New Jersey Court of Errors and Appeals

Between

THE MCNAB & HARLIN MANUFACTURING COMPANY,

and

THE PATERSON BUILDING COMPANY, ET ALS.

On Bill of Interpleader.
On Appeal from Chancery.

Brief of Edward F. Merrey,

Of Counsel with Thomas F. McCran. Receiver of the Paterson Building Company.

This matter is brought up on the appeal of Thomas F. McCran, receiver of the Paterson Building Company against the parts of the decree of the Court of Chancery in favor of MARTIN GOBLE, THE G. DROUVE COMPANY and COLLINS, LAVERY & CO.

The complainant filed a bill of interpleader and secured a decree after which it paid into Court a fund of $5,027.97. Nine defendants filed concise statements as provided under the Chancery rules, each claiming parts of the fund, and the receiver of the building company filed a statement claiming the whole of the fund. The nine defendants claimed portions of the fund under the third section of the mechanics lien act and the receiver

attacked the validity of their claims. The decrees below allowed five of the claims of the defendants and directed the balance of the money to be paid to the receiver of the building company. The receiver now attacks the parts of the decree allowing three of the claims. It is conceded that all this money belongs to the receiver except such parts as any of the other defendants are entitled to by virtue of the liens claimed by them.

The question involved in the appeal is the method of construing the Mechanics' Lien Act.

At the conclusion of the hearing in the Court of Chancery the Vice Chancellor announced his findings in regard to the claims of the various defendants, and following the rule laid down by him in Beckhard vs. Rudolph, 59 Atl. 253, disallowed the claims of the three defendants involved in this appeal. He announced, however, that since the Beckhard-Rudolph case had been appealed no decree could be entered until after the decision of the Court of Appeals in that case. Upon the coming in of that decision the Vice Chancellor filed an opinion allowing these claims, besides others, and a decree was entered in accordance with that opinion.

In deciding Beckhard vs. Rudoph the Vice Chancellor adopted a strict construction of the lien act and now that the Court of Appeals has reversed him, the Vice Chancellor reasons that the act must be construed liberally.

I feel that the Court of Appeals did not intend to place as liberal a construction on the act as the Vice Chancellor in his opinion in this case indicates.

I. As to the Drouve Claim.

As the Vice Chancellor says in his opinion the notice of the G. Drouve Company (case p. 19) follows the statute as closely as the Adamson notice in the case of Beckhard vs. Rudolph. He says "My conclusion is that it would be entirely unnecessary to discuss the principles enunciated by the Court of Errors and Appeals or inferable from the decision of that Court in the Beckhard case in order to determine the status of this claim of the G. Drouve Co. The lienability of the debt by stop notice and the sufficiency of the notice are directly and necessarily established by this decision which deals with substantially a parallel state of facts."

Nevertheless the reasoning of the Vice Chancellor applies with great force to this very claim, and if it is sound this Court should reverse its rulings in the Beckhard case. The Vice Chancellor has evidently given this case exhaustive study, and his opinion treats the question at great length.

In his opinion (case p. 61, line 22) he says:

"The questions to be discussed when perhaps narrowly defined are these: first, whether paragraph 3 of the mechanics' lien act is to be strictly or liberally construed so far as that section may give a lien to persons who are not journeymen or laborers, or in other words are not wage earners; and second, whether after the lienability of the debt has been established a strict or liberal construction is to be placed upon the provisions of the statute which regulate the fastening of the debt as a lien on the fund by the service of a notice in writing."

And further, page 71, line 13.

"The fundamental principle applied by me in

deciding the Beckhard case undoubtedly was that sub-contractors like Messrs. Adamson & Son were not entitled to a liberal construction of that portion of paragraph 3 which creates a privileged class of dealers who are not wage-earners, and imposes for their benefit special burdens upon the owners of real estate. The whole view, I think, must now be deemed entirely erroneous since the decision and opinion of the Court of Errors and Appeals in the Beckhard case."

If this is the effect of the decision of the Court of Errors and Appeals and the third section is to be liberally construed in favor of materialmen as to the lienability of their debt, then the practice of the Court has been radically changed.

And if the effect of the decision is that the statutory remedy need not be pursued strictly it reverses decisions of this Court heretofore made.

"It must be borne in mind, however, that the statutory remedy must be strictly pursued; that the statute alters the existing law so far, and no further than its terms require, and that it cannot be extended by construction."

Supt. vs. Heath, 2 McCar., 26.

The first question raised as to the claim of the Drouve Company is as to the lienability of its debt. That is, as to whether the Drouve Company, having furnished materials and also furnished labor to install them, could be called a "materialman." In the Beckhard case the opinion treats of this phase of the case quite fully and the decision is, that a person furnishing material and installing it in a building may be considered a materialman.

The opinion in the Beckhard case does not, however, deal with the other phase of this case, that is as to the form of the notice. If the G. Drouve Company is a "materialman" and has only furnished materials *in situ* then its notice (case p. 10) is incorrect in describing the debt due to it from the contractor as being for labor and materials furnished. It is conceded that no stop notice could be served for labor furnished, and this notice describes a debt which is partly lienable and partly not.

I do not believe that this Court will adopt the liberal construction now placed on the act by the learned Vice Chancellor, and feel sure that this Court will hold that the notice served under the third section must show more than (1) a refusal to pay, (2) a certain specified sum of money. (Opinion of Vice Chancellor, case p. 77, line 20). I think the notice should accurately describe the debt, and this the Drouve notice does not do, when it says that the debt was incurred for "*labor and materials furnished.*"

There can be no lien by stop notice for labor *furnished.*

Under the decision of the Beckhard case in this Court we can infer that the notice must show that it was a debt for materials furnished and used in the building. The Court held that the Adamson notice sufficiently showed that the material was used in the building. Now, if the notice must show upon its face some of the characteristics of a lienable debt, why should it not show accurately that the debt had all the characteristics of a lienable debt, and if it inaccurately described the debt

and described it as a debt which was only partly lienable, should it not be held to be a bad notice.

II. In Regard to the Claim of Martin Goble.

Our only objection is to the form of the notice. The debt was incurred for materials in the raw state delivered at the building.

The notice (case p. 19) does not show that the materials were used in the building ; it reads :

"This is to notify you that I have sold to the Paterson Building Company, for your building on Straight street, Paterson, N. J., material to the amount of $234.02."

This does not show that the material was actually used in the building, which I take is necessary in order to make the notice good. This I infer from the opinion of the Court of Errors and Appeals in the Beckhard case.

"A stop notice which declares that certain materials were furnished to the contractor 'for and in the erection of a building,' sufficiently shows that the materials were actually used in the building."

The Goble notice does not show sufficiently that the materials were used in the building.

III. In Regard to the Claim of Collins, Lavery & Co.

This claim is founded on three separate papers. (Case pp. 22, 23). An order, a stop notice and an assignment.

The Company is relying upon its stop notice.

It is admitted that the order was never accepted by the owner, and that the Company was insolvent

at the time of the order and at the time the assignment was made (case p. 49, line 18). For this reason we need not consider the order, but the assignment must be considered on account of its connection with the notice. I admit the debt of this defendant was lienable.

a. The notice is defective in many ways.

1. It does not show that the material was used in the building. This is undoubtedly due to an error in typewriting the notice, which makes the notice state that the debt was "the sum of $540.52 cents, by you, the said owner, used in the erecting and constructing of your said building;"

It does not show that the debt was for materials furnished for and used in the erecting of the building. It might possibly be for money loaned to the contractors, and in turned loaned by them to the owner. I do not think any court would construe the act with such extreme liberality as to hold this notice good.

2. The notice misdescribes the debtor.

The contractor is in this case was the Paterson Building Company, a corporation of the State of New Jersey.

The notice reads, "Take notice, that there is due to us, Collins, Lavery & Company from Hugh Montague, Joseph J. Rooney and Dennis A. Bergan, partners trading as the Paterson Building Company, the sum of &c."

We cannot say, but that these three individuals might have been ~~such~~ such contractors under the corporation. To hold this notice good not withstanding this defect, will have the effect of making a

notice good that described the debt as being due from John Jones when in fact it was due from John Smith, on the theory, that the owner ought to know the correct name of the contractor.

Besides it has been held heretofore that it must appear that the contractor has refused to pay the debt.

Is the refusal of Hugh Montague, Joseph J. Rooney and Dennis A. Bergan sufficient. Should not the notice show a refusal by the corporation, The Paterson Building Company.

To hold this notice good reverses all former decisions of this Court that the notice must show a demand upon the contractor and a refusal by him.

b. The notice cannot be cured by considering the notice and assignment as one paper.

The Vice Chancellor overcomes our first objection to the notice by considering the notice and assignment one paper.

This he had no right to do. Although at the trial the proof showed that they concerned the same debt, *there is nothing in the two papers to show that they were related to each other.* The only thing that might induce a person to believe so is the fact that they are for the same amount.

But these two papers if they are for the same debt are inconsistent with each other, because the assignment paid the debt and it was no longer due from the contractor to the materialman, but was due from the owner to the materialman.

These two papers must be considered as separate and independent papers and not related to each other. Taken together there is nothing in either of them to show to the owner that they related to

the same debt, and there is no evidence to show that the owner was so informed in any other way. The assignment was executed by the individuals and not by the corporation so that taking both papers together that defect was not cured.

Taking the two papers together there is nothing to show that a demand was ever made upon the Paterson Building Company by the Collins, Lavery & Company, or that the Paterson Building Company ever refused to pay. The refusal of the three individuals mentioned in the notice is not the refusal of the Paterson Building Company, a corporation.

This refusal must positively be set out in the notice.

"It shall be the duty of such journeyman or laborer to give notice in writing to the owner or owners of such building of such refusal, and of the amount due, &c."

Section 3, Mechanics' Lien Act.

Kirkland vs Moore, 13 Stew., at 109.

Donnelly vs. Johnes, 44 Atl., 180.

Fehlings vs. Goings, 58 Atl., 642.

1 Rob., 375.

In Slingerland vs. Binns, 11 Dick., 413, this court construed the new section to give to workmen and material men as against the contractor and his assigns an inchoate lien, ab initio, upon the liability of the owner to the contractor for which they furnish labor or material; but distinctly declared that such lien becomes perfect only on service, before that liability matures, of the statutory notice, based on demand and refusal of payment,

and expires on such maturity if no notice be given. To substitute "simpler machinery" for the perfecting of the inchoate lien would not be to construe, but to legislate.

Bayonne Building Ass. vs. Williams, 14 Dick., at 619.

In Conclusion.

The importance of this case cannot be measured by the amount involved. The building industry is probably the greatest industry in the State. Stop notices are being served every day involving in the aggregate large sums of money. There has been no deliverance from this Court as to exactly what a stop notice should contain, and the present condition of affairs is chaotic.

The condition of the mind of a member of the bar called upon by an owner to advise him as to the validity of a stop notice, may well be imagined when the mind of the learned Vice Chancellor, who decided this case, is in such a condition on the subject as to cause him to conclude his opinion as follows: (Case page 88.)

"In case any of the claimants desire to have the determination of this Court reviewed by the Court of Errors and Appeals, the fund will be held until such review can be obtained. I am by no means certain that the adjudications which I have made upon these notices will in the end stand as approved precendents. Questions of statutory construction are notoriously difficult and productive of discordant decisions and decisions by divided courts. When a statute like the one with which we are dealing is not in its entirety based upon

any ethical principle but arbitrarily confers a favor through a somewhat complex procedure upon a somewhat loosely defined class of beneficiaries, and is expressed in clumsy and inapt phraseology, it is unsafe to accept any construction of it as final which has not been approved by the Court of Last Resort or by a majority of the judges of such court."

Respectfully submitted,

EDWARD F. MERREY,

Of counsel with,

THOMAS F. MCCRAN,

Receiver.

New Jersey Court of Errors and Appeals.

Between

McNab & Harlin M'f'g Co.,

Complainants,

and

The Paterson B'l'g Co., et als.,

Defendants.

On bill of Interpleader on Appeal from Chancery.

Brief of James G. Blauvelt of counsel with the G. Drouve Company, defendant below and appellee here.

The McNab & Harlin M'f'g Co. had a building erected for it in Paterson by the Paterson Bld'g Co. on written contract duly filed.

The G. Drouve Company and others filed stop notices on the owner claiming liens on the money due the contractor. The owner (McNab & Harlin M'f'g Co.) filed its bill of interpleader in Chancery to obtain leave to discharge its liability by paying the money remaining due on the contract into court.

On September 16th, 1904, a decree was entered directing the complainant owner to pay $5027.97 into court.

The claim of the G. Drouve Co. for $1373.70

was allowed by the Vice-Chancellor as secondly entitled to payment out of the fund (p. 55, l. 22) and as the claim first directed to be paid is only that of Martin Goble for $234.02, and there is therefore sufficient to pay the G. Drouve Co., it is not interested in any way with changing the order of payment.

The only interest the G. Drouve Co. has therefore on this appeal is to sustain the decree of the Vice-Chancellor that the claim was one that could be properly made under section 3 of the machanics' lien act.

The facts concerning this claim are stated in the stipulation on page 48 of the case as follows :

> "B. That before November seventeenth, nineteen hundred and three, the G. Drouve Company furnished to the Paterson Building Company, and installed in the mill erected by the said Paterson Building Company for the McNab & Harlin Manufacturing Company as set forth in the bill of complaint, a patented apparatus, known as a Lovell apparatus, which was intended to be used in opening and closing a skylight in said mill. The said G. Drouve Company furnished this apparatus, and also furnished the labor for installing same, all for the agreed price of thirteen hundred and seventy three dollars and seventy cents. This apparatus was included in the carpenter's contract mentioned in the bill of complaint. That the said sum of money, being due to the G. Drouve Company from the Paterson Building Company the G. Drouve Company demanded payment of the said sum from the Paterson Building Company, which refused to pay the same, whereupon the

> G. Drouve Company, November seventeenth, nineteen hundred and three, served upon the McNab & Harlin Manufacturing Company a notice, signed by the G. Drouve Company, a copy of which is attached to the bill of complaint."

No objection has been raised to the stop notice filed or any proceedings taken to perfect and fasten the lien of the Drouve claim on the fund.

As the opinion shows, this claim was at first disallowed by the Vice-Chancellor on the theory underlying his opinion in Beckhard vs. Rudolph (59 Atl. 253) that a materialman to claim a lien by stop notice under section 3 must be one who delivered material divorced from labor, (p. 59 l. 4.)

After this opinion in the Beckhard case had been reversed by this court (63 Atl. 705) the Drouve claim was allowed. The reason for its allowance is clearly stated in the opinion of the Vice-Chancellor from which I quote (p. 59, l. 23.)

> "I am unable to distinguish the claim of the G. Drouve Company from the claim of Adamson & Son, which was sustained by the Court of Errors and Appeals in Beckhard vs. Rudolf. The claim of Adamson & Son was for the amount due for the plumbing which they had put into the building in pursuance of a sub-contract. They supplied the materials and performed the labor and the elements of labor and materials in fact entered about equally into the total charge. The total charge, however, was a single sum for the entire contract. The Court of Errors and Appeals decided that Adamson & Son were "material

men" who had "furnished materials used in the erection" of Mr. Beckhard's building, and that the amount claimed by them in their notice to be due for "work done and materials furnished" in fact was due "for materials furnished in situ," and that therefore they could acquire a lien by a stop notice under Section three of the mechanics' lien law."

