the 20th of August follow-  
ing is void, I conclude that strict compliance with this  
requirement is waived in the submission itself. The  
instrument is dated April 14, 1902, and directs the  
first meeting of the arbitrators to be held on the fol-  
lowing Saturday which was the 19th of the same  
month adding the words "and afterwards if necessary 30  
at such times and places as they shall appoint." An  
indorsement upon the submission also shows on July



1, 1902, the two arbitrators therein named appointed the umpire therein referred to and that both the parties to the arbitration gave their consent thereto in writing at the same time. The stenographer's notes of the evidence, shows that it was taken on July 31, 1902, before all three of the arbitrators, and that both the parties were present with their counsel and participated and that no objection was raised as to the time limit having expired or to the jurisdiction of the arbitrators. So that if it could be said that there was a time limit in the submission it was waived. The time limit may be enlarged by an agreement not under seal *Bloom vs. Sherman* 2 Edw. Ch. 452—Id 5 Page 575, or by the parties proceeding with the arbitration after the time limit without objection. *Wood vs. Tunnicliff* 74 N. G. 38 *Matthews vs. Miller* 25 W. Va., 817, *Leslie vs. Leslie* 7 Dick 382, *Everett vs. Charlestown* 12 Allen 93. In *Evans vs. Thompson* 5 East 189 it was held that where the parties by general indorsement on the bonds, enlarged the time, such agreement included all the terms of the original submission and also the agreement to make the same a rule of Court. This case was fully approved in *McClure vs. Gulick* 2 Harrison 340.

Under the third point it is contended that the award shows the arbitrators to have exceeded the authority of the submission and to have failed to confine themselves to the subject matter of the submission. There is a mis-recital perhaps in the award of the terms of the submission, but their finding shows that they did confine themselves to the disputes concerning the amount claimed to be due for work and materials on the four properties mentioned in the submission. The award that all actions, &c., between the parties respecting said premises from the date of the submission



to be no further prosecuted is confirmatory of this conclusion.

It is also contended that the award is void for the reason that it was not made by the umpire. The submission in speaking of the condition of the bonds to be executed requires the parties to abide by the award of the arbitrators or any two of them. In the appointment made with the consent of the parties describes the third person as "umpire" between the above arbitrators the case shows that the three sat together as arbitrators and acted as such in making the award, and that the third person was not selected as umpire between the parties. Under such circumstances the third party though called an umpire will be treated as an arbitrator. 10

2 Am. & Eng. Enc. (2 Ed) 712 Mullins vs. Arnold 4 Sued (Tenn.) 262 Kelderhouse vs. Hall 116, 111, 147, Ins. Co. vs. Doying 26, Va. 596. Another contention is that in this case the award is void for uncertainty, in not defining amount allowed for work and materials separately; that the evidence is undisputed that no materials were furnished by Booye at all. I do not so read the testimony. Booye testified that he furnished rough brick and mortar. As to the charge of uncertainty in the award, the objection is not well founded, because it is not required to specify particulars of the finding any more than it would be in a judgment. The account books were produced, and itemized bills of the accounts were offered for identification at the hearing. 20

Another reason urged is that the award is so excessive as to evince gross bias on the part of the arbitrators in favor of Booye and show partiality and corruption. It is a settled principle of jurisprudence that awards are to be expounded favorably and every reasonable intendment made in their support. Rogers vs. 30



Tatum 1 Dutch 281-284, Leslie vs. Leslie 5 Dick 103, Thomas vs. W. J. R. R. 9 C. E. Green 568. It is further held that no Court will review and correct an award: the only power is to set it aside for corruption or mis-conduct in the arbitrators on a plain mistake of law or fact. W. J. R. R. Co. vs. Thomas (Supra) Id -6 C. E. Green 205 Id. 8 C. E. Green 431. In this case the award is for the exact amount of the accounts presented by Booye without interest. The arbitrators  
10 heard the evidence on both sides which was considerable and they choose to give greater weight to the evidence presented by Booye than they did to that presented by Muth. There was evidence on the part of Booye that he had received on account a note for \$1,000, which had been renewed on payment of \$250, and was not then due; that Muth owed him over four hundred dollars on other work not included in the arbitration; that the cash he received was not received  
20 on account of the work and material included in the arbitration. If these facts were true, and Muth though a witness did not contradict them, then it cannot be said that the arbitrators have acted in bad faith or in clear mistake of the law if failing to credit the cash on these accounts. The charge of gross bias or other want of good faith against the arbitrators is not sustained by the evidence. I find no sufficient ground in the points raised for setting aside the award or the rule of Court entered upon the submission. The result is that the rule to show cause is discharged with costs.



(Endorsed on Back).

