

# New Jersey Court of Errors and Appeals.

PECK & BARNARD,

*Defendants in Error,*

vs.

JAMES MOONEY,

*Plaintiff in Error.*

ON ERROR.

## DEFENDANTS' BRIEF.

Mr. Mooney having conceived the idea of building a wing to his hotel in Cape May and making it the handsomest and one of the largest there, sought certain contractors to furnish materials and do the work—among others Peck & Barnard.

Having got the contractors to build his hotel, his next endeavor was to get rid of paying for it. To accomplish this he seeks able counsel and disputes all claims—this among many others, hence this writ of error.

There is not a particle of evidence in the case to show that Mooney does not owe Peck & Barnard the money they claimed, and for which they got judgment. Even Mooney himself, though present at the trial, did not swear nor pretend that the goods charged had not been delivered to him, or that he did not have value received, or that he had ever paid the bill. Though the cause in all

its detail had been laid before him for months, at the trial he made no pretence to a defense, and made his counsel rely upon his own wit in discovering defects in plaintiffs' proceedings rather than any show of merit in his opposition.

The result was exception at every turn. For some of these he got bills sealed and assigned error. In the court below they numbered ten, but on the argument there he abandoned all except the fourth, fifth, sixth and eighth.

In his assignment of errors in this court he evidently, from the general manner in which he assigns same, abandons all except the sixth and eighth in that court, being the first and second in this court. These two we will then consider.

#### I.

This bill relates to the admission of a telegram.

If the testimony is correctly reported—and we know nothing about it otherwise, for we did not attend at the trial, besides it is on this record that this exception depends,—then the original telegram signed by James Mooney was there at the trial (pp. 36-37). There is nothing in the evidence or in the exception to show that it was a copy as now claimed by plaintiff's counsel.

Upon proof being made that it was signed by James Mooney (p. 36,) the court admitted the telegram in evidence against objection. The court so ruled that it had been sufficiently proved, as undoubtedly it ought, the evidence being that of Hill, well acquainted with and agent of Mooney.

That this was not the understanding of plaintiff's counsel and he thought the court was ruling that a copy of a telegram should be admitted instead of the original, or, what his objection was or he understood it to import, cannot avail, since the record discloses that it was general and not specific. He can only have the benefit of an exception taken by showing that at the time he drew the

mind of the court to the grounds of his objection. A general objection is not sufficient. It must be specific.

Donnelly v. State, 2 Dutch., 511.

Associates, &c., v. Davison, 5 Dutch., 417.

State v. Lewis, 10 Vr., 507.

Nor has any error been assigned to cover the exception as claimed. The assignment relates to an original telegram and not a copy; plainly because the assignment follows the exception.

But this exception has no merit. It was not material to the trial whether the telegram was admitted or not. Plaintiff's counsel pretends that it was put forth as the basis of the orders of Hill, Mooney's agent, to Peck and Barnard, for the materials charged. The right of Hill to give orders for material did not depend upon the telegram. His testimony (p. 27, l. 23) is: "I had full authority from "Mr. Mooney in several ways by writing, verbally, and "by telegram, to order all and anything that I wanted or "needed for the proper completion of that building." The writings so referred to were well known to the parties, had been produced in a previous trial (Hill against Mooney) and were then in the possession of the jury out in that cause. They were papers signed by Mr. Mooney, the first dated June 18, 1883, appointing Mr. Hill superintendent; the second, dated July 2, 1883, giving authority to Mr. Hill "to order such material and mill work "and hardware for the New Columbia Hotel, at Cape "May, New Jersey, as he may deem necessary for the "proper completion of said hotel."

Mr. Hill states what his duties as Superintendent were in the following, (p. 27, l. 19):

Q. "What did you have to do with the building as regards material and mill work, and so forth that came?"

A. "I had to order it as it was needed, saw that it was delivered, and saw that it was put in place when it was delivered."