"In the present case, the G. Drouve Company had a similar sub-contract for the incorporation into the building of a system of bars or levers called the "Lovell Apparatus" a device for opening and closing windows. The total charge was $1,373.70. Although as in the case of Adamson & Son this total charge was in no way devided so as to indicate how much of it was for labor and how much of it was for material, it was evident that a very large portion of the charge represented the value of the apparatus or finished parts of the apparatus delivered at the building, all of which was material—raw material so far as the building operations were concerned—and plainly lienable"

"If any distinction could be drawn between the notice which was deemed sufficient by the Court of Errors and Appeals in the case of Adamson & Son and the notice served by the G. Drouve Comany, the latter seems to follow the statue more closely than the former. The Adamson notice states that the material was furnished for the remodeling of the building as well as in the erection and alteration thereof, whereas the notice in the Drouve case strictly adheres to the statutory language."

> "My conclusion is that it would be entirely unnecessary to discus the principles enunciated by the Court of Errors and Appeals or inferable from the decision of that court in the Beckhard case in order to determine the status of this claim of the G. Drouve Co. The lienability of the debt by stop notice and the sufficiency of the notice are directly and necessarily established by this decision which deals with substantially a parallel state of facts. My original ruling will therefore be changed and the claim will be allowed in its place as a lien."

This is clearly giving the law the same construction which this court gave it in the Beckhard case. There seems to be no distinction between the Adamson claim in that case and the Drouve claim in this except as the Vice-Chancellor points out, that the Drouve claim follows the statute strictly while the Adamson did by a reasonable interpretation in spirit.

I deem it sufficient to rest the Drouve claim on the Beckhard case.

I therefore submit that the decree of the Vice-Chancellor directing the clerk to pay the Drouve claim with cost and interest should be affirmed.

Respectfully submitted,

JAMES G. BLAUVELT,

OF COUNSEL WITH THE

G. DROUVE CO., APPELLEE.

NEW JERSEY

Court of Errors and Appeals.

BETWEEN McNAB & HARLAN MANUFACTURING COMPANY *and* THE PATERSON BUILDING COMPANY ET AL.	*On Appeal from Chancery.*

Brief for Collins, Lavery & Company, one of the Respondents.

The claim of Collins, Lavery & Company is for $540.52 for material sold and delivered by this respondent to the contractor, the Paterson Building Company, and by it used in the erection of a building for the McNab & Harlan Manufacturing Company under a filed contract; demand on the contractor for payment was made and refused; the amount demanded was correct, and the owner had funds in hand sufficient to pay the claim. These facts are admitted in the stipulated state of facts; see particularly paragraph C, commencing on page 48 of the printed case.

On November 18th, 1903, the respondent served on the owner an order, notice and assignment, copies of which are printed on page 22 of the case. It will be seen that of these papers, the second states that the claim is for $540.52, "by you, the said owner, used and employed in the erecting and constructing of your said building," and that between the words quoted and the statement of the amount due, there is omitted the words "for material furnished and used," usually found in this form of notice. It is contended on behalf of this respondent that this second paper alone is sufficient notice under Section 3 of the Mechanic Lien Act, notwithstanding the words omitted, or if not, that the three papers taken together are a "notice" within the meaning of said section.

I.

The section referred to is for the benefit of a certain class of men, namely, those who furnish material or perform labor for the contractor used on a building being erected under a filed contract. All men of that class have an inchoate lien upon the contract price, and one who gives notice of refusal of payment by the contractor, perfects his lien and is entitled to the protection of the statute, if, after giving such notice, he can show he belongs to that class.

The statute does not require the material manto include in his notice a statement of all the facts which he may be required to prove as a preliminary to payment by the owner. He is only required to give notice of the contractor's *refusal to pay and of the amount due to him.* Such notice puts the owner on inquiry and it thereupon becomes his duty to retain and, after being satisfied of the correctness of the demand, to pay. To satisfy himself of the correctness of the demand, he must ascertain not merely that the amount demanded is correct, but also that the claimant is within the class protected by the statute. A claimant may serve a notice setting out all facts which would entitle him to payment, yet his debt may not be lienable, or he may be unable to prove the essential facts, therefore the form of notice doesnot govern.

This respondent's second paper. called a notice, states that the contractor owes the claimant $540.52; that the claimant demanded payment of the contractor and payment was refused and calls upon the owner to hold such amount out of the money due or to grow due to the contractor. Thus it complies with the requirement of the statute in that it states

refusal and amount due. The failure to state that the money claimed is due for work and material and the statement that the claim is for a *sum of money used by the owner in* the erection of the building, although the debt is stated to be due *from the contractor*, are not fatal errors. The omission is an obvious one and an apparent mistake. It was not necessary to state what the claim was for, and a mistake made in good faith will not invalidate the notice, if the owner has, in effect, been informed that the material man claims the protection of the statute.

Camden Iron Works vs. Camden, 15 Dick., 211.

Garrison vs. Boris, 16 Dick., 236.

Hall Co. vs. Jersey City, 17 Dick., 489.

Evans vs. Lower, 1 Rob., 234.

Fehlings vs. Goings, 1 Rob., 375.

But, if the second paper alone is not sufficient, the three papers served at the same time, taken together, fully comply with the statutory requirements.

The first paper (the order) notified the owner that the contractor admitted a debt due to this respondent; the second paper (the notice) showed demand for payment, refusal and amount due, and called on the owner to withhold the amount demanded, and by the third paper (the assignment) the owner was informed that the debt was for material and work furnished to the contractor and used by the contractor in the erection and construction of the owner's building.

It matters not in what form the statutory notice is given. It is sufficient if from the papers served on the owner it appears that the requirements of the statute have been complied with.

Donnelly vs. Johnes, 13 Dick., 442-452.

Fehlings vs. Goings, Ibid.

II.

That the notice claims for work done as well as material furnished, is no objection to the allowance of the claim.

The lien of the act extends to a claimant who has furnished both work and material.

Beckhard v. Rudolph, 2 Rob., 740.

The labor in connection with this claim is the usual work of loading, hauling and delivering, but if no labor were proved and the amount claimed was shown to be due for material only, the notice will be allowed, because a lienable debt has been proven.

Beckhard v. Rudolph, Ibid.

III.

The description of the contractor as a firm instead of a corporation, in two of the papers served, is unimportant.

The order served is signed by the contractor as a corporation by its Treasurer. The notice gives the name of the company and refers to a certain build-

ing which the owner knew (from his contract) was being erected by the contractor as a corporation; the assignment names the same company and refers to the same building. The claimant was not bound to know that the contractor was a corporation and not a firm and its mistake injured no one.

The contractor having in said assignment to this claimant described itself as a firm and thus mislead the claimant in this particular, this appellant (who is the receiver of the contractor), should not be permitted to take advantage of the contractor's misstatement.

It is submitted that the decree of the Court of Chancery in favor of this respondent should be affirmed, and that the appeal of the receiver of the Paterson Building Company, as against this respondent, should be dismissed.

BRINKERHOFF & FIELDER,

Of Counsel with Respondent,

Collins, Lavery & Company.

New Jersey Court of Errors and Appeals.

No. 47,

MARCH TERM, 1907.

BETWEEN

MCNAB AND HARLIN MFG. CO., *Complainant,* — *On Bill of Interpleader.*

and

PATERSON BUILDING CO., *et. als.,* *Defendants.* — *On Appeal from Chancery.*

BRIEF OF FRANCIS SCOTT FOR MARTIN GOBLE.

The decree of the Chancellor (book page 53) declares as follows: "That the defendant Martin Goble has a lien upon the said fund for the sum of two hundred and thirty-four dollars and two cents ($234.02), and is entitled to be paid out of the said fund the said sum of two hundred and thirty-four dollars and two cents ($234.02), and that his lien is first in order of priority." The petition of appeal (book page 3) declares as follows: "Second:—That Martin Goble, the defendant below, did not give to the McNab and Harlin Mfg. Co. a notice in writing, complying with the statute in such case made and provided; and for that reason, any debt which the Paterson Building Co. may have owed the said Martin Goble did not

become and is not now a lien upon the fund paid into court."

The notice given by Mr. Goble is found in the book page 19 and is as follows:

"Paterson, N. J., Nov. 13, 1903.

The McNab & Harlin Mfg. Co.,

City.

Dear Sir:

This is to notify you that I have sold to the Patterson Building Co. for your building on Straight Street, Paterson, N. J., material to the amount of two hundred and thirty-four dollars and two cents ($234.02), and that I have demanded payment of same, and that they have refused to pay me.

You are therefore notified to retain the said amount out of the sums of money due them or to become due them, and after satisfying yourself that the bill is correct, pay the same over to me.

Yours respectfully,

MARTIN GOBLE.

H."

This notice was given under section 3 of the Mechanics Lien law. The pertinent part of this statute reads as follows: "Whenever any master workman or contractor shall upon demand, refuse to pay any person who may have furnished materials used in the erection of any such house or other building, the money due to him, it shall be the duty of such material man **to give notice in writing to the owner, or owners of such building of such refusal, and of the amount due to him or them, and so demanded,** and the owner or owners of such building shall thereupon be authorized to retain the amount so due and claimed by any such material man out of the amount owing by him or them on the contract, or that may hereafter become due from him or them on such

contract for the material used in the erection of such building, giving the master workman or contractor written notice of such notice of payment; and if the same be not paid or settled by the said master workman or contractor such owner or owners upon being satisfied of the correctness of the said amount, shall pay the same,'' etc.

The Vice Chancellor in the court below at first excluded the claim of Martin Goble, and then allowed it (book page 79) in the following language: ''I excluded the claim on the ground that the notice was defective, and that it did not set forth that the material **had been 'used'** in the erection of the building. The notice states that the claimant 'has sold to the Paterson Building Company for the building of the McNab and Harlin Mfg. Co. on Straight Street, Paterson, N. J., material to the amount of two hundred and thirty-four dollars and two cents ($234.02),' etc. The demand and the refusal are set forth and the owner is notified to retain the amount due and pay it, after satisfying themselves that the claim is correct. It is plain that this notice describes the claim which might be lienable. It contains the two things which the statute expressly requires to be inserted therein, viz: the amount due and the refusal of the corporation to pay that amount. It is true that upon all the facts being ascertained by the owner or subsequently proved in a court of law or a court of equity, it might be made to appear that the material sold by Mr. Goble to the builders for the building which the owner was erecting, has not in fact been used in that building, and the lien would then be defeated. **This however is a matter of proof.** No doubt if the notice must be treated **as a pleading** the omission of the essential fact that the materials had been used in the building is fatal, but having in view the function of the notice above set forth, as an in-

strument to put the owner upon the inquiry, I think this notice should be deemed sufficient."

The above language would indicate that the Vice Chancellor's first impression was that this notice should be treated as a pleading, with all the definiteness, certainty and accuracy of a pleading. As the Vice Chancellor says the two things which the statute requires to be inserted in the notice, to wit: **the amount due, and the refusal of the corporation to pay that amount, appear in this notice,** and as he says, whether the material was used or not in the building, is a matter of proof. As a matter of fact this notice of Martin Goble's complies strictly with the statute, containing all the essentials required by the statute. Our contention is that the notice need not say that the material was used in the erection of the building, but that it is quite sufficient if the notice is in writing, and shows the refusal of the contractor to pay the amount demanded. The only inference being, of course, that the goods were used in the building. The whole object and purpose of the notice being to put the owner upon the inquiry. In the case of Beckart vs. Rudolph the Judge declares as follows: "Another objection raised to the form of Adamson's stop notice is that it did not set forth that the materials were actually used in the building. This was not much relied upon by the Vice Chancellor, and is not in our view tenable. The notice sets forth that the claimants had done the work and furnished materials for and in the erection of the building. This, we think, amounts in effect to an averment, that the materials were used in the building."

It is doubtful if even this much is required, to wit, that **there should be an averment,** that the materials were used. However, such an averment is made in the Goble notice. The notice says that, "I have sold

to the Paterson Building Co. for your building, material, etc." It further states that "I have demanded payment of the same, and they have refused to pay me." It further states "You are notified, after satisfying yourself that the bill is correct, to pay the same over to me." All this language breathes the suggestion that the materials were used in the building, and amounts to an averment to that effect.

The stipulation entered into by the various parties to this suit, through their respective counsel, states as follows on page 47:

"A. That before November 13, 1903, the Paterson Building Company owed to Martin Goble the sum of two hundred and thirty-four dollars and two cents ($234.02) for brick, lime and other material furnished by him to the said company which were used in the erection of the buildings of the McNab and Harlin Co., referred to in the bill of complaint, and that the same were used by the said defendant company, in pursuance of the mason work contract, set out in the bill of complaint. That Martin Goble demanded from the Paterson Building Co. the said sum of money, which they refused to pay, and thereupon on the 13th day of November, 1903, the said Martin Goble caused a notice (a copy of which is annexed to the bill of complaint) to be served upon the McNab and Harlin Mfg. Co." The effect of this stipulation is the same as if it were proved, that this material furnished by Martin Goble was actually used in the erection of the building. To shut Martin Goble out, therefore, under the circumstances, would be a hardship, and would necessitate a strained construction of the statute, entirely unjustified. The case of Beckart vs. Rudolph straightened out the learned Vice Chancellor on this question, and very properly so. The statute starts out with a preliminary statement to the effect that whenever a contrac-

tor shall, on demand, refuse to pay any person who may have furnished material used in the building, then it shall be the duty of the material man to give notice. What does the notice require? In the first place, the statute says it must be in writing. It must be given to the owner or owners of the building. It must state the amount due and so demanded. This is what the notice requires, and this is all that the statute says that the notice shall require, and when such a notice as this is given, then the owner of the building is authorized to retain the amount so due and claimed by such material man out of any money due or to become due to the contractor. According to our judgment it is not necessary to state in the notice that the material was used in the building expressly, nor is it even necessary to make an averment of this kind by any suggestive language. It is strictly a matter of proof. If it can be shown by proof that the material was used, of course the claim is made out. If this is not shown, the claim fails. The very fact that a notice at all, is given, is quite sufficient to carry the influence that the material was used in the building, as it would be absurd for a material man to expect the owner of a building to pay for material that never went in the building. We insist that the conclusion of the Vice Chancellor upon the Goble claim should be confirmed.

Respectfully submitted,

FRANCIS SCOTT,

Of Counsel with Martin Goble.

INDEX.

New Jersey Court of Errors and Appeals

Between

McNAB & HARLIN MFG. CO.,

Complainant,

and

PATERSON BUILDING CO. ET ALS.,

Defendants.

On Appeal from the Court of Chancery.

Petition of Appeal.

To the Honorable Court of Errors and Appeals in the last resort in all causes :

The petition of Thomas F. McCran, Receiver of the Paterson Building Company, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by the final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the eighth day of June, in the year nineteen hundred and six, wherein the McNab & Harlin Manufacturing Company was complainant, and the Paterson Building Company, The G. Drouve Co., Martin Goble, Collins, Lavery and Company, and your petitioner and others were defendants, in this respect, to wit : that the said decree adjudges that the G. Drouve Company has a

lien upon the fund paid into Court of Chancery by the complainant in the above mentioned suit, for the sum of thirteen hundred and seventy-three dollars and seventy cents, and that its claim is second in order of priority ; and directs the Clerk of said Court to pay to the said defendant, The G. Drouve Company or its solicitor, the said sum of money, together with his costs in that suit incurred.

And further, in the respect that the said decree adjudges that the defendant, Martin Goble, has a lein upon a certain fund paid into the Court of Chancery in said cause for the sum of two hundred and thirty-four dollars and two cents, and that his lien is first in order of priority; and directs the Clerk of said court to pay to the said defendant, Martin Goble the said sum of money, together with his costs in this suit incurred.

And further, in the respect that said decree adjudges that the defendant, Collins, Lavery & Company, has a lien upon the same fund for the sum of five hundred and forty dollars and fifty-two cents, and that its lien is fourth in order of proirity and directs the Clerk of said Court of Chancery to pay to the said defendant, Collins, Lavery & Company, the said sum of money, together with its costs in and about its suit incurred.