## ATLANTIC CIRCUIT COURT.

In the matter of arbitration between Rufus Booye, Jr., and Frank Muth. On rule to show cause why award should not be set aside. Memorandum of conclusions of Court.

Duplicate.

FRANK MUTH, (Church )  
To RUFUS BOOYE, JR., Dr.  
Contractor, Bricklayer and Plasteter, 10  
Jobbing promptly attended to

Office: 2305 Atlantic Avenue.

Residence: 128 N. Mississippi Ave.

|      |      |     |                                   |   |   |    |       |    |
|------|------|-----|-----------------------------------|---|---|----|-------|----|
| 1891 | Dec. | 18, | to 1½ days, Laborer,              | . | . | \$ | 3.38  |    |
| "    | "    | "   | " 6 hours, Bricklayer,            | . | . | .  | 3.00  |    |
| "    | "    | 23  | " Material used in Concrete,      | . | . | .  | 3.00  |    |
| "    | "    | 30  | " 6 hours, Bricklayer,            | . | . | .  | 3.00  |    |
| "    | "    | "   | " 12 " Laborer,                   | . | . | .  | 3.39  |    |
| "    | "    | 31  | " 4 days and 3 hours, Bricklayer, | . | . | .  | 17.50 |    |
| "    | "    | "   | " 36 hours, Laborer,              | . | . | .  | 9.02  | 20 |
| 1902 | Jan. | 1   | " 5 hours, Bricklayer,            | . | . | .  | 2.50  |    |
| "    | "    | "   | " " Laborer,                      | . | . | .  | 1.45  |    |
| "    | "    | 3   | " 1 bbls. French Gray Colors,     | . | . | .  | 15.40 |    |
| "    | "    | "   | " 36 hours, Bricklayer,           | . | . | .  | 18.00 |    |
| "    | "    | "   | " 1½ days, Laborer,               | . | . | .  | 3.37  |    |
| "    | "    | 6   | " 3 " Bricklayer,                 | . | . | .  | 12.00 |    |
| "    | "    | "   | " 2 " Laborer,                    | . | . | .  | 4.50  |    |
| "    | "    | 7   | " 8 " Bricklayer,                 | . | . | .  | 32.00 |    |
| "    | "    | "   | " 4 " Laborer,                    | . | . | .  | 9.00  |    |
| "    | "    | 8   | " 16 hours, Bricklayer,           | . | . | .  | 8.00  | 30 |
| "    | "    | "   | " 18 " Laborer,                   | . | . | .  | 2.40  |    |
| "    | "    | "   | " 37½ " Bricklayer,               | . | . | .  | 8.75  |    |



|       |      |      |    |                             |          |
|-------|------|------|----|-----------------------------|----------|
|       | 1902 | Jan. | 8  | to 7 hours, Laborer,        | 2.10     |
|       | "    | "    | "  | Mortar &c.,                 | 2.00     |
|       | "    | "    | 9  | 7 days, Bricklayer,         | 28.00    |
|       | "    | "    | "  | 3 " Laborer,                | 6.75     |
|       | "    | "    | 10 | 6½ " Bricklayer,            | 26.00    |
|       | "    | "    | "  | 3 " Laborer,                | 6.75     |
|       | "    | "    | 11 | 6 " Bricklayer,             | 24.00    |
|       | "    | "    | "  | 2 " Laborer,                | 4.50     |
|       | "    | "    | 15 | 4 " and 1 hour, Bricklayer, | 16.50    |
| 10    | "    | "    | "  | 1½ " Laborer,               | 2.25     |
|       | "    | "    | 16 | 1 " " "                     | 2.25     |
|       | "    | "    | "  | 4 " Bricklayer,             | 16.00    |
|       | "    | "    | 17 | 4½ " " "                    | 18.00    |
|       | "    | "    | "  | 1 " and 3 hours, Laborer,   | 3.00     |
|       | "    | "    | 23 | Laying 69432 brick, 5½      | 381.87   |
|       | "    | Feb. | 1  | Lime sand &c.,              | 9.55     |
| Total |      |      |    |                             | \$709.18 |

Duplicate.