Again, Mooney personally gave Tudor, Peck and Barnard's agent, orders to furnish all materials for the hotel ordered by Hill. Did so at the mill in Camden when he and Hill called and saw Tudor in Groff's presence, about July 7, before any material had been furnished. The first material was furnished July 9 and the last August 2. This is testified to by Hill (p. 27-29) and by Groff (p. 12-14). See also Deery's evidence, (p. 24, l. 5 to 30).

Under these circumstances the telegram can have no significance and its introduction becomes immaterial. Unless material there can be no error.

Steelman v. Steelman, 1 Harr. 66.

Joslin v. N. J. Clay Spring Co., 7 Vr. 147.

## II.

The error here assigned is for allowing a paper purporting to be a lien claim to be given to the jury as evidence without any proof of it.

This is the first suggestion of doubt that the paper given the jury was the lien claim. Certainly there was none in the exception taken. (p. 44, l. 25.)

The lien claim is part of the record in the cause. As such it "may be enforced by suit" (Rev. 672, §18, §13); may be taxed for in the bill of costs (Rev. 670, §12, §19), may be amended by the court even at the trial (Rev. 671, §14, §15); two dollars for such amendment "may be taxed with the costs in such suit," (id., §15). It is simply part of a proceeding *in rem* (Gordon v. Torrey, 2 Mc. C., 114) and needs no introduction to go to the jury.

But if the law were otherwise it was a case plainly within the discretion of the court. It is not correct to say that it had not been proved. It was fully proved so that Judge Pancoast, on cross-examination of Hill, (p. 33, l. 3,) asks:

Q. "Did you order all the material in this lien claim that has been shown you?"

A. "Yes, sir."

Q. "Did you order the whole of it?"

A. "Yes, sir."

\* \* \* \* \*

Q. "So that for all the items ordered Mr. Tudor had specific orders, either in writing or verbally?"

A. "Yes, sir; he had an order from me either by word of mouth or written."

Q. "When was it you said that Mr. Deery and Mr. Reed went over this bill?"

A. "After the building was finished."

Q. "How long after the building was finished?"

A. "Not a great while; I could not remember."

\* \* \* \* \*

Q. "At whose invitation?"

A. "I looked over it by Mr. Mooney's order."

\* \* \* \* \*

Q. "What paper did you have to verify this account by?"

A. "It was a copy of that bill sent to me previously by Mr. Mooney, and it was delivered to him, I suppose, and I got it from him."

\* \* \* \* \*

Q. "That was a duplicate of this bill?"

A. "Yes, sir."

\* \* \* \* \*

Q. "What was the state of the building at the time you went into it?"

A. "It was being used by Col. Duffy for a hotel."

Q. "When you took Mr. Deery and went in did you see where the different materials went?"

A. "Yes sir."

\* \* \* \* \*

Q. "Can you ascertain the mill work after it is put in the building?"

A. "Certainly, I can locate it."

Q. "Locate it where it is put?"

A. "Yes; so any man can if he knows his business."

Mr. Hill further testifies to the lien claim (pp. 29 to 31, p. 36 and p. 38), and Mr. Deery (pp. 24 to 26).

Certainly there was enough proof of the lien claim. It only remains to consider whether the trial judge erred in sending it to the jury with this proof. When first asked for by the jury evidently the judge thought it had been admitted. His remark was (p. 43, l. 22) "If it is not already offered in evidence I will admit the lien claim in evidence."

The whole exception relates to nothing more than an ordinary mistake, if so much as a mistake, which it was not only the privilege of the court in its legal discretion to correct, as it did, but was also its duty so to do in the interests of justice. (Rev. 673, §20.)

BERGEN & BERGEN,

*Defendants' Attorneys.*

*Court of Errors and Appeals*  
NEW JERSEY ~~SUPREME~~ COURT.

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JAMES MOONEY  
vs.  
PECK & BARNARD.

} ON ERROR.  
} PLAINTIFF'S BRIEF.