And your petitioner humbly appeals from that part of the decree of the Chancellor, which decrees as aforesaid, upon the grounds that the same is erroneous for the following reasons :

First. That the debt of the Paterson Building Company to the G. Drouve Company, and for which the said G. Drouve Company claims a lien upon the said fund paid into court by the com-

plainant below, was not such a debt for which a lien could be obtained upon said fund under the statute in such case made and provided ; and for the further reason that even if said debt were such a debt for which said defendant might obtain such a lien, the notice in writing given by the said G. Drouve Company to the McNab & Harlin Manufacturing Company, the complainant below, did not comply with the statute in such case made and provided ; and for these reasons the G. Drouve Company has no lien upon the said fund paid into court.

Second : That Martin Goble, the defendant below, did not give to the McNab & Harlin Manufacturing Company, a notice in writing complying with the statute in such case made and provided, and for that reason, any debt which the Paterson Building Company may have owed the said Martin Goble did not become and is not now a lien upon the said fund paid into court.

Third. That Collins, Lavery & Company, the defendant below, did not give to the McNab & Harlin Manufacturing Company a notice in writing complying with the statute in such case made and provided, and for that reason, any debt which the Paterson Building Company may have owed the said Collins, Lavery & Co., did not become and is not now a lien upon the said fund paid into court.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed and set aside and for noth-

ing holden ; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

Solicitor for and of Counsel with the Appellant.

Answers to Petition of Appeal.

The defendants, Collins, Lavery & Co., Martin Goble and the G. Drouve Company, each filed general answers to the petition of appeal in general form.

IN CHANCERY OF NEW JERSEY.

Between

THE MCNAB & HARLIN MANUFACTURING CO.,

Complainant,

and

THE PATERSON BUILDING COMPANY ET AL.,

Defendants.

Bill of Interpleader.

To His Honor, William J. Magie, Chancellor of the State of New Jersey:

Complaining, shows unto your Honor, your orator, The McNab & Harlin Manufacturing Company, a body corporate under and by virtue of the laws of the State of New York, engaged in the manufacture of iron and brass fittings, plumbers' supplies and kindred products, that it is the owner of a certain tract of land and premises situate, lying and being in the city of Paterson, in the county of Passaic and State of New Jersey, composed of lots known as numbers three hundred and sixty to three hundred and seventy-eight, inclusive, on Straight street, on the official map of said city, and running through to Ramapo avenue.

That, being desirous of erecting on said premises a building or foundry for the purpose of its business, you orator entered into a contract in writing

with The Paterson Building Company, a corporation organized under the laws of the State of New Jersey, under which contract the said The Paterson Building Company undertook to do all the mason work for said building for the sum of nineteen thousand three hundred and forty dollars, which amount your orator agreed to pay for the same; that said contract is dated on the eleventh day of May, in the year nineteen hundred and three, and was filed, together with the specifications of said work, in the office of the Clerk of the County of Passaic on the thirteenth day of May, aforesaid.

That your orator also entered into a contract in writing with said company, dated on the nineteenth day of May, in the year aforesaid, whereby said company undertook to do all the carpenter work required to complete said building for the sum of nineteen thousand four hundred and eighty-five dollars; which amount your orator agreed to pay for the same; that said last mentioned contract, together with the specifications for said work, was also filed in the office of the Clerk of Passaic County, on the twenty-first day of May, in the year aforesaid.

That both of said contracts contained clauses to the effect that payments should be made as the work progressed under the architect's certificate in amounts of five hundred dollars or more, each payment to be for ninety per cent. of the value of the work done at the time the certificate was issued.

That both of said contracts contained clauses to the effect that if the contractors should, at any time, fail or refuse to supply a sufficiency of workmen or material to complete said work after three days' notice in writing to said contractor to proceed with

said work, and upon its failure to proceed with the same, your orator should have power to complete the same and deduct any sum or sums necessary to complete said work from any money due and owing by your orator to said contractor.

And your orator further shows that said contracts and specifications were made out and filed in accordance with and in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment of their labor and materials in erecting any building." (Revision of 1898.)

And your orator further shows that the said The Paterson Building Company entered upon the performance of said work, in pursuance of said contracts, and up to October ninth, nineteen hundred and three, had, under its contract for carpenter work above referred to, done sufficient work to entitle it to the sum of sixteen thousand five hundred dollars, which amount up to that time had been paid to it by your orator for said work upon certificates issued by said architect, and that since said date last above mentioned your orator has made no further payment to said company on said contract.

That, in pursuance of said contract for the mason work above referred to, sufficient work had been done by said Building Company up to the twenty-second day of October, nineteen hundred and three, to entitle it to the sum of eighteen thousand nine hundred and forty dollars, which amount, up to that time, had been paid to it by your orator for said mason work, upon certificates issued by said architect, and that since said last mentioned

date your orator has made no further payments to said company on said contract.

And your orator further shows that in carrying on said works it required other and extra work to be done by said Building Company, not provided for in said contracts, the value of which extra work has been fixed between your orator and said company at eight hundred and seventy-two dollars and sixty-two cents.

That said contractors also did certain other work on other property belonging to your orator, not connected with or relating to the buildings or premises hereinabove referred to, amounting to the sum of one hundred and thirty-four dollars and twenty cents.

And your orator further shows that since the twenty-second day of October, last past, the said The Paterson Building Company has done no work and furnished no material for or toward the erection or construction of the buildings referred to in said contracts, and that said company failed to complete said buildings; that the said Building Company having failed and neglected to complete said work, your orator caused a notice, in writing, to be served upon said company requiring it to proceed with said work within three days from the time of the service thereof, or that upon its failure so, to do your orator would have said work completed and would charge the expense thereof to said Building Company, and deduct the same from any money remaining in the hands of your orator belonging to said company; that said Building Company having failed to proceed with said work within the time required by said notice, your orator was obliged

to have said work done by other parties at an expense to your orator of four hundred and sixty-three dollars and eighty-five cents, which amount your orator has deducted from the money owing by it to said Building Company, as under the terms of its said contracts it was authorized to do, and for which it asks allowance.

And your orator further shows that the said buildings are now completed and that your orator is indebted to said Building Company for said work in the sum of five thousand twenty-seven dollars and ninety-seven cents, which amount it is ready and willing to pay to said Building Company or whomsoever may be entitled to receive it.

That said amount is made up as follows:

Balance due on above recited contract dated May 11, 1903, for mason work. .	$ 500.00
Balance due on above recited contract dated May 19, 1903, for carpenter work.	3,985.00
Amount due for extra work on said building.	872.62
Amount due for work on other buildings as mentioned above.	134.20
	$5,491.82
Less amount paid for completing the work under said contracts.	463.85
Balance due Paterson Building Company	$5,027.97

And your orator further shows that on the twenty-fourth day of October, last past, the said The Paterson Building Company served on your orator an order to pay George A. Myers & Com-

pany, a corporation of this state, the sum of six hundred and seventy dollars and thirty-nine cents, and to charge the same to the account of said Building Company.

That on the thirtieth day of October, aforesaid, the Mehrhof Brick Company, a corporation of this state, served a notice on your orator claiming the sum of one thousand three hundred and fifteen dollars and sixty-five cents, as due from said Building Company, to it for material furnished to said Building Company and used by it, in said buildings of your orator, and requesting payment thereof from your orator.

That on or about the thirteenth day of November, aforesaid, one Martin Goble caused a notice to be served upon your orator claiming the sum of two hundred and thirty-four dollars and two cents, as due to him from said Building Company for material furnished by him to said Building Company in the erection of said buildings of your orator, and requesting your orator to pay the same.

That on the fourteenth day of November, aforesaid, one Cornelius J. Gallagher caused a notice to be served upon your orator claiming the sum of two hundred and thirty-four dollars and forty-six cents, as due to him from said Building Company for labor furnished to said Building Company in the erection of said buildings of your orator, and requiring your orator, to pay the same.

That on the seventeenth day of November, last past, The G. Drouve Company, a corporation, caused a notice to be served on your orator claiming the sum of one thousand three hundred and seventy-three dollars and seventy cents, as due to

it from said Building Company, for work and material furnished by it to said Building Company, in the erection of said buildings of your orator, and requiring your orator to pay the same.

That on the nineteenth day of November, aforesaid, one Joseph R. Graham caused a notice to be served on your orator claiming the sum of three hundred and one dollars, as due to him from said Building Company, for material furnished by him to said Building Company in the erection of said buildings of your orator, and requiring your orator to pay the same.

That on or about the second day of November, aforesaid, the said The Paterson Building Company gave to Collins, Lavery & Company, a corporation, an order or direction on your orator to pay said Collins, Lavery & Company, the sum of five hundred and forty dollars, and to charge the same to the account of said Building Company; that on the nineteenth day of November, aforesaid, the said Collins, Lavery & Company caused a notice to be served upon your orator claiming the sum of five hundred and forty dollars and fifty-two cents, as due to it from said Building Company, for labor and material furnished in the erection of said buildings of your orator, and requesting your orator to pay said amount to said Collins, Lavery & Company, and that on the same day, last aforesaid, the said Collins, Lavery & Company served upon your orator an assignment of said sum of five hundred and forty dollars and forty-two cents made to it by said Paterson Building Company.

That on or about the twenty-fifth day of November, aforesaid, the firm of James Radcliffe & Sons,

a co-partnership composed of James Radcliffe, James E. Radcliffe and Amos H. Radcliffe, caused an account between the said The Paterson Building Company and said James Radcliffe & Sons to be served upon your orator, amounting to the sum of eight hundred and seventy-nine dollars and fifty cents, and also a notice authorizing your orator to pay the same, and claiming that said amount was incurred by said Building Company for work and material furnished to it by said James Radcliffe & Sons in the erection of said buildings of your orator.

That on or about the twenty-fifth day of January, in the year nineteen hundred and four, one Cyril R. Forbes caused a notice to be served upon your orator claiming the sum of twenty-six dollars and twenty cents as due to him from said Building Company, for material furnished by him to said company, in the erection of said buildings of your orator, and requesting your orator to pay said sum to him.

Each of which several orders and notices aforesaid, is claimed by the person or persons or corporation respectfully causing the same to be served, to be valid and effectual in virtue of the matters therein respectively alleged, and by force of the provisions of said act of the Legislature to entitle the said claimants, respectively, to be paid from the funds so due and payable by your orator under its contracts, the amount in said several orders and notices mentioned.

And your orator further shows that copies of the said various orders, notices, claims or assignments above recited are appended hereto and form part

hereof, and that the originals are in the possession of your orator, to which your orator begs leave to refer when necessary so to do.

And your orator further shows that it gave written notice to said The Paterson Building Company of all the various notices and demands above referred to as having been served upon your orator, according to the third section of the act above recited.

And your orator further shows that on or about the sixteenth day of November, last past, the said The Paterson Building Company was, by an order of this Honorable Court, decreed to be insolvent, and one George S. Hilton was appointed the receiver thereof, but he declined to accept said trust; that on the twenty-third day of November, aforesaid, one Thomas F. McCran was substituted as receiver of said Building Company, and on the thirtieth day of November, aforesaid, his appointment as such receiver, was duly confirmed by this Court, and that thereupon said Thomas F. McCran took upon himself the performance of his duties as such receiver, and entered into possession of the assets and property of said The Paterson Building Company.

And your orator further shows that it is claimed by the said Building Company, and by the receiver thereof, that at the time of the service of the aforesaid notice of the Mehrhof Brick Company the amount claimed in said notice was not due and owing by said Paterson Building Company to said Mehrhof Brick Company, for the reason that the said Mehrhof Brick Company then held promissory notes of said Paterson Building Company for said claim, which notes had not then matured, and that by reason thereof said notice was irregular and in-

valid, and of no effect in law, and should be rejected and disregarded in the distribution of said fund.

And your orator further shows that it is also claimed by said receiver that the order given by said Paterson Building Company to said George A. Myers and Company, is invalid for the reason that at the time said order was given, the said Paterson Building Company was insolvent.

That it is also claimed that the notice above referred to served upon your orator by James Radcliffe and Sons is invalid in that it does not specify that the amount therein claimed was for work done or material furnished in the erection of said buildings of your orator, or that payment thereof was demanded from said Paterson Building Company and refused.

And your orator further shows that the said Thomas F. McCran, as receiver of the said Paterson Building Company, also alleges that certain others of the notices served upon your orator, as aforesaid, are irregular and invalid, and that the amounts therein claimed are not due and owing by said Building Company to said claimants, or were not so due and owing at the time of serving the same, as aforesaid, and that he disputes the same and has notified your orator not to pay the same to said several claimants until their rights in the premises are established.

And your orator further shows that the aggregate amount of the claim and orders served upon and filed with your orator, as aforesaid, is greater than the sum now due and owing by your orator to said Building Company; that your orator is unable without great risk to itself, to

determine to whom, of right, said balance now in the hands of your orator and owing by it to said Building Company belongs, and the manner of its division, the several claimants on the one hand claiming the several amounts aforesaid as due to them, and on the other hand disputing among themselves and with said receiver as to the priority according to which said amounts should be paid, and also alleging that certain of said claims or notices were not made out and filed or served in accordance with said act referred to, and that such claims are not entitled to participate in the fund remaining in the hands of your orator.

And your orator further shows that it has always been willing since the completion of said buildings, to pay the balance of said money remaining in its hands, as aforesaid, to such person or persons or corporation as should be lawfully entitled to receive the same and to whom it could pay the same with safety, but that it has been advised that it cannot pay the same or any part thereof to any of said claimants without provoking litigation on the part of the other claimants against it, or without great risk or prejudice to itself on account of the conflicting claims of the various creditors of said Building Company above referred to, and because said fund is insufficient to satisfy said claims in full; and your orator, therefore, hereby offers to pay the same into this Court.

And your orator further shows that it does not in any respect collude with any of the aforesaid claimants, touching the matters in this cause, and that it has not been indemnified by such claimants, or any of them, but brings this suit of its own free

will and to avoid being molested and injured touching the matters contained in this will.

Therefore, and as your orator can only have adequate relief in this Court:

To the end that the said defendants may answer this bill and interplead and settle their rights to the said sum of money now due and owing by your orator to said Building Company, and that your orator may be at liberty to pay the same into this Court, and that your orator, upon payment into Court of such amount, and procuring said defendants to interplead according to the course of this Court, may be decreed to be discharged from all liability to such defendants in the premises, and may have all their costs therein:

May it please your Honor, to grant unto your orator writs of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said The Paterson Building Company, Thomas F. McCran, Receiver of said The Paterson Building Company, George A. Myers & Company, The Mehrhof Brick Company, The G. Drouve Company, Joseph R. Graham, Cornelius J. Gallagher, Collins, Lavery and Company, Martin Goble, James Radcliffe, James E. Radcliffe and Amos Radcliffe, partners, trading and doing business as James Radcliffe and Sons, and Cyril R. Forbes, commanding them, and each of them, on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honor in this Honorable Court, and then and there to answer all and singular the premises aforesaid, and to stand to, per-

form and abide such order, direction and decree therein as to your Honor shall seem meet.

And your orator will ever pray, etc.

EDWARD R. WEISS,

Solicitor for, and

GUSTAVE A. HUNZIKER,

Of Counsel with, Complainant.

Paterson, N. J., Oct. 24, 1903.

McNAB & HARLIN MFG. Co.
Gentlemen :

Please pay to the order of Geo. A. Myers & Co. the sum of six hundred seventy dollars and 39 cents, and charge the same to our account.

This is for H'dware furnished on new b'ldg on Straight St.

Yours very truly,

THE PATERSON B. C.

pr. J. J. ROONEY, Treas.

To the McNab & Harlin Manufacturing Company,
Owners.