FRANK MUTH, 18 So. Kentucky  
 20 To RUFUS BOOYE, JR., Dr.,  
 Contractor, Bricklayer and Plasterer,  
 Jobbing promptly attended to.  
 Office: 2305 Atlantic Ave.  
 Residence: 128 N. Mississippi Ave.

|    |      |      |     |                             |         |
|----|------|------|-----|-----------------------------|---------|
|    | 1892 | Jan. | 15, | to 1½ days, Bricklayer, \$4 | \$ 6.00 |
|    | "    | "    | "   | 2 " Laborer, 2¼             | 4.50    |
|    | "    | "    | 16  | 2 " Bricklayer and Laborer, | 12.50   |
|    | "    | "    | 17  | 2 " " "                     | 12.50   |
|    | "    | "    | 18  | 2 " " "                     | 12.50   |
| 30 | "    | "    | "   | Carting Sand,               | 2.25    |
|    | "    | "    | 20  | 1½ days, Bricklayer,        | 6.00    |
|    | "    | "    | "   | ½ " Laborer,                | 1.12    |
|    | "    | "    | 21  | 1 " Bricklayer and Laborer, | 6.25    |



|                 |      |     |                                    |                            |          |    |
|-----------------|------|-----|------------------------------------|----------------------------|----------|----|
| 1892            | Jan. | 22, | to 6 hours                         | Bricklayer and Laborer, 50 | 3.00     |    |
| "               | "    | "   | " 3 "                              | " "                        | .90      |    |
| "               | "    | 25  | " 4 days, Bricklayer,              | .                          | 6.00     |    |
| "               | "    | "   | " 2 " Laborer,                     | .                          | 4.50     |    |
| "               | Feb. | 1   | " 1 " Bricklayer,                  | .                          | 4.00     |    |
| "               | "    | "   | " 1/2 " Laborer,                   | .                          | 1.12     |    |
| "               | "    | "   | " Carting,                         | .                          | 1.50     |    |
| "               | "    | 12  | " 2 days, Bricklayer,              | .                          | 8.00     |    |
| "               | "    | "   | " 2 " Laborer,                     | .                          | 4.50     |    |
| "               | "    | 13  | " 2 " "                            | .                          | 4.50     | 10 |
| "               | "    | "   | " 2 " Bricklayer,                  | .                          | 8.00     |    |
| "               | "    | 14  | " 1 " Laborer,                     | .                          | 2.25     |    |
| "               | "    | 15  | " 1 1/2 " Bricklayer and Laborer,  | .                          | 9.38     |    |
| "               | "    | "   | " Lime, &c., used,                 | .                          | 17.50    |    |
| "               | "    | "   | " Carting Sand,                    | .                          | 4.00     |    |
| "               | "    | 24  | " 5 hours, Laborer,                | .                          | 1.45     |    |
| "               | "    | 25  | " 6 " Laborer,                     | .                          | 1.74     |    |
| "               | "    | "   | " Carting Sand,                    | .                          | 1.00     |    |
| "               | "    | 1   | " 5 hours, Bricklayer and Laborer, | .                          | 4.00     |    |
| "               | "    | "   | " 15 bus. lime,                    | .                          | 3.75     | 20 |
| "               | "    | 6   | " 3 " "                            | .                          | .75      |    |
| "               | "    | 12  | " 1 day, Laborer,                  | .                          | 2.25     |    |
| "               | "    | "   | " 2500 Roman brick, \$28.          | .                          | 70.00    |    |
| "               | "    | 27  | " 42 hours, Bricklayer,            | .                          | 21.00    |    |
| "               | "    | "   | " 1 days, Laborer,                 | .                          | 2.25     |    |
| "               | Mar. | 28  | " 4 1/2 " Bricklayer,              | .                          | 18.00    |    |
| "               | "    | "   | " 2 " Laborer,                     | .                          | 4.50     |    |
| "               | "    | 29  | " 2 1/2 " Bricklayer,              | .                          | 10.00    |    |
| "               | "    | "   | " 1 1/2 " Laborer,                 | .                          | 3.38     |    |
| "               | "    | "   | " Mortar Color, &c.,               | .                          | 5.00     | 30 |
| "               | "    | 31  | " 2 days and 2 hours, Bricklayer,  | .                          | 9.00     |    |
| "               | "    | "   | " 1 " Laborer,                     | .                          | 2.25     |    |
| "               | Apr. | 1   | " 500 Roman brick, \$28.           | .                          | 14.00    |    |
| "               | "    | 3   | " 14 1/2 bus. lime,                | .                          | 3.63     |    |
| Total . . . . . |      |     |                                    |                            | \$344.72 |    |



Duplicate.

FRANK MUTH,

Boscobel.

To RUFUS BOOYE, JR, Dr.

Contractor, Bricklayer and Plasterer,

Jobbing promptly attended to.

Office: 2305 Atlantic Ave.