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The plaintiff in error had a written contract with Harrison Groff to furnish certain specified materials toward the erection of an addition to the New Columbia House, at Cape May City.—p. 3.

June 27th, 1883, Groff alleged he had failed, and the Sheriff took possession of his mill and stopped him from furnishing any more materials to Mooney under his contract.—p. 5.

He then assigned his contract to Peck & Barnard, the defendants in error.—p. 17. 10

The cross-examination of Harrison Groff as to the objects and purposes of this assignment and his relation to the business afterwards carried on under Peck & Barnard's name reveals the fact that this suit has a secret history unfavorable to the other side.—pp. 18, 19, 20, 21, 22.

After Groff's alleged failure and assignment to Peck & Barnard, it is alleged that Peck & Barnard acquired the stock in his mill by virtue of a bill of sale made to them by the Sheriff of Camden county, dated July 6th, 1883.

And that afterwards they furnished Mooney the materials in suit, under a new contract to pay for them, without regard to Groff's contract to furnish them by orders given through John Hill, Mooney's alleged agent.

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## I. #

And the first exception relied upon relates to the admission of the Sheriff's bill of sale to Peck & Barnard, which was objected to on the two grounds of irrelevancy and incompetency.—pp. 69 and 70.

Whether Peck & Barnard bought the goods enumerated in the bill of sale of the Sheriff or not was not a material question in the case; it was most immaterial.

But if it were material the bill of sale was not competent evidence of the fact, because it was unattended with any legal proof that the bill of sale was made according to law, there being no evidence to show that it was made under an execution, or that any advertisement was made of the sale, without which it was a nullity. Nor is there any evidence that the goods were ever delivered under or in pursuance of it.

Whether such a sale or transfer was made was immaterial, but if material, it could not be proved by the simple production of the bill of sale offered, and therefore it was error in the Court below to allow it to be introduced against objection.

But the bill of sale being admitted under objection and exception, the Court was requested but refused to charge that it did not operate to transfer the title to the goods—1st request, p. 44; exception, p. 43.

# The assignments of Error in the Supreme Court are on p. 47-

Those in this Court p. 53-

The Court charged: "That if the sale was irregular, the defendant (Groff) was the only one who could complain."—p. 41. This was insufficient. The bill of sale being in evidence, its legal effect should have been stated to the jury, else what force they should give it would be the result of conjecture on their part.

Papers cannot be given to the jury to interpret, without legal instruction from the Court, when called for by either party.

But the Court charged that there was a sale, whether 10  
regular or irregular, and that the goods were delivered to Peck & Barnard under it. (p. 41.) This charge was not justified by the evidence, and was excepted to by the defendant.—p. 43.

## II.

The second exception relied upon relates to the refusal of the Court below at the trial to allow the defendant's counsel to cross-examine Groff, to show that Lloyd & 20  
King had no *bona fide* judgment against him to support the Sheriff's sale.

Certainly, under the circumstances of the case, where the defence was that Groff was the real plaintiff seeking, under the name of Peck & Barnard, to avoid compliance with his own contract with Mooney, such a cross-examination should have been allowed. It was not an effort to prove the contents of a judgment by parol but to find out if a *bona fide* one actually existed.

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## III.

The third exception relied upon relates to certain letters which Hill was allowed to testify he wrote to Groff before his failure, and others afterwards to Peck & Barnard.—pp. 31 and 32.

The letters themselves were the best evidence of when they were written and for what purpose.

The question allowed against objection was this: "Were all your letters after the ninth or seventh of July, when the mill opened under Peck & Barnard, directed to John S. Tudor?"

It was leading in form and illegal in character because it called for secondary evidence, the letters themselves being the best.

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## IV.

The fourth exception relied upon relates to the admission of a certain telegram which Hill testified was the basis of his authority from Mooney to him to order the materials of Peck & Barnard, and was a most material matter.—pp. 36 and 37.

Such a telegram was produced and admitted in evidence, without any proof to show that Mooney sent or  
20 authorized it.