Gentlemen:—

Take notice that there is due and owing to us, the Mehrhof Brick Company, from Paterson Building Company, the contracting company which is erecting a building owned by you at numbers 360 to 378 Straight street, Paterson N. J., under a contract entered into May the twenty-first A. D. nine-

teen hundred and three, the sum of thirteen hundred and fifteen dollars and sixty-five cents ($1,315.65) for material furnished by us to the said Paterson Building Company, and used by the said company in the erection and construction of the said building owned by you at numbers 360 to 378 Straight street, in the City of Paterson, County of Passaic and State of New Jersey ; and further, that we have demanded of the said Paterson Building Company, the contractors erecting said building as aforesaid, the payment of the above mentioned sum of thirteen hundred and fifteen dollars and sixty-five cents, but that the said Paterson Building Company has refused and failed to pay us.

Therefore, we notify you, the McNab & Harlin Manufacturing Co., to retain the said sum of thirteen hundred and fifteen dollars and sixty-five cents ($1,315.65) so due us from the said Paterson Building Company for material used in the erection of the said building owned by you, out of the amount due and owing, or which may hereafter become due and owing, from you to the said Paterson Building Company, contractors erecting your said building, and to pay the said sum of thirteen hundred and fifteen dollars and sixty-five cents ($1.315.65) to us, or to reserve the same for us, and not to pay the said sum to the said Paterson Building Company, and that the said sum is demanded of you.

Dated Paterson, N. J., October the 30th, A. D., 1903.

Yours respectfully,
MEHRHOF BRICK CO.,
NICHOLAS MEHRHOF,
Treas.

Paterson, N. J., November 13th, 1903.

THE MCNAB & HARLIN MFG. CO.,
City.

Dear Sir :

This is to notify you that I have sold to the Paterson Building Company, for your building on Straight street, Paterson, N. J., material to the amount of two hundred and thirty-four —02-100 dollars, $234.02, and that I have demanded payment of same and that they have refused to pay me.

You are therefore notified to retain the said amount out of sums of money due them or to become due them, and after satisfying yourself that the bill is correct, pay the same over to me.

Yours respectfully,
MARTIN GOBLE,
H.

To McNab & Harlin Mfg. Company, Owner.

You are hereby notified that The Paterson Building Company, is justly indebted to me in the sum of two hundred and thirty-four dollars and forty-six cents ($234.46) for labor furnished by me to the said The Paterson Building Company, in the erection of one and two story brick building erected on the land owned by you and situate in the city of Paterson, New Jersey, and known and designated as lots Nos. 260 to 280 Striaght street in said city, which run through to Ramapo Avenue, pursuant to the written contract made between you and the said The Paterson Building Company and on file

in the Passaic County Clerk's office; and you are further notified that I have demanded payment from the said The Paterson Building Company of the said sum of money, so due and owing to me as aforesaid, and that it has refused to pay the same or any part thereof ; and you are therefore, required to retain the amount, so due and claimed by me, out of the amount owing by you on said contract, or that may hereafter become due and owing by you on said contract and, on being satisfied of the correctness of my demand, to pay the same to me.

Dated, November 14th, 1903.

CORNELIUS J. GALLAGHER.

THE G. DROUVE COMPANY,
Bridgeport, Conn.,
Nov. 17, 1903.

MCNAB & HARLIN MFG. CO., OWNERS.

Gentlemen :

We hereby notify you that the Paterson Building Company is justly indebted to us in the sum of one thousand three hundred and seventy-three dollars and seventy cents ($1,373.70) for labor and material furnished by us to the said The Paterson Building Company, in the erection of the one and two story brick building erected on the land owned by you and situate in the city of Paterson, New Jersey, and known and designated as lots Nos. 360 to 380 Straight street in said city, and extending through to Ramapo avenue, in accordance with the written contract made between you and the said The Paterson Building Company, and on file in the Passaic County Clerk's office ; and you are further notified that we have demanded payment from the

said The Paterson Building Company of the said sum of money so due and owing to us as aforesaid, and that it has refused to pay the same or any part thereof; and you are therefore required to retain the amount, so due and claimed by us, out of the amount owing by you on said contract, or that may hereafter become due and owing from you on said contract, and to pay the same to us.

(Signed) THE G. DROUVE CO.,
A. C. BRADLEY,
President.

To McNab & Harlin Manufacturing Company, Owner:

You are hereby notified that the Paterson Building Company, the contractor, is justly indebted to me in the sum of three hundred and one dollars ($301) for materials furnished by me at its request and used in the erection of the brick foundry building, erected or being erected on the land owned by you, located on the westerly side of Straight street, in the city of Paterson, county of Passaic and state of New Jersey, mentioned and described in a certain written contract bearing date May 19, 1903, made between you and the said the Paterson Building Company, and on file in the Clerk's Office in the said county of Passaic; and you are further notified, that I have demanded payment from the said Paterson Building Company of the said sum of money, so due and owing to me as aforesaid, and that it has refused to pay the same or any part thereof; and you are, therefore, required to retain the amount, so due and

claimed by me, out of the amount owing by you on said contract, or that may hereafter become due and owing from you on said contract and, on being satisfied of the correctness of my demand, to pay the same to me.

Dated November 17, 1903.

(Sd.) Jos. R. Graham.

Paterson, N. J., Nov. 2, 1903.

McNab & Harlin Manufacturing Co.,

Gentlemen :

Sirs :—Please pay Collins, Lavery & Co. five hundred and forty dollars, $540.00, and charge the same to our account.

The Paterson B. Co.,
J. J. Rooney,
Treasurer.

To McNab & Harlin Manufacturing Company, owner of the building known as No. 368 to 378 Straight street, in the city of Paterson, and State of New Jersey.

Take notice, that there is due to us, Collins, Lavery & Company from Hugh Montague, Joseph J. Rooney and Dennis A. Bergan, partners trading as the Paterson Building Company, the sum of five hundred forty dollars and fifty-two cents, by you, the said owner, used and employed in the erecting and constructing of your said building; that we have demanded payment of said contractors, and they have refused to pay us, and we therefore notify you to retain the amount so due of the amount owing by you to the said contractors or that may hereafter become due from you to

said contractors for labor or materials used in the erection and construction of said building, and that you pay the same to us.
Dated November 18, 1903.

COLLINS, LAVERY & COMPANY,
per S. B. COLLINS,
President.

Know all men by these presents, that we, Hugh Montague, Joseph J. Rooney and Dennis J. Bergan, trading as and under the firm name of the Paterson Building Company, for and in consideration of the sum of five hundred and forty dollars and fifty-two cents, lawful money of the United States of America, to us in hand paid at or before the ensealing and delivery of these presence, the receipt whereof is hereby acknowledged, have assigned, transferred and set over, and by these presence do assign, transfer and set over unto Collins, Lavery & Company, a corporation of the State of New Jersey, out of the moneys now due and owing or hereafter to become due and owing to us from McNab & Harlin Manufacturing Company, for work done and materials furnished by the said Collins, Lavery & Company to us, and by us used in the erection and construction of a certain building for the said McNab & Harlin Manufacturing Company, at Paterson, New Jersey, the sum of five hundred and forty dollars and fifty-two cents.

And we hereby nominate, constitute and appoint time said Collins, Lavery & Company our attorney, irrevocable, for the purpose of demanding, collecting, suing for or receipting for said sum of money, either in their own name or in our name, as they

may see fit, and that their receipt shall be as good and effectual as if we had caused the same to be duly signed.

In witness whereof, the said Paterson Building Company have caused this assignment to be signed by one of its members this second day of November, nineteen hundred and three.

THE PATERSON BUILDING COMPANY, [L. S.]

By J. J. ROONEY,

Treasurer.

Paterson, N. J., Nov. 25, 1903.

MCNAB & HARLIN MFG. CO.,

56 John St., N. Y.

Gentlemen :

We return to you this bill under the laws of New Jersey and the lien law of New Jersey and do hereby authorize you to withhold the amount of bill due us from The Paterson Building Company of Paterson, New Jersey.

Yours very respectfully,

JAMES RADCLIFFE & SONS,

pr. Amos. H. Radcliffe.

Paterson, N. J., Oct. 31, 1903.

THE PATERSON BUILDING CO.

To JAS. RADCLIFFE & SONS, Dr.

Oct. 23.	5 sets door springs and fixtures	$ 77 50	
	To contract for McNab & Harlin Mfg. Co.	3,102 00	
			$3,179 50
Aug. 22.	By check	1,500 00	
Oct. 12.	By check	800 00	
			2300 00
	Bal. due		$879 50

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss.

James Radcliffe, being duly sworn, on his oath says that he is a member of the firm of James Radcliffe and Sons, of the City of Paterson, N. J. ; and deponent further says that said firm of James Radcliffe & Sons has a just claim against the estate of The Paterson Building Company, amounting to the sum of eight hundred and sventy-nine dollars and fifty cents, besides interest, the same being the amount due to said firm of James Radcliffe & Sons on a book account of which the foregoing is a true copy.

JAS. RADCLIFFE.

Sworn and subscribed before me this 18th day of Nov. A. D., 1903.

WOOD MCKEE,
Notary Public of N. J.

To McNab & Harlin Manufacturing Company, Owner :

You are hereby notified that the Paterson Building Company is justly indebted to me, in the sum of twenty-six dollars and twenty cents, for materials furnished by me to said company and used in the erection of the brick foundry and core room, erected on the land owned by you, and situated at Nos. 360 to 378 Straight street, in the city of Paterson, county of Passaic and State of New Jersey, pursuant to the written contract, dated May 11, 1903, made between you and said company, and on file in the Passaic County Clerk's office ; and you are further notified that I have demanded payment from the said Paterson Building Company of the said sum of money, so due and owing to me as aforesaid, and that it has refused to pay the same or any part thereof ; and you are, therefore, required to retain the amount so due and claimed by me out of the amount owing by you on said contract, or that may hereafter become due and owing from you on said contract, and, being satisfied of the correctness of my demand, to pay the same to me.

The following is a true statement of the account :

1903.

May	25.	To 80	bags Rosendale cement	$ 24 00
		80	"	8 00
	26.	100	sand tickets	10 00
June	1.	50	bags Rosendale	15 00
		50	" "	5 00
	2.	50	" "	15 00
		50	" "	5 00

June 10.	70 bags Rosendale		21 00
	70 " "		7 00
16.	55 " "		16 50
	55 " "		5 50
July 7.	25 " "		7 50
	25 " "		2 50
9.	50 " "		15 00
	50 " "		5 00
17.	4,000 paving blocks		168 00
20.	50 bags Rosendale		15 00
	50 " "		5 00
Aug. 15.	30 " "		10 00
	30 " "		3 00
			$363 00

Credit

May 25.	By 50 bags	$ 5 00	
June 16.	" 148 "	14 80	
July 13.	" cash	50 00	
23.	" "	70 00	
28.	" "	62 00	
Aug. 18.	" "	75 00	
Oct. 3.	" "	50 00	
			$326 80
			$ 36 20
Credit by 300 paving blocks			10 00
Balance due			$ 26 20

CYRIL R. FORBES.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } SS.

DANIEL O'CONNELL, of full age, being duly sworn according to law, says that he is the treasurer and acting president of the McNab & Harlin Manufacturing Company, the complainant, and that the complainant has exhibited its bill of interpleader against the defendants in the above stated cause without any fraud or collusion between it and the said defendants, but merely of its own accord, for relief in this Court; and that said bill is not exhibited at the request of the said defendants, or any or either of them; and that the complainant is not indemnified by the said defendants, or by any of them. And he further says that the complainant has exhibited said bill with no other intent but to avoid being sued or molested by the said defendants touching the matters contained in said bill.

DANIEL O'CONNELL.

Sworn and subscribed before me this 15th day of April, 1904.

HENRY BEST,
Notary Public N. Y. Co.

{ SEAL OF NOTARY }

IN CHANCERY OF NEW JERSEY.

Between THE MCNAB AND HARLIN MANUFACTURING COMPANY, *Complainant,* *and* THE PATERSON BUILDING COMPANY ET ALS., *Defendants.*	*On Bill of Interpleader.*

Decree of Interpleader.

This cause coming on to be heard in the presence of Edward R. Weiss, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned served upon the Mehrhof Brick Company, and due service acknowledged for the G. Drouve Company, The Paterson Building Company and Joseph R. Graham, and served upon George A. Myers and Company, James Radcliffe, James E. Radcliffe, Amos H. Radcliffe, Martin Goble and Cyril R. Forbes ; and that said defendants have neglected to file any plea, demurrer or answer to the complainant's bill within the time limited by law ; and that said bill has been heretofore taken as confessed against them, and that the defendants, Thomas F. McCran, receiver of the said The Paterson Building Company, Cornelius J. Gallagher, and Collins, Lavery & Company, have answered said complainant's bill, and consent to

the making of this decree (which consent is hereunto appended); and it appearing to the court upon consideration thereof that the complainant holds the funds in its bill mentioned for the true owners thereof without having or claiming any right or interest therein, and is willing and ready to deposit said funds in this Court to be delivered over to whomsoever may have right thereto.

It is thereupon on this sixteenth day of September, nineteen hundred and four, by his Honor, William J. Magie, Chancellor of the State of New Jersey, ordered adjudged and decreed, and the said Chancellor does, by virtue of the power and authority of this court hereby order, adjudge and decree that the said bill of interpleader is properly brought by the complainant in this cause, and that said complainant is entitled to relief in this court.

And it is further ordered, adjudged and decreed that the said complainant do forthwith pay over the funds in its bill mentioned, to wit, the sum of five thousand and twenty seven dollars and ninety-seven cents ($5,027.97) to the Clerk of this court, to be delivered over to whomsoever may have right hereto, and that upon payment of the same as aforesaid the said complainant be dismissed from the further prosecution of this suit, and its cost to be taxed, and a counsel fee of twenty-five dollars paid by the Clerk of this court out of the fund, and that upon payment of the said fund into this court as aforesaid, the complainant be released, acquitted and discharged from all claims or liability to either or any of the defendants in this suit, for, upon or by reason of said fund.

And it is further ordered, adjudged and decreed that the defendants do interplead, settle and ad-

just their respective claims, demands and matters in controversy in this suit as between themselves.

W. J. MAGIE,

C.

Respectfully advised,

S. M. DICKINSON,

Adv. Master.

IN CHANCERY OF NEW JERSEY.

Between
THE McMAB AND HARLIN MANUFACTURING COMPANY,
Complainant,
and
THE PATERSON BUILDING COMPANY ET ALS.,
Defendants.

On Bill of Interpleader.

Statement of the Defendant Martin Goble

Of the grounds of his claim to the fund directed to be paid into Court in the above cause.

The said defendant, Martin Goble, shows that heretofore the Paterson Building Company in and by two certain contracts in writing, the first dated upon the eleventh day of May, in the year nineteen hundred and three, and the second dated the nineteenth day of May in the same year, undertook to do all the mason work and all the carpenter work required to complete a new building for the McNab and Harlin Manufacturing Company, the other party to said contract upon land owned by said McNab and Harlin Manufacturing Company, in the city of Paterson, in the County of Passaic and State of New Jersey, and known and designated as Nos. three hundred and sixty to three hundred and seventy-eight Straight street, in con-

sideration whereof, the said McNab and Harlin Manufacturing Company agreed to pay the said Paterson Building Company the sum of nineteen thousand three hundred and forty dollars for said mason work and the sum of nineteen thousand four hundred and eighty-five dollars for said carpenter work. And afterwards the said contracts were filed in the office of the clerk of Passaic County, with the different sets of specifications accompanying them ; thefirst on the thirteenth day of May nineteen hundred and three and the second on the twenty first day of May in said year.