Residence: 128 N. Mississippi Ave.

|    |      |        |                                |        |   |   |    |       |
|----|------|--------|--------------------------------|--------|---|---|----|-------|
|    | Nov. | 14, to | 15000 small brick,             | 6½     | . | . | \$ | 97.50 |
|    | "    | 16     | " 5000 " "                     | "      | . | . |    | 32.50 |
| 10 | "    | "      | " 5000 hard "                  | 9½     | . | . |    | 47.50 |
|    | "    | "      | " 6000 salmon "                | 6½     | . | . |    | 39.00 |
|    | "    | 22     | " 1000 hard "                  |        | . | . |    | 9.50  |
|    | "    | 30     | " ½ days, Bricklayer,          |        | . | . |    | 2.00  |
|    | "    | "      | " 1½ " Laborer,                |        | . | . |    | 3.38  |
|    | "    | "      | " Sand,                        |        | . | . |    | 1.00  |
|    | Dec. | 2      | " 1 day, Bricklayer,           |        | . | . |    | 4.00  |
|    | "    | "      | " 2 " Laborer,                 |        | . | . |    | 4.50  |
|    | "    | 13     | " 2000 salmon brick,           | 6½     | . | . |    | 13.00 |
|    | "    | 14     | " 2500 " "                     | "      | . | . |    | 16.50 |
| 20 | "    | 9      | " 2 days, Bricklayer,          | \$4    | . | . |    | 8.00  |
|    | "    | "      | " 2 " Laborer,                 |        | . | . |    | 2.50  |
|    | "    | 10     | " 7 " Bricklayer,              |        | . | . |    | 28.00 |
|    | "    | "      | " 3 " Laborer,                 | \$2.25 | . | . |    | 6.75  |
|    | "    | 11     | " 11 " Bricklayer,             | \$4.   | . | . |    | 44.00 |
|    | "    | "      | " 5 " Laborer,                 |        | . | . |    | 11.25 |
|    | "    | 12     | " 5 " "                        |        | . | . |    | 11.25 |
|    | "    | "      | " 11 " Bricklayer,             |        | . | . |    | 44.00 |
|    | "    | 13     | " 13 " "                       |        | . | . |    | 52.00 |
|    | "    | "      | " 47 hours, Laborer,           |        | . | . |    | 13.21 |
| 30 | "    | 14     | " 15 days, Bricklayer.         |        | . | . |    | 60.00 |
|    | "    | "      | " 6 " Laborer,                 |        | . | . |    | 13.50 |
|    | "    | 15     | " 29 hours, Bricklayer,        |        | . | . |    | 14.50 |
|    | "    | "      | " 3 days and 3 hours, Laborer, |        | . | . |    | 5.34  |
|    | "    | 24     | " 62 hours, Bricklayer,        | 50     | . | . |    | 31.00 |
|    | "    | "      | " 32 " Laborer,                |        | . | . |    | 8.96  |



|      |     |                                 |                    |          |  |         |
|------|-----|---------------------------------|--------------------|----------|--|---------|
| Dec. | 26, | to 9 days,                      | Bricklayer,        | \$4.     |  | 36.00   |
| "    | "   | " 5 "                           | Laborer,           | 2 1/4    |  | 11.25   |
| "    | "   | " 3 bbls.                       | Green Colors,      | 15.40    |  | 30.80   |
| "    | 27  | " 48 hours,                     | Bricklayer,        | 50       |  | 24.00   |
| "    | "   | " 24 "                          | Laborer,           |          |  | 7.20    |
| "    | 28  | " 1000 salmon brick,            |                    |          |  | 6.50    |
| "    | "   | " 1296 dow C. brick,            |                    | 8        |  | 10.36   |
| Jan. | 3   | " Mortar slams,                 |                    |          |  | 39.72   |
| "    | 7   | " 1 days,                       | Bricklayer,        |          |  | 4.00    |
| "    | "   | " 1/2 "                         | Laborer,           |          |  | 1.25 IO |
| "    | 8   | " 3 "                           | Bricklayer,        | \$4.     |  | 12.00   |
| "    | "   | " 1 "                           | Laborer,           |          |  | 2.25    |
| "    | 9   | " 1 1/2 "                       | Bricklayer,        |          |  | 6.00    |
| "    | "   | " 1 "                           | Laborer,           |          |  | 2.25    |
| "    | 18  | " 7 hours "                     |                    |          |  | 2.10    |
| "    | 20  | " Carting.                      |                    |          |  | .50     |
| "    | 21  | " 3 days,                       | Bricklayer,        |          |  | 12.00   |
| "    | "   | " 2 "                           | Laborer,           |          |  | 4.50    |
| "    | 22  | " 5 "                           | Bricklayer,        | \$4.     |  | 20.00   |
| "    | "   | " 2 "                           | Laborer,           |          |  | 4.50 20 |
| "    | 23  | " 2 "                           | "                  |          |  | 4.50    |
| "    | "   | " 5 "                           | Bricklayer,        |          |  | 20.00   |
| "    | "   | " Sand and lime for front work, |                    |          |  | 20.00   |
| "    | "   | " Laying 98642 rough brick,     |                    |          |  | 567.10  |
| "    | 24  | " 7 days,                       | Bricklayer,        | \$4.     |  | 28.00   |
| "    | "   | " 2 "                           | Laborer,           |          |  | 4.50    |
| "    | 25  | " 5 "                           | Bricklayer,        |          |  | 20.00   |
| "    | "   | " 3 "                           | Laborer,           |          |  | 6.75    |
| Feb. | 1   | " 215 lbs.                      | French Gray Color. |          |  | 6.45    |
| "    | 7   | " 1/2 day,                      | Bricklayer,        |          |  | 2.00 30 |
| "    | "   | " 1 1/2 "                       | Laborer,           |          |  | 3.38    |
| "    | 12  | " 2 "                           | Bricklayer,        |          |  | 8.00    |
| "    | "   | " 3 "                           | and 1 1/2 hours,   | Laborer, |  | 7.29    |
| "    | 13  | " 3 "                           | Bricklayer,        | \$4.     |  | 12.00   |
| "    | "   | " 1 "                           | Laborer,           |          |  | 2.25    |
| "    | 14  | " 3 "                           | Bricklayer,        |          |  | 12.00   |
| "    | "   | " 2 "                           | Laborer,           |          |  | 4.50    |