Wharton on Evidence, 2 vol. § 1128, says: "It is scarcely necessary to say that to charge a party with a telegram the original draft in the handwriting of the party or his agent must be produced."

See also Burt vs. Winono, XXXI Minn., 472.

In the case of Hill vs. Mooney, tried at the same term, the judge ruled out the same telegram under circumstances similar to those in this case. (See paper book in  
30 that case, p. 12.)

It seems to me to be entirely clear that the admission of that telegram against objection was a fatal error.

The day book, after having been twice admitted against objection, was finally ruled out by the Court.—pp. 9, 37, 38, 39.

## V.

The last exception relied upon relates to the giving of the plaintiff's lien claim to the jury as a bill of particulars and basis from which to recover the plaintiff's damages, after it had retired to consider the case, and without any opportunity on the part of the defendant to disprove any part of it.

All through the case secondary evidence was resorted to in the place of primary or the best evidence by the plaintiffs below, and at the end they had their reward.

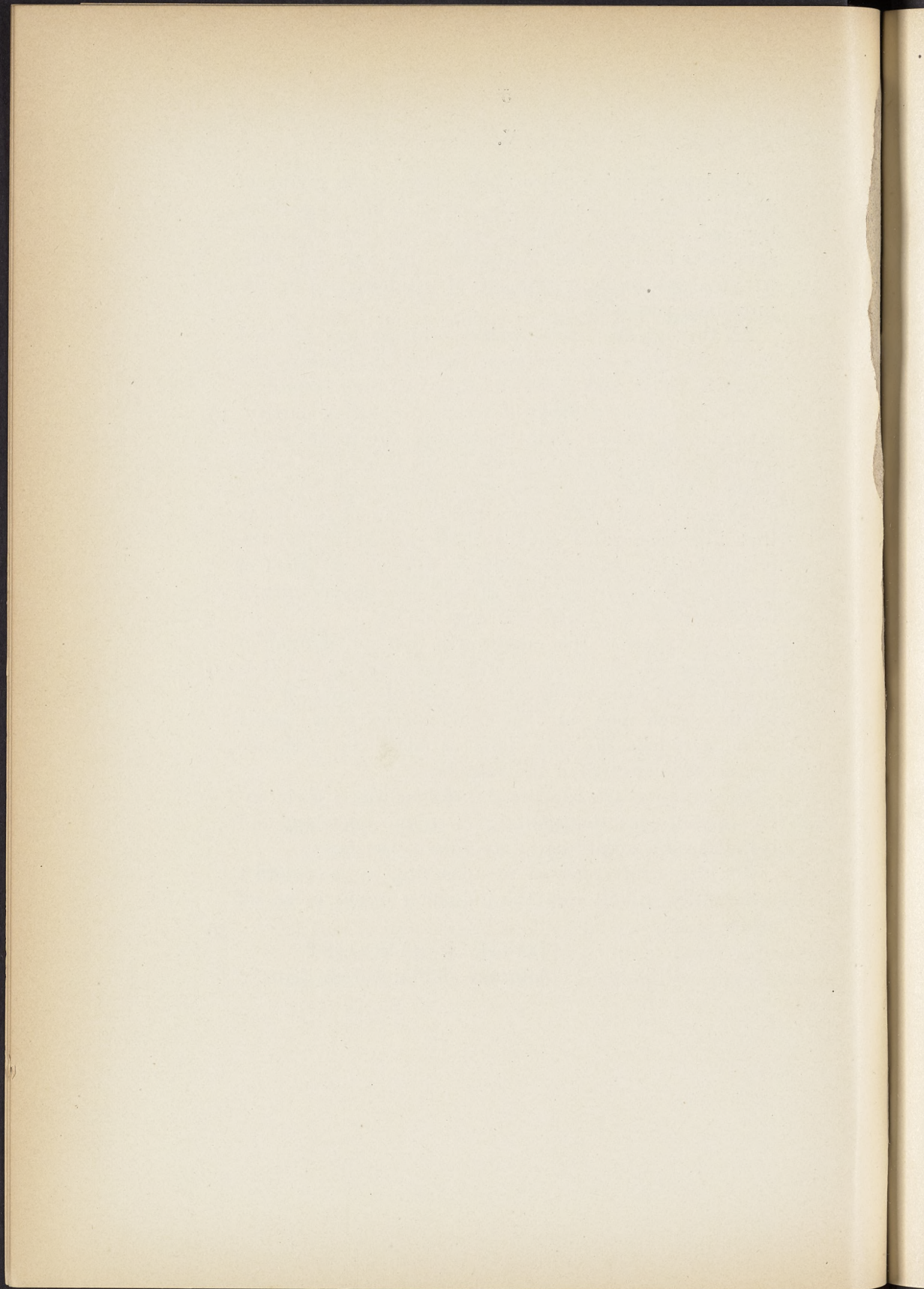
The jury had no books of account, no bill of particulars, nothing before them containing the items of the plaintiff's claim, and they sent to the Court for a bill of items of the plaintiff's claim, or in other words for more evidence in plaintiff's favor, and in lieu of the books that had been ruled out the Court handed the jury the plaintiff's lien claim as evidence, without any proof of its filing or accuracy, and without any opportunity of the defendant to contradict it.—pp. 43, 44. 10