And this defendant shows that afterwards the said Paterson Building Company became indebted to this plaintiff in the sum of two hundred and thirty-four dollars and two cents for materials furnished by this defendant to said company, and by said company used in the erection of the building for the said McNab & Harlin Manufacturing Company in pursuance of the contracts above set forth, a bill of items of which materials is hereto annexed and the said Paterson Building Company being so indebted to the defendant Martin Goble, the said Martin Goble demanded of the said company payment of the said amount and the said Paterson Building Company then and there refused to pay the same, and thereupon this defendant on the thirteenth day of November, nineteen hundred and three, gave notice in writing to the said McNab & Harlin Manufacturing Company, of the said demand and refusal, and of the amount due to this defendant as aforesaid.

And this defendant shows that there was then in the hands of the McNab & Harlin Manufactur-

ing Company, or that there grew due thereafter as appears by the said bill of interpleader upon said contracts the sum of five thousand and twenty-seven dollars and ninety-seven cents, and that the said McNab & Harlin Manufacturing Company shortly thereafter became satisfied of the correctness of the demand of this defendant, but that the said company have by virtue of a decree of this honorable court made in this cause paid the said sum into this court.

And this defendant therefore prays that there should be paid to him out of the said fund the said sum of two hundred and thirty-four dollars with interest and costs.

And this defendant will ever pray, &c.

IN CHANCERY OF NEW JERSEY.

Between THE MCNAB & HARLIN MANUFACTURING COMPANY, *Complainant,* *and* THE PATERSON BUILDING COMPANY ET ALS., *Defendants.*	*On Bill of Interpleader.*

Statement of Claim.

Statement of the grounds of the claim of The G. Drouve Company, one of the defendants, to a part of the fund paid into Court in the above entitled cause, by The McNab & Harlin Manufacturing Company, complainant.

This defendant, for its statement of its claim, says that in the year nineteen hundred and three, shortly after the McNab & Harlin Manufacturing Company and the Paterson Building Company entered into the contracts referred to in the bill filed in the above entitled cause, the defendant therein, the Paterson Building Company, bought from the defendant, the G. Drouve Company, certain material to be used in the erection and construction of the building to be erected under the terms of the contract aforesaid by the said defendant, the Paterson Building Company, to wit, Lovell ap-

paratus, consisting of six runs each of two hundred and twenty-six feet (226 feet), and six runs each of twelve feet (12 feet), for which the said defendant, The Paterson Building Company, agreed to pay to the said The G. Drouve Company the sum of one thousand, four hundred and forty-six dollars ($1,446) less five per cent. thereof, or seventy-two dollars and thirty cents ($72.30), or one thousand three hundred and seventy-three dollars and seventy cents ($1,373.70). That the said defendant, The G. Drouve Company, sold and delivered the said materials to the said defendant, The Paterson Building Company, which said materials were used by the said defendant, The Paterson Building Company, in the erection and construction of said building of the said plaintiff, The McNab and Harlin Manufacturing Company. That the said defendant, The G. Drouve Company, have received no payment for the said materials from the said defendant, The Paterson Building Company, or from anyone else upon or for the account of said defendant, although the said defendant, The G. Drouve Company, have demanded payment from the said defendant, The Paterson Building Company, which was refused, and thereupon, on the twelfth day of November, in the year nineteen hundred and three, this defendant caused a notice to be served on the complainant, The McNab and Harlin Manufacturing Company, claiming from it the sum of money last above set forth, as due to it from the defendant, The Paterson Building Company, and this defendant claims that the service of the notice aforesaid was the fifth in point of date to be served upon the said The McNab and Harlin Manufacturing Com-

pany, but in effect it is really first on account of the irregularities and improper and illegal forms of the notices served upon the said Company prior to the notice of this defendant.

This defendant therefore prays that a decree may be made in this cause directing that the sum of one thousand three hundred and seventy-three dollars and seventy cents ($1,373.70) be paid to it, or its solicitors, out of the funds paid into Court by the said complainant, The McNab & Harlin Manufacturing Company.

Solicitors of the Defendant,
THE G. DROUVE COMPANY.

Of Counsel.

IN CHANCERY OF NEW JERSEY.

Between McNab & Harlin Manufacturing Company, *Complainant,* and Paterson Building Company et al., *Defendants.*	*On Bill of Interpleader.*

Amended Statement of Collins, Lavery & Company.

The amended answer of Collins, Lavery & Company, a corporation duly organized and existing under the laws of the State of New Jersey, to the interlocutory decree heretofore made in this cause on the sixteenth day of September, nineteen hundred and four, alleges as follows :

1. That it is a corporation duly organized and existing by virtue of and under the laws of the State of New Jersey.

2. That this defendant has no knowledge excepting as derived from the bill of complaint whether any of the claims of the defendants in this suit, excepting of this defendant, are meritorious and should be paid and this defendant leaves the other defendants to prove the same as this court may direct.

3. That at the request of Paterson Building Company it furnished certain material, consisting of lumber, to the said the Paterson Building Company and by the said Paterson Building Company used in the erection and construction of the buildings in said contract mentioned and set forth in the bill of complaint, in the sum of five hundred and forty dollars, and that having furnished the same, this defendant demanded payment therefor from the said Paterson Building Company, which said demand the said Paterson Building Company refused and did not pay the same or any part thereof.

That thereupon said Paterson Building Company gave this defendant an order in writing directed to the complainant in this cause, requesting said complainant to pay said sum of five hundred and forty dollars to this defendant, and at the same time the said Paterson Building Company, by an assignment in writing, assigned, transferred and set over to this defendant said sum of five hundred and forty dollars, out of the money then due and owing or thereafter to become due and owing to it from said complainant, copies of which order and assignment are annexed to the bill of complaint in this cause. That this defendant thereupon served upon said complainant copies of said order and assignment and also served on said complainant a notice in writing demanding from said complainant said sum of five hundred and forty dollars, a copy of which notice is also annexed to said bill of complaint. That it fully appeared from said order, assignment and notice so served on complainant, that this defendant had furnished said Paterson Building Company material used by the Paterson Build-

ing Company in the erection of the buildings in said contract and in said bill of complaint mentioned; that the said sum of five hundred and forty dollars was due from said Paterson Building Company therefor; that this defendant had demanded payment of said sum and that Paterson Building Company had refused to pay the same. That said order, assignment and notice were served on said complainant on the nineteenth day of November, nineteen hundred and three.

4. That said order, assignment and notice did not include any item against said Paterson Building Company other than material of this defendant actually furnished and used in the erection and construction of said building.

5. That this defendant's claim has not been settled or paid by said Paterson Building Company or anyone for it and no notice or dispute of the same has ever been given to this defendant and this defendant is ready and willing to satisfy the court of the correctness of its claim.

6. Wherefore this defendant says it is entitled out of the sum heretofore deposited in this court to be paid first the full amount of this claim, by virtue of an act of the Legislature of New Jersey entitled "An Act to secure to mechanics and others payment for their labor and material in erecting any building," and the various supplements thereto and amendments thereof, there being sufficient funds for that purpose.

BRINKERHOFF & FIELDER,

Solicitors for and of Counsel with Defendant Collins, Lavery & Company.

IN CHANCERY OF NEW JERSEY.

Between THE MCNAB & HARLIN MANUFACTURING CO., *Complainant,* *and* THE PATERSON BUILDING COMPANY ET AL., *Defendants.*	*On Bill of Interpleader.*

Statement of the Claim of Thomas F. McCran

as Receiver of the Paterson Building Company, to the fund directed to be paid into the above court in the above cause.

The said Thomas F. McCran shows that on the sixteenth day of November, nineteen hundred and three, The Paterson Building Company was declared insolvent by an order of this honorable court in a cause therein depending, wherein Joseph J. Rooney was the complainant and the said Paterson Building Company was defendant, and thereafter in said cause by an order dated the twenty-third day of November, nineteen hundred and three, he was appointed receiver of such insolvent corporation with full power to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every and any description, belonging to the said Paterson Building Company, and that this defend-

ant duly qualified as such receiver and is still qualified and acting as such receiver.

And this defendant shows that many of the creditors of the said Paterson Building Company have filed with him proofs of claims against said company greater in total amount than the fund paid into court in this cause.

And this defendant shows that he claims the whole of said fund upon the following grounds :

As receiver of the Paterson Building Company he is entitled to receive the whole of said fund because the said amount was due to the said Paterson Building Company at the time the same was adjudicated insolvent as aforesaid, from the said McNab & Harlin Manufacturing Company under the contracts set forth in the bill of interpleader filed herein.

And defendant shows that he is entitled to receive the whole of said fund and that the other defendants are not entitled to receive any part thereof ; that the order given to George A. Myers & Company for the sum of six hundred and seventy dollars and thirty-nine cents was invalid and of no effect because at the time the same was made by the said Paterson Building Company the said company was insolvent and had suspended its ordinary business ; that the said order was made in contemplation of insolvency ; and that the said George A. Myers & Company through its officers and agents knew at the time said order was given that the Paterson Building Company was insolvent and that the same was given in contemplation of insolvency ; and further that the said order was never accepted nor recognized by the McNab & Harlin Manufacturing Company.

And the said defendant further shows that the Mehrhof Brick Company is not entitled to receive any part of said fund because at the time of the service of the notice by them upon the McNab and Harlin Manufacturing company the said amount was not due to them from the Paterson Building Company, they having accepted the notes of the Paterson Building Company for such indebtedness; which notes were not payable until after the said Company was adjudicated insolvent; and further that at the time of the demand by the said Mehrhof Brick Company upon the Paterson Building Company for payment of the said sum of thirteen hundred and fifteen dollars and sixty-five cents as alleged in their notice, if any such demand was in fact made, the said sum of money was not due by the PatersonBuilding Company to said Mehrhof Brick Company and the said Paterson Building Company was justified in refusing to pay the same. And further that the notice of the said Mehrhof Brick Company served upon the said McNab and Harlin Manufacturing Company was defective in many particulars and did not comply with the statute in such case made and provided.

And this defendant further says that Collins, Lavery & Co., a corporation, is not entitled to receive anything from said fund because if the order and assignment referred to in the Bill of Interpleader, and upon which they purport to rely, was made by the said Paterson Building Company, the same were void because the said company at the time of the making thereof was insolvent and had suspended its ordinary business; and this defendant further shows that the said order and

assignment were not made by said Paterson Building Company, and that said order never was accepted by the Paterson Building Company ; and further that the notice referred to in the Bill of Interpleader and served upon the said McNab and Harlin Manufacturing Company by said Collins and Lavery Company does not show that any demand was made upon the Paterson Building Company, nor any refusal by them to pay the same, and in other respects does not conform to the statute in such case made and provided.

And this defendant further shows that the said James Radcliffe & Sons are not entitled to receive any part of said fund, because the notice referred to in the Bill of Interpleader and served by them upon the McNab and Harlin Manufacturing Company does not show that any demand was made by them upon the Paterson Building Company for the amount so claimed to be due them nor that said company had refused to pay the same, and in other respects does not conform to the statute in such case made and provided.

And this defendant further shows that the notices served bythe other defendants, Martin Goble, Cornelius J. Gallagher, The G. Drouve Company, Joseph R. Graham and Cyril R. Forbes, do not conform to the statutes in such cases made and provided and for that reason none of them should receive any of the said fund.

This defendant therefore prays that the said fund should be paid over to him to distribute amongst the creditors of the said Paterson Build-

ing Company in accordance with the statute in such case made and provided.

And this defendant will ever pray, &c.

EDWARD F. MERREY,
Solicitor and of Counsel with

THOMAS F. MCCRAN,
As Receiver of the Paterson Building Company.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between THE MCNAB & HARLIN MANUFACTURING COMPANY, *Complainants,* *and* THE PATERSON BUILDING COMPANY ET ALS., *Defendants.*	*On Appeal from Chancery.*

Stipulation.

It is hereby agreed between Messrs. Brinkerhoff and Fielder, solicitors for Collins, Lavery and Company, Francis Scott, Esq., solicitor for Martin Goble, James G. Blauvelt, Esq., solicitor for the G. Drouve Company, and Edward F. Merrey, Esq., solicitor for Thomas F. McCran, receiver of the Paterson Building Company, all the parties to this appeal, that the state of the case to be printed on this appeal shall be abridged, and that it shall contain the following:

First.—A copy of the petition of appeal and answers.

Second. A copy of the bill of complaint and notices and orders annexed thereto.

Third. The decree of interpleader.

Fourth. The concise statements filed under Chancery Rule No. 221, by each of the parties to this appeal.

Fifth. The agreement as to the facts proved as set forth below.

Sixth. A copy of the final decree.

Seventh. The opinion of Vice Chancellor Stevenson.

It is further agreed that in lieu of the proofs the following statements of facts proved be printed :

That it is admitted that the statements of fact set forth in the bill of complaint were proved to be true.

A. That before November thirteenth, nineteen hundred and three, the Paterson Building Company owed to Martin Goble the sum of two hundred and thirty-four dollars and two cents for brick, lime and other such materials furnished by him to the said company, which were used in the erection of the buildings of the McNab & Harlin Manufacturing Company referred to in the bill of complaint, and that the same were used by the said Paterson Building Company in pursuance of the mason work contract first set out in the bill of complaint. That Martin Goble demanded from the Paterson Building Company the said sum of money, which it refused to pay, and thereupon on the thirteenth day of November, nineteen hundred and three, the said Martin Goble caused a notice, a copy of which is annexed to the bill of complaint, to be served upon the McNab & Harlin Manufacturing Company.

B. That before November seventeenth, nineteen hundred and three, the G. Drouve Company furnished to the Paterson Building Company, and installed in the mill erected by the said Paterson Building Company for the McNab & Harlin Manufacturing Company as set forth in the bill of complaint, a patented apparatus, known as a Lovell apparatus, which was intended to be used in opening and closing a skylight in said mill. The said G. Drouve Company furnished this apparatus, and also furnished the labor for installing same, all for the agreed price of thirteen hundred and seventy-three dollars and seventy cents. This apparatus was included in the carpenter's contract mentioned in the bill of complaint. That the said sum of money, being due to the G. Drouve Company from the said Paterson Building Company, the G. Drouve Company demanded payment of the said sum from the Paterson Building Company, which refused to pay the same, whereupon the G. Drouve Company, November seventeenth, nineteenth hundred and three, served upon the McNab & Harlin Manufacing Company a notice, signed by the G. Drouve Company, a copy of which is attached to the bill of complaint.

C. That some time prior to the second of November, nineteen hundred and three, Collins, Lavery & Company furnished to the Paterson Building Company, lumber of the value of five hundred and forty dollars and fifty-two cents, which lumber was used by the Paterson Building Company in erecting a mill of the complainant in and by virtue of the carpenters' contract, the second contract referred to in the bill of complaint.

That on November second, nineteen hundred and three, the Paterson Building Company executed an order on the McNab & Harlin Manufacturing Company, directing it to pay to Collins, Lavery & Company, the sum of five hundred and forty dollars, a copy of which order is annexed to the bill of complaint. That later, an assignment made by Hugh Montague, Joseph J. Rooney and Dennis J. Bergan, dated November second, nineteen hundred and three, assigning to Collins, Lavery & Company, the sum of five hundred and forty dollars and fifty-two cents, out of the moneys which were to become due to the Paterson Building Company from the McNab & Harlin Manufacturing Company in the erection of the buildings mentioned in the bill of complaint, was executed, as appears by the copy of the said assignment which is annexed to the bill of complaint. And further, that at some date prior to the twenty-fourth day of October, nineteen hundred and three, the said Paterson Building Company became insolvent, and discontinued its business and had not resumed the same at the beginning of this suit, and continues insolvent to this time.