|    |      |     |    |                                  |   |   |   |            |
|----|------|-----|----|----------------------------------|---|---|---|------------|
|    | Feb. | 14, | to | Carting Sand,                    | . | . | . | 2.25       |
|    | "    | "   | "  | 2 days, Laborer,                 | . | . | . | 4.50       |
|    | "    | 15  | "  | 2 " Bricklayer,                  | . | . | . | 8.00       |
|    | "    | "   | "  | Carting,                         | . | . | . | 4.00       |
|    | "    | "   | "  | 3 days, Laborer,                 | . | . | . | 6.75       |
|    | "    | "   | "  | 1½ " Carting Sand,               | . | . | . | 1.25       |
|    | "    | 21  | "  | 1 " Bricklayer and Laborer,      | . | . | . | 6.25       |
|    | "    | 24  | "  | 2½ " Bricklayer,                 | . | . | . | 10.00      |
|    | "    | "   | "  | 2 " Laborer,                     | . | . | . | 4.50       |
| 10 | "    | "   | "  | Carting,                         | . | . | . | 1.25       |
|    | "    | 25  | "  | 2000 S. & I. brick,              | . | . | . | 20.00      |
|    | "    | "   | "  | 4 days and 1½ hours, Bricklayer  | . | . | . | 16.75      |
|    | "    | "   | "  | 3 " " 5 " Laborer,               | . | . | . | 8.50       |
|    | "    | 26  | "  | 3 " Laborer,                     | . | . | . | 6.75       |
|    | "    | "   | "  | 3 " Bricklayer,                  | . | . | . | 12.00      |
|    | "    | 27  | "  | 6 " " "                          | . | . | . | 24.00      |
|    | "    | "   | "  | 3 " and 6 hours, Laborer,        | . | . | . | 8.49       |
|    | "    | 28  | "  | 1000 S. & I. brick,              | . | . | . | 10.00      |
|    | "    | "   | "  | 7 days and 5 hours, Bricklayer,  | . | . | . | 30.50      |
| 20 | "    | "   | "  | 3 " Laborer,                     | . | . | . | 6.75       |
|    | Nov. | 1   | "  | 2 hours, Bricklayer and Laborer, | . | . | . | 1.60       |
|    | "    | "   | "  | Lime, &c.,                       | . | . | . | 4.50       |
|    |      |     |    | Total                            | . | . | . | \$1,788.84 |

Duplicate.

FRANK MUTH, St. James Pl.

To RUFUS BOOYE, JR., Dr,

Contractor, Bricklayer and Plasterer,

Jobbing promptly attended to.

Office: 2305 Atlantic Ave.