But the worst of the matter was, that on account of the illness of one juror the defendants had agreed that the case as it stood when the jury retired should be left to the eleven men; and the Court afterwards re-opened it to introduce the lien claim as additional evidence against the objection of the defendant. 20

The action of the court in this matter was a clear encroachment upon the legal rights of the defendant and is indefensible according to my view of the law.

For the errors referred to appearing in the record I respectfully submit that the judgment ought to be set aside.

DAVID J. PANCOAST,  
Attorney of Plaintiff in Error.



# New Jersey Court of Errors and Appeals.

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JAMES MOONEY,

vs.

PECK & BARNARD.

} ON ERROR.

} STATE OF THE

} CASE.

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## WRIT OF ERROR.

10

NEW JERSEY, ss.

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting :

For as much as in the record and proceedings, and also in the giving of judgment in a certain

[L. s.]      plaint which was in our said Supreme Court of Judicature before you, between

James Mooney, plaintiff, and Darius M. Peck and Stanton Barnard, trading, &c., as Peck and Barnard, defendants, in a plea of an action of trespass on the case upon 20 promises, manifest error hath intervened, to the great damage of the said James Mooney as it is said :

We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do

command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourth day of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to  
10 the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the fifteenth day of April, A. D. eighteen hundred and eighty-six.

HENRY C. KELSEY,  
Clerk.

DAVID J. PANCOAST,  
Attorney.

20 The answer of the Justices of the Supreme Court of New Jersey, within named.

The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY. [L. s.]

RECORD.

NEW JERSEY SUPREME COURT.

DARIUS M. PECK and STANTON	}	IN ERROR.	
BARNARD, Trading, &c., as "Peck			
and Barnard,"		ON AFFIRMANCE,	10
ads		&c.	
JAMES MOONEY.	)		

BERGEN & BERGEN,  
Attorneys.

As yet of the Term of June, A. D.  
eighteen hundred and eighty-four.

Witness,  
MERCER BEASLEY, ESQ., 20  
Chief Justice.

BENJ. F. LEE,  
Clerk.

NEW JERSEY, ss.

The State of New Jersey sent to the Judge of the Circuit Court of the county of Cape May its writ in these words, to wit:

" NEW JERSEY, ss.