That prior to November second, nineteen hundred and three, the Paterson Building Company owed to Collins, Lavery & Company, the sum of five hundred and forty dollars and fifty-two cents for lumber furnished by Collins, Lavery & Company to the Paterson Building Company and used by it in the erection of the buildings referred to in the bill of complaint, in and by virtue of the carpenters' contract, the second contract referred

to in the bill of complaint. And the said money being so due to the said Collins, Lavery & Company, by the Paterson Building Company, the said Collins, Lavery & Company demanded payment of the same, from the Paterson Building Company and it was refused. That on the eighteenth day of November, nineteen hundred and three, the said Collins, Lavery & Company caused to be served upon the McNab & Harlin Manufacturing Company, a stop notice, copy of which is annexed to the bill of complaint. That the said order, assignment and stop notice has reference to one and the same indebtedness. That said order and assignment were served by Collins, Lavery & Company, with their said notice, on the McNab & Harlin Manufacturing Company.

D. That on the tenth day of November, nineteen hundred and three, the Paterson Building Company was by order of the Court of Chancery decreed to be insolvent, and that on the twenty-third day of November, nineteen hundred and three, Thomas F. McCran was made receiver of the said building company. That on the thirtieth day of November, nineteen hundred and three, his appointment as such receiver was duly confirmed by the said court, and he is still acting as such. That as such receiver, the said Thomas F. McCran is entitled to receive all the moneys paid into court in this suit, by the complainant in this suit, except such moneys as should properly be paid to the other defendants by virtue of the liens acquired by

stop notices in and by virtue of the Mechanics' Lien Law.

BRINKERHOFF & FIELDER,
Solicitors of Collins, Lavery & Co.

FRANCIS SCOTT,
Solicitor of Martin Goble.

JAS. G. BLAUVELT,
Solicitor of G. Drouve Co.

EDW. F. MERREY,
Solicitor of Thomas F. McCran, Receiver.

IN CHANCERY OF NEW JERSEY.

Between
THE MCNAB & HARLIN MFG. CO.,
Complainant,
and
THE PATERSON BUILDING CO.,
Defendants.

On Bill of Interpleader.

Decree.

This cause coming on to be heard before the Court, in the presence of Messrs. Ward & McGinnis, Esquires, of counsel with the Mehrhof Brick Company, defendant; of James G. Blauvelt, of counsel with the G. Drouve Company, defendant; William B. Gourley, Esq., of counsel with Joseph R. Graham, defendant; J. Willard De Yoe, Esq., of counsel with George A. Myers & Co., defendant; of Wood McKee, Esq., of counsel with James Radcliffe, James B. Radcliffe and Amos Radcliffe, partners, as James Radcliffe and Sons, defendants; Hugh McQuillan, Esq., of counsel with Martin Goble and Cyril R. Forbes, defendants; of Brinkerhoff & Fielder, of counsel with Collins, Lavery and Company, defendants, Michael Dunn, Esq., of counsel with Cornelius J. Gallagher; and Edward F. Merrey, Esq., of counsel with Thomas F. McCran, Receiver of the Paterson Building Company; and the complainant, the McNab & Harlin Manufacturing Com-

pany, having paid to the Clerk of this Court the sum of five thousand and twenty-seven dollars and ninety-seven cents ($5,027.97) to be delivered over to whomsoever may have right thereto, and upon said payment, having been dismissed from the further prosecution of the suit with its costs to be taxed, and a counsel fee of twenty-five dollars to be paid by the Clerk of this Court out of the said fund; and said complainant having been by said order released, acquitted and discharged from all claims or liabilities to either or any of the defendants in this suit, for, upon or by reason of said funds.

And the said defendants having been ordered, adjudged and decreed to interplead, settle and adjust their respective claims, demands and matters in controversy in this suit as between themselves, and each of the said defendants, having filed statements in accordance with the rules of this Court, whereby and wherein each of the said defendants did claim to be entitled to the said fund or some portion thereof; and the said statements being read, and the testimony of witnesses offered by the said defendants being heard, and the arguments of the respective counsel being heard, and it appearing that the defendant, George A. Myers & Company, has no lien or claim of any kind upon the said fund, that the defendant, the Mehrhof Brick Company, has no lien or claim of any kind upon the said fund; that the defendant, Martin Goble, has a lien upon the said fund for the sum of two hundred and thirty-four dollars and two cents ($234.02) and is entitled to be paid out of the said fund, the said sum of two hundred and thirty-four

dollars and two cents ($234.02) and that his lien is first in order of priority.

That the defendant, Cornelius J. Gallagher, has no lien or claim upon said fund.

That the defendant, the G. Drouve Company, has a lien upon the said fund for the sum of thirteen-hundred and seventy-three dollars and seventy cents ($1,373.70) and is entitled to be paid out of the said fund the said sum of thirteen hundred and seventy-three dollars and seventy cents ($1,373.70) and its claim is second in order of priority.

That the defendant, Joseph R. Graham, has a lien upon the said fund for the sum of three hundred and onedollars, ($301) and is entitled to be paid out of the said fund the said sum of three hundred and one dollars ($301), and his claim is third in order of priority.

That the defendant, Collins, Lavery and Company, has a lien upon the said fund for the sum of five hundred and forty dollars fifty-two cents ($540.52) and is entitled to be paid out of the said fund the said sum of five hundred and forty dollars and fifty-two cents ($540.52) and that its lien is fourth in order of priority.

That the defendants, James Radcliff, James E. Radcliff, and Amos H. Radcliff, partners trading as James Radcliff & Sons, have no lien or claim of any kind upon the said fund.

That the defendant, Cyril R. Forbes, has a lien upon the said fund for the sum of twenty-six dollars and twenty cents ($26.20) and is entitled to be paid out of the said fund the said sum of twenty-six dollars and twenty cents ($26.20), and that his lien is fifth in order of priority.

That the balance of the said fund belongs to

Thomas F. McCran as receiver of the Paterson Building Company. It is thereupon, on this eight day of June, nineteen hundred and six, by the Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of his Court does hereby order, adjudge and decree that the said defendants, the Mehrhof Brick Company, George A. Myers & Co., James Radcliff, James E. Radcliff and Amos H. Radcliff, partners, as James Radcliff & Sons, and Cornelius Gallagher, have no lien upon or claim to or right in the said fund heretofore paid into the Court by the McNab & Harlin Mfg. Company in this cause.

And it is further ordered that the Clerk of this Court pay out of the said fund, first, to the defendant, Martin Goble, or to his solicitor, the sum of two hundred and thirty-four dollars and two cents ($234.02) together with his costs in this suit incurred to be taxed.

Second. That he pay to the defendant, the G. Drouve Company, or its solicitor, the sum of thirteen hundred and seventy-three dollars and seventy cents ($1,373.70) together with its costs incurred in and about this suit, to be taxed.

Third: That he pay to the defendant, Joseph R. Graham or to his solicitor, the sum of three hundred and one dolllars ($301), together with his costs in and about this suit incurred to be taxed.

Fourth: That he pay to the defendant, Collins, Lavery Company or its solicitor, the sum of five hundred and forty dollars and fifty-two cents, to-

gether with its costs in and about this suit incurred to be taxed.

Fifth: That he pay to the defendant, Cyril R. Forbes or to his solicitor, the sum of twenty-six dollars and twenty cents ($26.20) together with his costs in and about this suit incurred to be taxed.

And that the balance of this said fund, after deducting legal fees and commission of said Clerk be paid to the defendant Thomas F. McCran, as receiver of the Paterson Building Company or to his solicitor.

Respectfully advised,

EUGENE STEVENSON,

Vice Chancellor.

W. J. MAGIE,

Chancellor.

IN CHANCERY OF NEW JERSEY

Between
McNAB & HARLIN MANUFACTURING COMPANY,
Complainants,
and
THE PATERSON BUILDING COMPANY ET ALS.,
Defendants.

On Bill of Interpleader.

Opinion.

Final hearing upon statements of defendants of the grounds of their several claims to liens by stop-notice under §3 of the mechanics' lien law.

Mr. J. W. DeYoe for George A. Meyers & Co.

Messrs. Ward & McGinnis for The Mehrhoff Brick Co.

Mr. Bently and Mr. Fielder for Collins, Lavery & Co.

Mr. H. McQuillin for Martin Goble and for Cyril R. Forbes.

Mr. Michael Dunn for Cornelius J. Gallagher.

Mr. Wood McKee for James Radcliffe & Sons.

Mr. J. G. Blauvelt for The G. Drouve Co.

Mr. W. B. Gourley for Joseph R. Graham.

Mr. Edward F. Merrey for Thomas F. McCran, Receiver of The Paterson Building Co.

STEVENSON, *V. C.*

After the fund ($5.027.97) had been paid into Court in pursuance of the decree of interpleader, the ten defendants filed their respective "concise statements," setting forth the grounds of their respective claims in accordance with the practice established by Rule 221. The litigation thus set in Court was brought to a final hearing on June 8th and 9th, 1905. After the testimony had been taken and counsel had been heard in regard to each claim, I announced, orally, my conclusions, setting forth in each case the reasons why the claim was either allowed in its place as a lien against fund, or rejected. Four of the claims were disallowed under the rules laid down or followed by me in the case of Beckhard vs. Rudolph, 59 Atl. Rep., 253 (decided June 1904). Inasmuch as this Beckhard case was then pending on appeal in the Court of Errors and Appeals I announced that the final decree in the present case would be withheld until the Beckhard case had been decided in the Court of Last Resort, and that if such decision reversed or modified the decree of this Court a further hearing then would be had herein.

The Court of Errors and Appeals having reversed the decree advised me in the Beckhard case, all of the defendants were duly brought into court on notice of the settlement of the decree, "in accordance with the decision of the Court of Chancery already announced in this case, and the decision of the Court of Errors and Appeals" in the Beckhard case. Inasmuch as neither the testimony nor the conclusions announced by me have been written out by the stenographer I shall not undertake to set forth the grounds on which any claims are

either rejected or allowed excepting in the four cases above mentioned, viz : the respective cases of The G. Drouve Company, Martin Goble, Collins, Lavery & Co., and Cornelius J. Gallagher. In regard to each of these four claims, all of which were disallowed, it has been argued that the decision of the Court of Errors and Appeals in the Beckhard case, or the opinion of that court formulated by Mr. Justice Pitney, compels its allowance. As to the other six claims, which embrace five alleged liens by stop notice, and the claim of the receiver of the corporation which erected the building under the contract on file, no insistment is made that the decision of the Court of Errors and Appeals in the Beckhard case can possibly lead to a different result in any instance. Two of these five claims on stop notice were allowed and the remaining three were disallowed. In case an appeal should be taken from the decision of this court as to any one of these six claims, a brief additional opinion will be filed.

I am unable to distinguish the claim of the G. Drouve Company from the claim of Adamson & Son, which was sustained by the Court of Errors and Appeals in Beckhard vs. Rudolph. The claim of Adamson & Son was for the amount due for the plumbing which they had put into the building in pursuance of a sub-contract. They supplied the materials and performed the labor and the elements of labor and materials in fact entered about equally into the total charge. The total charge, however, was a single sum for the entire contract. The Court of Errors and Appeals decided that Adamson & Son were "material men" who had "furnished materials used in the erection" of Mr.

Beckhard's building, and that the amount claimed by them in their notice to be due for "work done and materials furnished" in fact was due "for materials furnished in situ," and that therefore they could acquire a lien by a stop notice under Section three of the mechanics' lien law.

In the present case, the G. Drouve Company had a similar sub-contract for the incorporation into the building of a system of bars or levers called the "Lovell Apparatus," a device for opening and closing windows. The total charge was $1,373.70. Although as in the case of Adamson & Son this total charge was in no way divided so as to indicate how much of it was for labor and how much of it was for material, it was evident that a very large portion of the charge represented the value of the apparatus or finished parts of the apparatus delivered at the building, all of which was material—raw material so far as the building operations were concerned—and plainly lienable.

If any distinction could be drawn between the notice which was deemed sufficient by the Court of Errors and Appeals in the case of Adamson & Son and the notice served by The G. Drouve Co., the latter seems to follow the statute more closely than the former. The Adamson notice states that the material was furnished for the remodeling of the building as well as in the erection and alteration thereof, whereas the notice in the Drouve case strictly adheres to the statutory language.

My conclusion is that it would be entirely unnecessary to discuss the principles enunciated by the Court of Errors and Appeals or inferable from the decision of that court in the Beckhard case in order to determine the status of this claim of the

G. Drouve Co. The lienability of the debt by stop notice and the sufficiency of the notice are directly and necessarily established by this decision which deals with substantially a parallel state of facts. My original ruling will therefore be changed and the claim will be allowed in its place as a lien.

In each of the other three cases now to be considered we have a different state of facts from that which was presented to the Court of Errors and Appeals on behalf of Adamson & Son in the case of Beckhard vs. Rudolph. In order to determine these three cases I think it is necessary to ascertain and follow not only the principles which are distinctly announced in the opinion of the Court in the Beckhard case, but also some of the principles which necessarily underlie the decision in that case. If I had taken time to set forth the fundamental rule of construction which I applied in the Beckhard case the Court of Last Resort would perhaps have been led to make a deliverance which would have rendered a large part of the present discussion entirely unnecessary.

The questions to be discussed when perhaps narrowly defined are these: first, whether §3 of the mechanic's lien act is to be strictly or liberally construed so far as that section may give a lien to persons who are not journeymen or laborers, or in other words, are not wage earners; and second, whether after the lienability of the debt has been established a strict or liberal construction is to be placed upon the provisions of the statute which regulate the fastening of the debt as a lien on the fund by service of a notice in writing.

Fortunately it is not necessary to consider the broad question whether the mechanic's lien law

generally should be construed strictly or liberally, if indeed any such broad question is capable of accurate statement or intelligent discussion. For various methods of treating this subject and for illustrations of the "hopeless division of opinion" in regard to it, the following text-writers may be referred to with the judicial decisions which they cite: Boisot on Mechanic's Liens (1897), Section 34; Phillips on Mechanic's Liens, § 16; 2 Jones on Liens, 2nd ed., Section 1556; 20 Am. Eng. Ency., 2nd ed., pp. 277-278.

What we are endeavoring to discover in this case is the true meaning of a few words in our New Jersey statute, the construction of which to a large extent may be determined without affecting rights and remedies which are unrelated to each other, or do not naturally stand in the same class.

The New Jersey Mechanic's Lien law creates several radically different kinds of liens, and oftentimes a construction placed upon the statute in a case involving one kind of lien is equally applicable to cases involving an entirely different kind of lien. One kind of lien may be of a character to induce the Court to endeavor to sustain it by a liberal construction, whereas the other kind of lien may be of such a kind as to induce the Court to exclude it, if possible, by a strict construction.

The elemental mechanic's lien, no doubt, is of the kind which was created by the first mechanic's lien law ever enacted in this country—the statute passed by the State of Maryland in 1791, "concerning the territory of Columbia and the city of Washington," (Laws of Md. of 1791, Ch. 45, Paragraph X). This original mechanic's lien law was created expressly "for the encouragement of mas-

ter builders to undertake the building" of houses in the projected city of Washington, and the lien was confined so as to secure only debts which were owed by the owner of the property subjected to the lien. Precisely the same limitation of the scope of the lien appears in the first statute establishing a mechanic's lien in any of the States (Pennsylvania Laws of 1803, p. 591). This Pennsylvania statute is the origin of all our New Jersey legislation. Its title is substantially the same as that of our present statute. This first Pennsylvania law, like the original mechanic's lien laws of New York and New Jersey, was applicable to a narrow locality and it was also limited to a period of less than four years. Shortly before the statute would have expired by its own limitation it was repealed and substituted by another statute having substantially the same title (Pennsylvania Laws of 1806, p. 480). The new statute was narrowed in its application, so as to include within its operation only the city of Philadelphia, but the debts, which it undertook to secure by a lien, included large numbers of claims for labor or materials for which the owner of the building charged with the lien would in no way be personally liable. The statute contained no provision for limiting the lien to the owner's creditors by filing the contract.