30 Residence: 128 N. Mississippi.

1892 Nov. 11, to 4 bbls. Cement, . . . \$ 10.00  
 " Jan. 2 " 1 " R. " . . . 2.00  
 " " 6 " 6 hours, Bricklayer, 50



|           |    |                               |      |   |         |
|-----------|----|-------------------------------|------|---|---------|
| 1892 Jan. | 6  | to 12 hours Laborer,          | .    | . | 3.50    |
| " "       | 7  | " 2½ days, Bricklayer,        | \$4. | . | 10.00   |
| " "       | "  | " 2 " Laborer,                | 2¼   | . | 4.50    |
| " "       | "  | " 1 bbl. French Gray Color,   | .    | . | 15.40   |
| " "       | 8  | " 4 hours, Bricklayer,        | 50   | . | 2.00    |
| " "       | "  | " 1 " Laborer,                | .    | . | .60     |
| " "       | 9  | " 2 days, Bricklayer,         | \$4. | . | 8.00    |
| " "       | "  | " 1 " Laborer,                | .    | . | 2.25    |
| " "       | 10 | " 2 " Bricklayer,             | .    | . | 8.00    |
| " "       | 11 | " 12 hours, " "               | 50   | . | 6.00 10 |
| " "       | "  | " 5 " Laborer,                | .    | . | 1.50    |
| " "       | "  | " Hauling sand,               | .    | . | 2.00    |
| " "       | 15 | " 2 days, Bricklayer,         | .    | . | 8.00    |
| " "       | "  | " 1½ " Laborer,               | \$2¼ | . | 3.38    |
| " "       | 16 | " 2 " Bricklayer and Laborer, | .    | . | 12.50   |
| " "       | 18 | " 2 " " " "                   | .    | . | 12.50   |
| " "       | 20 | " 1 " " "                     | .    | . | 4.00    |
| " "       | "  | " 2 " " "                     | .    | . | 8.00    |
| " "       | "  | " 6 hours, Laborer,           | .    | . | 1.80    |
| " "       | 21 | " 1 day, " "                  | .    | . | 2.25 20 |
| " "       | 22 | " ½ " " "                     | .    | . | 1.87    |
| " "       | "  | " 1 " Bricklayer,             | .    | . | 4.00    |
| " "       | 23 | " 2 " " "                     | .    | . | 8.00    |
| " "       | "  | " 2 " Laborer,                | .    | . | 4.50    |
| " "       | "  | " Laying 24782 brick,         | 5½   | . | 136.30  |
| " "       | 24 | " 1 day, Bricklayer,          | .    | . | 4.00    |
| " "       | "  | " 1 " Laborer,                | .    | . | 2.25    |
| " "       | 25 | " 1 " " "                     | .    | . | 2.25    |
| " "       | "  | " 1 " Bricklayer,             | .    | . | 4.00    |
| " Feb.    | 7  | " ½ " Bricklayer and Laborer, | .    | . | 3.12 30 |
| " "       | 24 | " ½ " Bricklayer              | 42   | . | 2.00    |
| " "       | "  | " 6 hours, Laborer,           | .    | . | 1.75    |
| " "       | "  | " Carting.                    | .    | . | 1.25    |
| " "       | "  | " 6 hours, Bricklayer,        | .    | . | 3.00    |
| " "       | "  | " 6 " Laborer,                | .    | . | 1.74    |
| <hr/>     |    |                               |      |   |         |
| " "       | 27 | " Am't brought forward,       | .    | . | 313.71  |



|       |      |    |                 |                           |          |
|-------|------|----|-----------------|---------------------------|----------|
| 1902  | Feb. | 27 | to 1½ days,     | Bricklayer,               | 6.00     |
| "     | "    | "  | " 1             | " Laborer,                | 2.25     |
| "     | "    | 28 | " 1             | " Bricklayer and Laborer, | 6.25     |
| "     | Mar. | 1  | " ½             | " " "                     | 3.12     |
| "     | "    | 6  | " 22 bus. lime, | " " "                     | 5.50     |
| Total |      |    |                 |                           | \$336.83 |

### ATLANTIC CIRCUIT COURT.

|                                    |   |                  |
|------------------------------------|---|------------------|
| In the Matter of Arbitration of    | } | Rule Dismissing. |
| Between                            |   | Rule to Show     |
| 10 Frank Muth and Rufus Booye, Jr. |   | Cause            |

This matter coming on to be heard on rule to show cause why the award of the arbitrators should not be set aside and for nothing holden, in the presence of John J. Crandall, Esq., of counsel for Muth, and Thompson and Cole, of counsel with Booye, and the Court having read and considered the testimony and the points and argument of counsel respectively, and being of the opinion that no legal or effectual error has been or is shown;

20 It is, on motion of Thompson and Cole, attorneys for Rufus Booye, Jr., ordered that the rule to show cause heretofore allowed be and the same is discharged with costs.

On motion of Thompson and Cole, Attorneys of Booye, Jr.

November 21st, 1902.



ATLANTIC COUNTY CIRCUIT COURT.

In the matter of the arbitration  
between  
Rufus Booye, Jr, and Frank Muth. } Award.

Award between Rufus Booye, Jr., and Frank Muth made this twentieth day of August in the year Nineteen and two.