The State of New Jersey to Alfred Reed, 30  
[L. s.] Esquire, Judge of our Circuit Court, at  
Cape May Court House, in and for the  
county of Cape May, or such Justice of the Supreme  
Court of the State of New Jersey as shall hold such Circuit Court, GREETING:

Because in the record and proceedings, and also in the

giving of judgment in a plaint which was in our Circuit Court, holden at Cape May Court House, in and for the said county of Cape May, between Darius M. Peck and Stanton Barnard, trading as Peck & Barnard, plaintiffs, and James Mooney, defendant, of a plea of trespass on the case, manifest error hath intervened, to the great damage of the said James Mooney, as by his complaint we are informed :

10 We, being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you to distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Justices of our Supreme Court of the State of New Jersey, on the first Tuesday of June next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the law ought to be done.

20 Witness, MERCER BEASLEY, Esquire, our Chief Justice, at Trenton aforesaid, the eighth day of May, A. D. eighteen hundred and eighty-four.

BENJAMIN F. LEE,  
Clerk.

DAVID J. PANCOAST,  
Attorney.

The answer of Alfred Reed, Esq., one of the Judges of the Circuit Court within named.

30 The record and proceedings of the plaint whereof mention is within named, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

ALFRED REED,  
J.

## JUDGMENT RECORD.

### CAPE MAY CIRCUIT COURT.

OF THE TWELFTH DAY OF NOVEMBER, EIGHTEEN HUNDRED  
AND EIGHTY-THREE.

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CAPE MAY COUNTY, SS.

James Mooney, builder and owner, the defendant in this suit, was duly summoned by the Sheriff of the county of Cape May, by serving a copy of the summons issued 10 in this cause on the said James Mooney, by affixing a copy thereof on the building described in the lien claim heretofore filed in this cause, and by sending a copy thereof by mail, post prepaid, directed to his address in the city of Philadelphia, to answer unto Darius M. Peck and Stanton Barnard, trading as Peck & Barnard, the plaintiff in this suit, in a plea of trespass on the case upon promises: Whereupon the said plaintiff, by Chas. T. Reed, his attorney, complains that whereas, the said James Mooney heretofore, to wit: on the first day of 20 October, eighteen hundred and eighty-three, at Cape May Court House, in the county of Cape May, and within the jurisdiction of this court, was indebted to said plaintiff in the sum of two thousand and eight hundred dollars for the work and labor, care and diligence of the said plaintiff, by the said plaintiff before that time done, performed and bestowed for the said defendant, and at his special instance and request, and also for divers materials and

other necessary things by the said plaintiff before that time found and provided, and used and applied in and about that work and labor for the said defendant, and at his like special instance and request, and in the further sum of two thousand and eight hundred dollars for goods, wares and merchandise sold and delivered by the said plaintiff to the said James Mooney, at his like request; and in the further sum of two thousand and eight hundred dollars for interest for the forbearance by the plaintiff, at the defendant's request, of money due and owing from the defendants to the plaintiff; and in the further sum of two thousand and eight hundred dollars for money found to be due from the said defendant to the plaintiff on an account stated between them. And being so indebted to James Mooney, the defendant, in consideration thereof, afterwards, to wit: on the day and year, at the place and within the jurisdiction aforesaid, promised the plaintiff to pay to him the said several moneys on request, yet the said defendant, though often requested, has not paid the said several sums of money, or any or either of them, or any part thereof, wherefore the said plaintiff says he is injured and hath sustained damage to the amount of two thousand and eight hundred dollars, and therefore he brings suit.

And the said plaintiff avers and in fact says, that the said debt is by virtue of this provision of an act of the Legislature entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March the twenty-seventh, eighteen hundred and seventy-four, and the supplements thereto, a lien on a certain building and curtilage thereto, described as follows:

The said building is the New Columbia House of Cape May, a four story brick building one hundred and twenty-two feet three inches in width fronting Jackson

street, by ninety-nine feet two inches in depth, with a four story brick extension thereto one hundred and thirty-two feet eight inches in length by thirty-eight feet in breadth. On the southeasterly side of said extension there is a brick bay window extending four stories in height, twenty-seven feet eight inches in length by sixteen feet two inches in breadth, and at the southeasterly corner of said extension fronting on Perry street there is a brick tower           feet in height, the base of said tower being fourteen feet in length by fourteen in width; on the northwesterly side of said extension thereto is a brick lateral extension fourteen feet ten inches in length by thirteen feet ten inches in width, a projection eighteen feet ten inches in width by fifteen feet six inches in breadth; the said building is erected on a lot or curtilage situated in Cape May county, New Jersey, beginning at a point on the southwesterly side of Jackson street, in the division line between Koenig's lot and the New Columbia House; thence extending in a south- 20 easterly direction along said line of Jackson street one hundred and eighty-five feet to a corner of ground of Mrs. Miller; thence southwesterly along the same one hundred and seventeen feet to a corner; thence southeasterly still along the same forty feet to a point in the line of ground belonging to E. C. Knight; thence southwesterly along the same one hundred and forty-two feet to the northeast side of Perry street; thence northwesterly along the said line of Perry street three 30 hundred and ninety-nine feet to the ground of M. F. McCray's; thence northwesterly along the same one hundred and forty-four feet to a corner of ground of Koenig's lot; thence southeasterly along the same one hundred and seventy-four feet more or less to a point in the partition line between the New Columbia and Koenig's land, and then northeasterly along the said partition line



the plaintiff's account having been filed, and the clerk of this county having duly assessed (this day) the damages of the said plaintiff at the sum of one thousand, four hundred and sixty-one dollars and sixty-two cents, (\$1,461.62).

It is therefore, on said day and year, further ordered, that judgment final for said sum of one thousand four hundred and sixty-one dollars and sixty-two cents (\$1,461.62) damages, with costs to be taxed, be entered in favor of said plaintiffs and against the said defendant, both builder and owner, generally and specially, to be made of the lands and buildings in said declaration described. 10

Rule actually entered January 24, A. D. 1884, on motion of

CHARLES T. REED,  
Attorney of Plaintiffs.

Damages...	\$1,461 62	
Costs.....	27 86	20
Total.....	<u>\$1,489 48</u>	

Therefore it is considered that the said Darius M. Peck and Stanton Barnard, trading as "Peck & Barnard," do recover against the said James Mooney, both builder and owner, generally and also especially, to be made of the lands and buildings in said declaration described, the said sum of one thousand four hundred and sixty-one dollars and sixty-two cents, (\$1,461.62), for their damages aforesaid, in form aforesaid assessed, and also the sum of twenty-seven dollars and eighty-six cents for their costs and charges by them about their suit in that behalf expended, amounting in all to the sum of one thousand four hundred and eighty-nine dollars and forty-eight cents, (\$1,489.48). 30

And the said defendant in mercy, &c. Judgment

signed this twenty-fourth day of January, Anno Domini  
eighteen hundred and eighty-four, (1884).

ALFRED REED,  
Judge.

CAPE MAY COUNTY CIRCUIT COURT.

10	DARIUS M. PECK AND STANTON	}	IN CASE.  ON MECHANICS' LIEN.
	BARNARD, TRADING, &C.,		
	vs.		
	JAMES MOONEY.		

Upon good cause being shown, it is on this sixteenth  
day of February, A. D. eighteen hundred and eighty-  
four, ordered, that the plaintiffs in the above stated cause  
do show cause before me, at my chambers, No. 106 Mar-  
ket street, Camden, New Jersey, on Saturday, the first  
day of March next, why the judgment in the said cause  
shall not be set aside and the defendant let in to plead,  
and that a copy of this order be served on the attorney  
of the plaintiffs on the day of the date hereof, and that  
all further proceedings upon the execution issued in said  
cause be stayed until the further order of the court in  
the premises; and it is ordered that the parties have  
leave to take testimony to be used upon the hearing of  
this rule.

Let this rule be entered.

(Signed),

Entered February 18th, 1884.

ALFRED REED,  
J.  
JONATHAN HAND,  
Clerk.