Here we have the origin of the lien which is charged upon the property of one man to pay another man's debts. This is the statute which first imposed upon the owners of real estate who desire to improve their property and to make contracts for the erection of buildings thereon, the onerous task of discovering who the creditors of their contractors are, and then seeing that their

claims are satisfied so far as they have arisen from the furnishing of labor or material to the erection of the owner's buildings.

The slightest reflection will show how widely these two liens created by precisely the same language differ from each other in respect of their essential nature and their respective claims to favorable consideration from courts of justice. The first lien, the elemental mechanic's lien, is little more than an extension of the common law lien afforded to large numbers of purveyors of labor and materials who add value to chattels under contract with the owner thereof. The second lien, arbitrarily granted to the contractor for material-man between whom and the owner there is no privity whatever, so far as I am aware has no analogy in the common law and stands in many respects directly in conflict with fundamental principles of justice. There are grounds for claiming as recited in the original Maryland statute of 1791 that a mechanic's lien for the protection of the party with whom the owner of the building contracts, encourages the erection of buildings, but it would seem that the extension of this lien to the protection of the creditors of the party with whom the owner contracts, must oftentimes have the effect to discourage the erection of buildings.

When we come to the lien by stop notice, which attaches not to the building but to the fund in the owner's hands, and due from him to the contractor, we perceive two liens, having different historical origins and differing widely from each other in a very important particular. One of these liens is that which the "journeyman or laborer employed by the contractor" enjoys for the better securing

of the wages which he has earned. The general policy of the law may be considered to favor and prefer the claims of all wage earners, whether on sea or on land. Our statutory law abounds with illustrations of this policy. Few land-owners who erect buildings would contemplate with satisfaction the loss of any wages by the workmen employed on their buildings, whether they personally were in any way obligated to pay such wages or not. Large numbers of such owners of real estate would cheerfully exert themselves to see that the wage earners, employed by the contractors, had received their dues. But there is no rule or principle of law, and no general policy or theory recognized by law apart from mechanic's lien statutes, which specially favors the collection of debts due to contractors and merchants merely because such debts have been created in the erection of buildings whose owners are not liable for such debts. Such a policy is the pure creation of an arbitrary statute and does not seem to have any ethical basis, nor can I perceive how the lien, to the material-man by stop-notice, can be deemed to encourage the erection of buildings.

But, without pursuing this subject further at present, what I desire to point out is that at the present time under our Mechanic's Lien Law, there may be created two widely different kinds of lien upon the land and also two widely different kinds of lien upon any fund in the hands of the owner and due from him to the contractor. An examination of our peculiar American legislation on the subject of mechanics' lien from the start shows how radically these four liens differ in their nature and in their origin, and here we find the

first reason why the reported cases are so at variance in regard to the spirit in which the Mechanics' Lien Law should be construed.

Any consistent theory or rule of construction of our present Mechanics' Lien Law as a whole is also rendered difficult from the way in which that law has been created. As in the case of the other adjacent states, the origin of our statute is in a special law applicable to a limited territory. (Laws of 1820, p. 124.) This statute then from time to time was extended to other localities until as revised in 1846 it included in its scope a very considerable portion of the state. (Revision of 1846, p. 743, §3). Still later the statute was extended to the entire state. (Laws of 1851, p. 187) and finally in 1853 a new Mechanics' Lien Law was enacted for the entire state, which new statute was to a large extent constructed out of the heterogenous materials which composed the prior statutes. (Laws of 1853, p. 437.)

The question whether the mechanic's lien law as it now stands, containing as it does without substantial change of phraseology the main provisions of the prior laws, should be strictly or liberally construed, is further made difficult by the fact that from time to time special interests have exerted an influence with the legislature so as to bring them within the beneficial operation of the statute. I am not aware that any commissioners or revisers have ever undertaken to draft a complete mechanic's lien law based upon any definite and consistent legal or equitable principles.

Before reverting to the narrow question whether the statute so far as it creates the lien by stop notice in favor of a debt of a material-man or a

contractor—any debt other than for wages—should be strictly or literally construed, it may be well to glance at the history of our New Jersey legislation. The first New Jersey statute above referred to pass in 1820 applied to a small tract of land in the County of Gloucester which one Edward Sharp desired to lay out in building lots and develop into a town or city. The title and main provisions of this act were copied from the Pennsylvania Act of 1806, and are substantially continued in our present statute. In order, however, to cut off the grossly inequitable lien which under the general terms of the act borrowed from the Pennsylvania statute was conferred upon parties to whom the owner of the building was in no way indebted, substantially the same provision was inserted which is now embodied in §2 of our present act to the effect that the filing of the contract should confine the lien to the contractor alone. If we may apply the principle that men and women, however ignorant, are presumed to know the law, the scheme of this statute as a whole might not be open to criticism, although, in fact, the provision for filing the contract has in large numbers of cases failed to protect the poor and the ignorant against a harsh and inequitable lien. It is plain, however, that the continuous policy of New Jersey has been to permit the owner of the building who does not buy the materials or employ the labor used in its erection a simple and comparatively inexpensive means for confining the liability of his property to lien to those persons with whom he contracts.

The act of 1820 made no provision for any lien by stop-notice. This lien first appears in the act of 1835 which related to two townships in

Huntington and Burlington Counties, respectively. (Laws of 1835, p. 148.) Section 3 of this statute as printed (p. 150) provides for a lien by stop notice in favor of any journeyman or laborer employed by "any master or workman" to secure "wages" due to such journeyman or laborer, and the somewhat clumsy phraseology of this statute has been largely embodied in our present enactment. The phrase "master or workman" if used in the act of 1835 was changed to "master workman" in the revised law of 1846. (Revision of 1846, p. 743, §3.) This lien by stop-notice originally was not confined to the case where the journeyman or laborer employed by the contractor was cut off from a lien on the land by the filing of the written contract. When no contract was on file the journeyman or laborer had both liens, the ordinary lien on the building and also the lien on the fund by stop notice. There are dicta in all our courts which assume that this workman's lien by stop-notice, like the lien of the material-man, is now confined to the case where the owner's contract has been filed, but the point is not discussed in the cases and the amendatory legislation which effected such a change is not indicated, Weaver vs. Atlantic Roofing Co., 57 N. J. Eq., 547-550; Frank vs. Freeholders, 39 N. J. Law, 347, 350, 353 (1897); Beckhard vs. Rudolph, supra. It may be that it will be held that all doubts in regard to this matter were removed by the changes of phraseology made in §3 in the amended law of 1898.

The lien of the material-man by stop-notice from the start has been confined to the case where he is cut off from filing a lien against the building by the filing of the contract between the contractor

and the owner. Summerman vs. Knowles, 33 N. J. Law, 202. It does not seem to me that it is correct to hold that the lien by stop-notice is given to the material-man because of any hardship inflicted upon him by the filing of the contract. The provision cutting off his lien upon the building by the filing of the contract, is manifestly intended to prevent the gross hardship of imposing upon the owner a lien for a debt which he does not owe. The material-man, observing that the wage-earner had two liens under the statute, one of which was not affected by the filing of the contract, while he, the material-man, had only one lien which was cut off by the filing of the contract, secured from the legislature the advantage of the wage-earner's second lien, the lien by stop-notice ; but the legislature declined to give the material-man this lien by stop-notice in case he could avail himself of his lien upon the building. Why the legislature saw fit to give this lien by stop-notice to the material-man in any case I have never been able to discover. Why the merchant who sells nails or brick or lumber or other merchandise should be permitted in the event of his merchandise being incorporated into a building, to have a preference over the other creditors of his customer, is I think somewhat difficult to discern. He has no such preference if the customer to whom he sells the merchandise on credit incorporates that merchandise into personal property. But what reason founded in sound morals or the just protection of trade can be imagined for permitting this particular class of dealers in the market to compel their debtor's debtor to come into their business affairs and see that their debt is paid ? The unfortunate

owner of real estate who has erected a building in many cases like this where large numbers of notices are served, is obliged to employ counsel, is made liable to actions at law, and oftentimes has difficulty and meets with expense which is not repaid to him, in coming into a court of equity on a bill of interpleader for relief, in order to disentangle himself from the business affairs and pecuniary demands of various traders with whom he has had no dealings, and to whom he owes no duty whatever excepting such as has been created by this arbitrary statute. This sort of legislation has been criticised as vicious class legislation. Such criticism may be deemed excessive and even intemperate, and I am not obliged to adopt it or, to use the languade of Chief Justice Green, to manifest a "design of impugning the wisdom or policy of the law." (Ayers vs. Revere, 25 N. J. Law, 474-481.) I did, however, adopt the view in the case of Beckhard vs. Rudolph, that every dealer in merchandise who sells on credit before he is allowed to claim this special advantage over other dealers and other creditors in the market, and to impose upon strangers the difficult and oftentimes expensive burden of seeing that his particular debt is paid, was bound to bring his case strictly within the words of the statute and was then obliged to pursue the statute strictly in order to fasten his lien upon the fund. It should be observed that the rule of construction which we are endeavoring to settle is not applicable to the lien by stop notice which the statute affords to the wage-earner. Oftentimes the construction of §1 creating the lien on the land and building applies equally to debts

due from the owner which are within the original policy of the mechanic's lien law, and to debts which the owner does not owe and the liens for which he is permitted to cut off by filing his contract. See Ayers vs. Revere, supra.

So also a construction placed upon §3 may equally affect the lien of the poor wage-earner and the lien of the rich merchant or contractor.

In the present instance, however, we have to deal with the question of the lien by stop-notice provided by the statute for different classes of creditors of the contractor who are strangers to the owner but who are not wage-earners. The fundamental principle applied by me in deciding the Beckhard case undoubtedly was that sub-contractors like Messrs. Adamson & Son were not entitled to a liberal construction of that portion of §3 which creates a privileged class of dealers who are not wage-earners, and imposes for their benefit special burdens upon the owners of real estate. This whole view, I think, must now be deemed entirely erroneous since the decision and opinion of the Court of Errors and Appeals in the Beckhard case. It is true that the Court of Errors and Appeals did not discuss the question whether the provision of the mechanic's lien law under examination should be strictly construed or liberally construed, but it seems to me that a ruling in favor of a liberal construction is necessarily implied both in the deliverance which the Court made and in the decision which the Court rendered. The construction placed upon the statute by this Court was rejected as arising from "too narrow a reading of the letter of the section" and because it failed "to give due effect to the spirit of the act and to the antithesis

that exists between the first and third sections." The legislative intent to give the material-man a lien upon the fund as a substitute for the lien upon the building of which he is deprived by the filing of the contract, is recognized and carried into effect not merely within the limits expressly prescribed by the phraseology of the statute, but in accordance with its general purpose and spirit. That the legislature of this State has continuously for years favored the lien of the materialman by stop notice is quite apparent; it lost no time after the publication of the decision of this Court of the Beckhard case, in extending this lien to every class of subcontractors including subcontractors who supply labor alone. (Laws of 1905, p. 311.) Whether since this recent amendment of §3 subcontractors like the Messrs. Adamson & Son can take their choice either to give notice of their lien as material-men or to give notice of it as subcontractors, perhaps is a debatable question.

The policy of the legislature to favor the material-man to the disadvantage of the owners of land who erect buildings thereon has recently been considerably extended. No backward step has been taken. Section five and six of our present act, which embrace recent amendments, interfere with and greatly impair the natural common law right of the owner and the builder to modify their contract so as to subserve the convenience of the two contracting parties, even though without such modification the carrying out of the contract may become practically impossible. These sections evince a most positive intention on the part of the legislature to foster and extend the lien by stop-notice, although it must be observed that these pro-

visions apply to the wage-earner's lien as well as to the lien of the material-man. The unfortunate owner who has filed his contract specifying the time and manner in which the contract price is to be paid, is made a sort of involuntary trustee in respect of the moneys which the contractor may earn, for the benefit of a favored class of the contractor's creditor ;and to enable these creditors who are strangers to him to collect their debts, the owner and the builder are prevented from altering their contract for the accomplishment of their own honest business purposes.

The legislature of the State having thus distinctly manifested a policy in favor of the lien by stop notice, which policy has been changed only by expansion, I think that the Court of Errors and Appeals by this last decision establish the doctrine that the courts of the state are bound to give a full and fair effect to this legislative policy so far as established rules of construction will permit. It is safe I think now to hold that all parties whose liens on the land are cut off by the filing of the contract are entitled to a liberal construction of the statute so as to give them a lien on the contract price in the owner's hands by stop-notice.

It follows necessarily from this liberal rule of construction, by which the liability of a debt by a stop-notice is to be determined, that a correspondingly liberal construction should be placed upon the requirements in respect of the notice. Heretofore it has commonly been said that the holder of a lienable claim by stop-notice must strictly pursue the statute or he would lose his lien. Supt. v. Heath, 15 N. J. Eq., 22, 26 (1862.) This proposition often has been stated in cases like the one last

cited where no question arose as to what the requirements of the statute were. The general principle is laid down by many authorities that the provisions of Mechanics' Lien law which "relate solely to the manner of enforcing the lien already given" are remedial, and hence should be liberally construed, while those parts of the law "upon which the right to the existence to a lien depends" should be strictly construed. (20 Am. & Eng. Ency. of Law, 2nd Ed., p. 278.) Certainly it must follow a fortiori that a liberal construction of that part of the statute which creates the lien leads to a similar construction of that part of the statute which regulates the enforcement of the lien, unless the provisions relating to enforcement apply also to some other lien besides the favored lien. In the present instance it is plain that the lien of the wage-earner is entitled to as much favor as the lien of the material-man, especially if under the amended act of 1898 the wage-earner's lien by stop-notice exists only when the contract has been filed.

Messrs. Adamson & Son had a lienable debt by stop-notice according to this decision of our Court of Last Resort. Messrs. Adamson & Son plainly were not "journeymen or laborers" employed by the contractor. They were adjudged entitled to a lien as material-men. They are held to be persons who "have furnished materials used in the erection" of Mr. Beckhard's building. They could not have any lien for work done. The performance of their sub-contract for the installation of the plumbing in Mr. Beckhard's house is deemed the supplying of materials in situ, and the contract price is the price of materials so installed. This is the per-

fectly plain theory of the decision of the Court of Errors and Appeals. And yet the notice which Messrs. Adamson & Son gave to the owner of the building stated most distinctly, in two places, that their debt was due to them for labor as well as for materials. It is evident that precisely this same notice might have been given by an architect or an engineer, or any employee of a sub-contractor who held an accepted order for the amount due to him from the principal contractor, provided this person, thus having a claim for labor against the principal contractor, which was not lienable by stop-notice, had happened to sell such principal contractor some material for which a lien by stop-notice could be acquired. The notice, however, which Messrs. Adamson & Son employed did, in fact, in their case, describe a debt which the Court of Errors and Appeals held to be lienable. It would seem to follow that, where the debt is in fact lienable, the notice must not be deemed insufficient because it describes a debt which may or may not be lienable.

The opinion of the Court of Errors and Appeals in the Beckhard case does not deal with the objection to the notice of Messrs. Adamson & Son which I endeavored to point out in my opinion, and which assumed that the debt in question for plumbing work was lienable by stop notice. The learned justice who wrote the opinion may have been misled by an erroneous syllabus published in the advance sheets of the Atlantic Reporter which was corrected in the permanent edition. See 59 Atl. Rep., p. 233, paragraph 3 of syllabus. The fact, however, that the opinion of the Court overlooked the objection to this stop-notice which led

me to deem it invalid even after assuming that the debt which it described in fact was lienable, is not a matter of any consequence. This notice of these material-men, Messrs. Adamson & Son, was before the Court and the Court unanimously held that a material-man's notice which described his debt as due for work done as well as for material furnished was a sufficient notice where in fact the work done had been so connected with the furnishing of the materials that the whole transaction could properly be deemed within the meaning of the statute, the furnishing of materials in situ. The owner is not allowed to disregard such a notice from a materialman merely because it appears to claim a lien not only for material but also for work done. The owner must look into the the facts and ascertain whether the party who serves such a notice is or is not in fact a materialman—has or has not a claim for work done and materials furnished in such a way that the whole amounts to a claim for "materials furnished in situ."