The aforesaid parties having, by their agreement made on the fourteenth day of April, in the year nineteen hundred and two, agreed to submit all matters in difference between them to the award and final determination of George Bourgeois, and James F. Levering as arbitrators, with power to choose a third party as umpire, and the said arbitrators having selected S. Hudson Vaughn as umpire, and the said arbitrators and umpire having been first duly sworn to faithfully and fairly hear and examine the matters in difference between the said parties, and make a true award, according to the best of their skill and ability, and having heard the allegations and proofs of the parties, and considered the same, we, the subscribers, George A. Bourgeois, James F. Levering and S. Hudson Vaughn the said arbitrators, do hereby make and publish our award of and concerning the matters to said arbitrators submitted, as follows: On the evidence before us. 10 20

1. We find there is due to the said Rufus Booye, Jr., from said Frank Muth for work done and materials furnished to and for the use of said Frank Muth on premises in Atlantic City, New Jersey, known as the Boscobel, the sum of seventeen hundred, eighty-eight dollars and eighty-four cents. 30



And for work done and materials furnished at 132 S. St. James Place, said City, the sum of three hundred and thirty-six dollars and eighty-three cents.

And for work done and materials furnished on premises 18 South Kentucky avenue, said City, the sum of Three hundred and forty-four dollars and seventy-two cents.

And for work done and materials furnished on Catholic Parsonage, 1417 and 1419 Pacific Ave., said  
10 City, the sum of Seven hundred and nine dollars and eight cents.

And in all the sum of Three thousand one hundred and seventy-eight dollars and forty-seven cents.

And we do award that the said Frank Muth do pay to the said Rufus Booye, Jr., the said sum of Three thousand one hundred and seventy-eight dollars and forty-seven cents on or before the twentieth day of September next.

2. We do award that the said sum is in full dis-  
20 charge and satisfaction only of the demands by either of said parties against the other respectively, respecting a claim for work done and materials furnished by the said Booye to the said Muth in and for the premises described in this award, and that all actions, suits, controversies, quarrels and demands whatever between them respectively respecting said premises from the date of the date of the submission to us aforesaid be no further prosecuted. Judgment signed, &c., and ordered to be entered this 27th day of August, A.  
30 D., Ninteen Hundred and two.

CHARLES E. HENDRICKSON,  
Judge.



ATLANTIC COUNTY TO WIT:  
The Stat of New Jersey to our Sheriff of  
our County of Atlantic, greeting :

We command you that of the goods and chattels of Frank Muth in your County, you cause to be made the sum of Three thousand one hundred and eighty-nine dollars and twenty-eight cents which to Rufus Booye, Jr., lately before our Circuit Court, holden at May's Landing, in and for our said County of Atlantic were adjudged for the damages which he had sustained as 10 well by occasion of the not performing certain promises and undertakings, then lately made by the said Frank Muth to the said Rufus Booye, Jr., as for his costs and charges by him about his suit on that behalf expended whereof their is a recovery.

And if sufficient goods and chattels of the said Frank Muth canont be found in your county of Atlantic whereof the damages and costs of aforesaid may be made there you are hereby further commanded that you cause the whole or the residue as the case may re- 20 quire, of the said damages, to be made, of the lands, tenements and hereditaments and real estate whereof the said Muth was seized on the twenty-seventh day of August in the year of our Lord, One thousand nine hundred and two or at any time afterwards in whose hands so ever the same may be.

And have you there that money before our Court aforesaid at Mays Landing aforesaid on the second Tuesday of April next, to render to the said Rufus Booye, Jr., for his damages aforesaid. And have you there this writ: 30

Witness Charles E. Hendrickson, Esq., Judge of our said Court at Mays Landing aforesaid, the thirteenth day of



December, in the year of our Lord, one thousand nine hundred and two.

THOMPSON & COLE,  
Attorneys.

LEWIS P. SCOTT, Clerk.

Received and recorded December 13, 1902.

LEWIS P. SCOTT, Clerk.

State of New Jersey,     }  
County of Atlantic,       } ss.

10 I, Lewis P. Scott, Clerk of the County of Atlantic and also Clerk of the Circuit Court holden therein, do hereby certify that the foregoing is a true and correct copy of a certain judgment record as the same is recorded in my office.



In witness whereof I have hereunto set my hand and affixed the seal of said Court and County, this thirty-first day of December, in the year of our Lord one thousand nine hundred and two.

LEWIS P. SCOTT, Clerk.



Court of Errors and Appeals in the last resort in all causes in N. J.

Frank Muth,  
~~Plaintiff~~ Defendant in Error.

Rufus Booye, Jr.,  
~~Plaintiff~~ Plaintiff in Error.

Error to  
The Circuit  
Court for the  
County of Atlantic.

Now comes Plaintiff in Error by his attorney, John J. Crandall, and avers that Hon. Charles E. Hendrickson, Judge of the Circuit Court for the County of Atlantic, Committed error in refusing to make the rule absolute and set aside the award of Arbitrators returned with the testimony by the writ in this cause for the following reasons to wit:— 10

*First.*—The Judges erred in refusing to set aside the award on the ground that the arbitrators proceeded without being sworn except before the counsel of plaintiff in Error who was counsel for said Muth before the arbitration and the reason by him assigned that the question was not raised in the mere application for the rule to show cause why award should not be set aside before Justice 20 Garrison, is without merit as the proceeding on the rule before Justice Hendrickson contemplated and called for a review of the whole case in the nature of an appeal. In contemplation of law, the arbitrators were not sworn and as this prosecution is in the nature of an appeal from the whole-case the award should be set aside on this ground.

*Second.*—S. Hudson Vaughn participated in the deliberation of the arbitrators without any authority whatever. He was appointed as umpire between the arbitrators—not the parties to the controversy—and the consent given by 30 the parties covered only the point of umpirage between the arbitrators and not the parties to the controversy.



*Third.*—The award made on the 20th day of August, 4 months after the date of submission—without any evidence of any meeting by the arbitrators on the Saturday following the date of submission—and without showing any necessity for meeting at any other time and place and without appointing judicially any time or place, demonstrates that they were without authority to bind the parties at the time the testimony was taken and the assumption of Judge Hendrickson that this plaintiff who in fact had and  
10 in law was defrauded in the proceedings waived this error of the arbitrators by simply appearing and contesting on the merits instead of absenting himself or protesting want of authority in the arbitrators to proceed is error in law. It is he who holds the affirmative of the inquisition that is bound by proceeding himself. He proceeds at his peril. It requires affirmative consent on the part of defendant to bind him.

*Fourth.*—The Award itself is not within the letter or spirit of the submission for the following reasons:

- 20 (a.) The specific things submitted are 1st “The  
“amount which first party shall pay, second for his work  
“done and materials furnished” \* \* \* \* 2d as “well as  
“all matters in difference between them concerning the  
“properties,” and as there does not appear by the whole  
case, evidence and all, any difference between them concerning the properties, this element of submission must be dismissed as too vague for consideration. There as to “the  
amount which first party should pay second” is a submission of mere question of calculation—measure of damages  
30 contra-distinguished to any question of right or liability,  
debt and liability is conceded and hence nothing was submitted capable of arbitration and the finding of liability to a large amount and awarding payment is not within the submission and every element not within the letter of the



submission is without it and the finding of Judge Hendrickson that awards in this respect must be liberally construed as error in law.

(b.) The award "that the said sum is in full discharge "and satisfaction only of the demands by either of said "parties against the other respectively, respecting a claim "for work done," &c., is not within the submission as to the amount which Muth shall pay second party for his work done, &c. Any elements of counter claim which Muth may have against Booye is not within the submission. The 10 work may have been damagingly performed. The work may have been so defective as to be damaging instead of useful and the award in terms merges and forecloses all suits by Muth vs. Booye as for such damages.

(c.) If there could be doubt as to the award attempting to merge any claim Muth might have against Booye for damages as appears by the above action of award—it is "thoroughly fixed by the subsequent fiat and that all ac- "tions, suits, controversies, quarrels and demands, what- "ever between them respectively, respecting said premises— 20 "from the date of the date of the submission to us afore- "said be no further prosecuted." The question whether suits already begun—or in contemplation of the parties should be included in their deliberations was not submitted to them and the learned Judge erred not making the rule absolute.

(d.) It is clear that the application of the thousand dollars paid by ~~Booye~~ <sup>Muth</sup> to ~~Muth~~ <sup>Booye</sup> was not within the submission and the award is vitiated by this investigation outside of the submission. 30

*Fifth.*—The testimony discloses that the payment of one thousand dollars by Muth was not credited by the arbitrators on his account and such a clear act of injustice by the arbitrators calls for setting aside of their award.



*Sixth.*—It is clear from the inspection of the bills rendered for the respective jobs and the evidence,—that Booye charged Muth for the laying of the bricks by the thousand and then duplicated the charge by a charge by the day for the same work.

*Seventh.*—It is clear from the evidence that the charges were improvised fraudulently from memory by Booye and that his evidence as to the number of days' work done is valueless and that the award based upon the mere bills of  
10 items in evidence without the least regard for the amount and value of the work done evinces unfairness on the part of the arbitrators to such an extent as to vitiate the award.

*Eighth.*—The awarding of execution upon the judgment on the award is unauthorized by law.

Wherefore plaintiff prays that said award may be set aside and for nothing holden.

J. J. CRANDALL, for Plaintiff.

(Joinder in Error.)