Precisely what are the requirements of the notice to the owner when the debt of the claimant is in fact lienable by stop-notice under §3 I am unable with certainty to ascertain. The statute describes a certain situation in which certain parties are placed which involves a "refusal" by one to pay money to the other. In order that the lien by stop-notice may be fixed on the fund notice must be given "of such refusal and of the amount due * * * and so demanded." If the notice were required to be merely "of such refusal" it seems plain that the statute could not be strictly complied with unless the notice set forth all the necessary

facts and conditions under which the refusal was made. A very strict construction would even require that the notice, when given by a materialman, however it may now be in the case of a journeyman or laborer, should state that the contract was on file. The express requirement, however, that the notice shall set forth the refusal and "the amount due and so demanded" certainly found a forcible argument based on the maxim expressio unius est exclusio alterius, that all the other essential facts and conditions which must precede the refusal in order to the establishment of the lien need not be set forth in the notice. When the general principle is established that the legislative policy is to favor the lien by stop-notice under §3 on behalf of all parties who would have liens under §1 if the contract were not filed, it seems that a correspondingly favorable construction of the provisions of the statute defining the notice might properly lead to this result, that if the notice states the two things which the statute expressly prescribes, viz, that there has been (1) a refusal to pay, (2) a certain specified sum of money, the sufficiency of the notice, in respect of all other matters depends upon whether or not it fairly apprises the owner to whom it is given that the party giving the notice claims to have a lienable debt for the amount stated, and that the notice is given to establish the lien. The notice is not a pleading; its object is to put the party upon whom it is served upon the inquiry and to inform him that a claim is made against him which he must investigate for the benefit of the party giving the notice. One of the burdens of the owner is that he must investigate and sat-

isfy himself of the lienable nature of the claim and of the "correctness" of the demand which is made upon him. These notices are often drawn by business men who are unacquainted with legal forms. Upon the general theory, which we are now adopting, it seems to me there is good ground for the argument that the notice need not contain things which the owner already knows. The sufficiency of a notice often depends on the question whether the party to whom it is given has or has not knowledge of certain other facts which are not stated in the notice. In the consideration to this matter regard may be had to the fact that it has never been held that the notice of the material-man should set forth the contract between the owner and the builder has been filed, and yet this fact lies at the very foundation of the lien. (See Corbin's Form, p. 509.) The owner, however, presumably is aware of this fact and the written paper served upon him that would not be in the slightest degree more efficient as a notice if it is set forth.

I shall not, however, undertake to formulate any rule defining the exact requirements of a stop-notice where the debt is lienable as a matter of fact under §3. What I have said is intended merely to indicate a general principle which may, to a certain extent, guide me in testing the sufficiency of the stop-notices to be examined in this case. These notices can, I think, be tested by comparing them with the notice, which in the case of Messrs. Adamson & Son has been established as sufficient with the aid of the general principle that where the debt is lienable by stop-notice and the stop-notice specifies the two matters expressly prescribed by the statute, and the owner, in fact, did

get notice by it that the party giving it claimed a lienable debt which it was intended to establish, the Court should make every possible effort to sustain it.

The above conclusion, I think, is strengthened by the adjudication in the Beckhard case that the notice need not expressly state that the debt had been demanded. The statute only gives a lien where there has been a refusal "upon demand" which phraseology if not tautological seems to imply that there may be a refusal not upon a demand—a refusal which anticipates or excludes a demand. The statute also in expressly prescribing the contents of the notice specifies that it must exhibit both the refusal and the amount demanded. This express mandate, when construed with strictness, requires that the notice shall set forth merely (1) the refusal, and (2) the amount. It must set forth the amount due to the complainant and so demanded, but, after all, strictly it is only the amount which the statute requires to be set forth. If the amount so set forth is subsequently proved in fact to have been due to the complainant and to have been demanded by him, the notice may be deemed to comply with the statute. A strict construction of the statute may thus be resorted to in order to sustain the notice of a lienable claim but not to defeat such notice.

With the above principles in view we may now proceed to consider the claim of Martin Goble. The claim as proved is for material, plainly lienable under §3. I excluded the claim on the ground that the notice was defective in that it did not set forth that the material had been "used"

in the erection of the building. The notice states that the claimant has "sold to the Paterson Building Company for the building of the McNab & Harlin Mfg. Co., on Straight street, Paterson, N. J., material to the amount of two hundred and thirty-four dollars and two cents," etc. The demand and the refusal are set forth and the owner is notified to retain the amount due and pay it after satisfying itself that the claim is correct. It is plain that this notice describes a claim which might be lienable. It contains the two things which the statute expressly requires to be inserted therein, viz., the amount due and the refusal of the corporation to pay that amount. The owner who received this notice was put on the inquiry. It is true that upon all the facts being ascertained by the owner, or subsequently proved in a court of law or a court of equity, it might be made to appear that the material sold by Mr. Goble to the builder for the building which the owner was erecting, had not, in fact, been used in that building and the lien would then be defeated. This, however, is a matter of proof. No doubt if the notice must be treated as a pleading the omission of the essential fact that the materials had been used in the building is fatal. But having in view the function of the notice above set forth as an instrument to put the owner upon the inquiry, I think this notice should be deemed sufficient. It seems to me that it comes as near to a strict compliance with the statute as a notice of Messrs. Adamson & Son in the Beckhard case. Messrs. Adamson & Son gave notice that their debt was due not only for materials furnished but for work done. In fact they could have no lien whatever for work done but only for materials furn-

ished. The notice was saved because the proof showed that while the debt was incurred in part for work done, such work was in contemplation of law so associated with the furnishing of materials that the entire claim for work done and materials furnished in fact stood for the furnishing of materials in situ. I may be in error but I feel constrained to change my ruling in the case of Mr. Goble and allow his claim.

We next take up the claim of Collins, Lavery & Co. which was for lumber furnished to the contractor and used in the building. What Collins, Lavery & Co. furnished was raw material, i. e., material which the contractor received and by his labor incorporated into the building. Collins, Lavery & Co. had nothing whatever to do with the attaching of the materials which they furnished to the building as a part thereof. They did not furnish the material in situ. There was no question about the lienability of the debt under §3. The claim was disallowed by me because I deemed that the notice was insufficient. The "notice in writing" in this instance consists of three papers. Only one is set forth in the "statement" presenting the claim, but the other two papers were proved without objection and the question argued was whether these papers as a whole satisfied the requirements of the statute. The "concise statement" of Collins, Lavery & Co. may therefore be amended so as to set forth all three of these papers, or at least two of them.

The first paper is an order by The Paterson Building Company on the McNab & Harlin Manufacturing Co. in favor of Collins, Lavery & Co. for

the sum of $540. This order was delivered but not accepted.

The second paper is an assignment which erroneously describes the party making such assignment as "Hugh Montague, Joseph J. Rooney and Dennis J. Bergen, trading as and under the firm name of The Paterson Building Company." This paper is executed by "The Paterson Building Company by J. J. Rooney, Treas." It was drawn by the attorney of Collins, Lavery & Company under the mistaken impression that The Paterson Building Company was a partnership. The persons named as partners were the officers of the corporation. The assignment undertakes to transfer to Collins, Lavery & Co. "out of the moneys now due and owing or hereafter to become due and owing" to the assignors "from McNab & Harlin Manufacturing Co. for work done and materials furnished by the said Collins, Lavery & Co." to the assignors, and by the assignors "used in the erection and construction of a certain building for the said McNab & Harlin Manufacturing Co. of Paterson, New Jersey, the sum of five hundred and forty dollars and fifty-two cents."

The third paper reads as follows:

To McNab & Harlin Manufacturing Company, owner of the building known as No. 368 to 378 Straight street, in the city of Paterson and state of New Jersey.

Take notice, that there is due to us, Collins, Lavery & Company, from Hugh Montague, Joseph J. Rooney and Dennis A. Bergen, partners trading as the Paterson Building Company, the sum of five hundred forty dollars and fifty-two cents, by you, the said owner, used and employed in the erecting

and constructing of your said building; that we have demanded payment of said contractors, and they have refused to pay us, and we therefore notify you to retain the amount so due out of the amount owing by you to the said contractors or that may hereafter become due from you to said contractors for labor or materials used in the erection and construction of said building, and that you pay the same to us.
Dated November 18, 1903.

COLLINS, LAVERY & COMPANY,

per S. B. COLLINS,

President.

The assignment and the notice were delivered to the McNab & Harlin Manufacturing Company, at the same time, on December 19th, 1903, although the assignment appears to have been executed on November 2nd, 1903, which is also the date of the order.

The order and assignment were entirely inoperative as against this receiver as transfers inasmuch as the Paterson Building Company was insolvent at the time the instruments were executed to the knowledge of Messrs. Collins, Lavery & Co. I think, however, that all the papers and especially the assignment and the notice must be taken together and examined with a view to ascertaining whether they amount in the aggregate to the "notice in writing" required by the statute in order to the establishment of the debt which they mention as a lien upon the fund in the hands of the McNab & Harlin Mfg. Co. The statute prescribes

no form of notice ; it merely directs that the lienor shall "give notice in writing to the owner" of certain things. If the owner in this case received notice of these things by the two papers which were delivered to it, and which plainly related to the same matter, then it seems to me the statutory requirement was met and the lien was established. The description of the contractor as a partnership instead of a corporation in my opinion is a mere misnomer which could not possibly have misled the McNab & Harlin Manufacturing Company or any other party in any way interested in this transaction. To hold otherwise, it seems to me, would be to convert the notice into a technical instrument in the nature of a pleading, and to disregard the function of the notice as a means of merely giving information and putting a party upon the inquiry. The notice on its face plainly exhibits a clerical error which probably was made by the operator on the typewriting machine who wrote out the paper for service. The debt ($540.52) is stated to have been used by the owner in erecting the building, but the notice goes on to state that the claimant had demanded payment of the contractor and that payment had been refused. The error could not have misled any one and it was corrected by the distinct recitation in the assignment by which The Paterson Building Company, mis-described as a partnership, acknowledged that the debt ($540.52) was due "for work done and materials furnished by the said Collins, Lavery & Co." and used by the Paterson Building Company in the erection of the building. The notice distinctly sets forth the two things ex-

pressly prescribed by the statute, viz: (1) the refusal to pay, (2) a specified sum of money.

The difficulty about this notice which caused me some hesitation arises from the fact that it states that the debt was due "for work done" as well as for materials furnished. In the case of Messrs. Adamson & Son their notice was sustained although it stated that their claim was for work as well as for materials, while upon the proofs their lien was established as a lien for materials only. The notice, however, described correctly in popular language the nature of the debt for which the lien was claimed, although technically such description might be deemed inaccurate. In the case of Collins, Lavery & Co. I think it is plain that their debt although due to them for materials within the contemplation of this statute, in fact must have included a charge for labor. The proofs showed that the materials were delivered by Collins, Lavery & Co., partly at the building in Paterson and partly, I think, on the cars. The price charged, for which the lien was claimed, included both the value of the material and the value of the labor which Collins, Lavery & Co., expended in its transportation. It is somewhat difficult, I think, to distinguish between labor expended in the transportation of material to the building and labor expended in incorporating the material into the structure itself. In each instance it would seem that the labor is "used" in the erection of a building. The notice, therefore, in the case of Collins, Lavery & Co., while not correct according to the popular usage of language, and not technically correct under the statute, seems to have described with accuracy the debt for which a lien properly could be claimed.

We have then in this case, a debt in fact lienable, a notice in writing describing a debt which might be lienable as sufficient in form as that which was sustained in the Beckhard case, and ample notices in fact to the owner, The McNab & Harlin Mfg. Co. of the nature of the claimant's debt, and that the notice was intended to establish a lien for the same. No case that I know of has held that if the notice on its face be sufficient the lien fails in case it should turn out that the notice misdescribed the debt for which the lien was claimed although the debt in fact was lienable.

My conclusion is that my orginial ruling in regard to this debt of Collins, Lavery & Co. is inconsist ent with the principles necessarily underlying the decision of the Court of Errors and Appeals in the Beckhard case, and therefore cannot stand. The defendant will be allowed its lien.

The last claim to be considered is that of Cornelius J. Gallagher. This is a debt due a subcontractor who excavated the cellar for the building with his teams and laborers at a price per cubic yard. There is no possible claim that Mr. Gallagher is a material-man. He is plainly a subcontractor and as such would have a lien by stop-notice under the act of 1905 above cited. He certainly was not a "journeyman" employed by any one. If his debt was lienable under the statute which governs this case it seems plain that he must be deemed "a laborer employed by the contractor."

Giving the widest possible effect to the decision of the Court of Errors and Appeals in the case of Beckhard v. Rudolph, I am unable to find that Mr. Gallagher was a "laborer" employed by the Pater-

son Building Company within the meaning of Section 3. For years a lien by stop-notice was given to "any journeyman or laborer employed" by the contractor to secure his "wages" before any such lien was given to a material-man. When the lien was given to the material-man it was confined to those cases where the written contract with the owner was filed. Originally, as we have seen, there was no antithesis between the two sections which give the "journeyman or laborer" employed by the contractor his two distinct liens. I see no reason to believe that the legislature when it made a great step in advance and gave the lien by stop-notice to materialmen changed the meaning of the words "journeyman and laborer" which had been employed for years to describe persons who earned "wages." It is the personal "wages" which are earned by a man in the direct employ of the contractor which manifestly the statute intended originally to secure.

That the word "laborer" in §3 does not include a subcontractor who is an employer of labor, is very strongly indicated by §6 of our present act which embodies an amendment of the statute passed in 1895. This section provides that "in all cases journeymen or laborers shall have priority or preference over any employers of labor, contractors or material-men for the payment of wages without reference to the date when said journeymen or laborers shall have filed the lien or served the notice provided for in this act." Mr. Gallagher is plainly an employer of labor and belongs to a class which the statute sharply distinguishes from

journeymen or laborers employed by a contractor who earn wages.

I see no way by which this Court can by any construction of this statute give Mr. Gallagher the lien which the legislature has now established or attempted to establish for all cases similar to his in the future, and which no doubt it would have long ago undertaken to give to the class of business men to whom Mr. Gallagher belongs if attention had been earlier called to their case.

What is the exact status of sub-contractors under this new and apparently hasty legislation may be a somewhat difficult matter to determine, and any discussion of the subject at present would be entirely out of place. It may be noted, however, that the sub-contracter is placed in the same class with the journeyman or laborer employed by the contractor and not in the same class with the material-man, which fact indicates that at the present time no lien by stop-notice can be acquired by any one if the owner's contract has not been filed. The case of the sub-contractor is further complicated by the omission to make changes in the subsequent sections of the act, especially §4, corresponding with the changes made in §3.

In case any of the claimants desire to have the determination of this Court reviewed by the Court of Errors and Appeals, the fund will be held until such review can be obtained. I am by no means certain that the adjudications which I have made upon these notices will in the end stand as approved precedents. Questions of statutory construction are notoriously difficult and productive of discordant decisions and decisions by divided courts. When a statute like the

one with which we are dealing is not in its entirety based upon any ethical principle but arbitrarily confers a favor through a somewhat complex procedure upon a somewhat loosely defined class of beneficiaries, and is expressed in clumsy and inept phraseology, it is unsafe to accept any construction of it as final which has not been approved by the Court of Last Resort as by a majority of the judges of such court.