## CAPE MAY COUNTY CIRCUIT COURT.

DARIUS M. PECK AND STANTON	}	IN CASE.
BARNARD, TRADING, &C,		ON MECHANICS' LIEN.
VS.		ORDER OPENING JUDG-
JAMES MOONEY.		MENT, &C.

The motion to open the judgment by default, entered in the above stated cause on the twenty-fourth day of January, A. D. 1884, coming on to be heard before his honor Alfred Reed, Judge of the said court, at his chamber, 106 Market street, Camden, New Jersey, in the presence of David J. Pancoast, attorney for the defendant, and Charles T. Reed, attorney for the plaintiffs, on the twelfth day of April, instant, and the matter being fully heard and considered on the proof submitted by the said parties, and his honor being of the opinion that the said judgment should be opened and the defendant let in to plead on the ground of surprise and merits. It is on this

day of April, eighteen hundred and eighty-four, ordered and adjudged, that the said judgment by default be and the same is hereby opened and the defendant let in to plead and make his defense upon the following terms, namely: that the case be put upon the list for trial of the coming term, without notice to the defendant, and that he pay the costs of entering judgment and issuing execution and of this motion, including the cost of the testimony taken and used at the hearing.

Let this rule be entered.

(Signed) ALFRED REED, J."

Entered April 22, 1884.

JONATHAN HAND,  
Clerk.

## CAPE MAY CIRCUIT COURT.

JAMES MOONEY ads. DARIUS M. PECK and STAN- TON BARNARD, trading, &c., 10 as PECK & BARNARD.	}	IN CASE. ON MECHANICS' LIEN. PLEAS, &c.
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And the said defendant, by D. J. Pancoast, his attorney, comes and defends the wrong and injury when, &c., and says he did not undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and for this he puts himself upon the country. And the said plaintiff does the like.

DAVID J. PANCOAST,  
Att'y of defendant.

20 CAPE MAY COUNTY, ss.

JAMES MOONEY being duly sworn, on his oath says, that his above plea is not filed for delay, but that he verily believes he has a just and legal defence to the said action on the merits of the case.

JAMES MOONEY.

Sworn and subscribed before me this 22d day of April, A. D. 1884.

JAMES H. NIXON,  
Master in Chancery of New Jersey.

30

[Endorsed.] "Cape May Circuit Court. James Mooney ads. Peck & Barnard. In Case. On Mechanics' Lien. Plea, &c. D. J. Pancoast, att'y of deft. Filed April 2d, '84. Jonathan Hand, clerk."

## CAPE MAY CIRCUIT COURT.

April Term, 1884. Tuesday, P. M.

DARIUS M. PECK AND STANTON	}	In Case.	On Mechanics' Lien	10
BARNARD, TRADING, &C.,				
Claimants,				
vs.				
JAMES MOONEY,				
Builder and Owner.	}	Claim.		

The trial of this cause being moved, it is ordered, on motion of Charles T. Reed, Esq., attorney of the plaintiffs, that the Sheriff return the venire and that the trial do now come on: Whereupon the names of the following jurors having been drawn from the box, they were called, appeared and were severally duly sworn, to wit: 20

1. Stephen Tyler,	sw.	7. Maskel Ware,	sw.
2. Leonard Abrams,	"	8. Jehu Boulcam,	"
3. John S. Johnson,	"	9. Sylvester Bishop,	"
4. Frank Hildreth,	"	10. James Carman,	"
5. Wm. S. Schellenger	"	11. Philip Kœnig,	"
6. Lafayette Smith,	"	12. John Stuart,	"

Attorney for Plaintiffs,	Attorney for Defendant,	30
CHARLES T. REED, Esq.	DAVID J. PANCOAST, Esq.	

Evidence for Plaintiffs.	Evidence for Defendant,
1. Charles T. Reed, Esq., sw.	1. James Mooney, deft., sw.
	2. Harrison Groff, sw.

Lien Claims, &amp;c.

2. John J. Deery, sw.  
3. John J. Hill, sw.

Agreement or assignment.

Court adjourned to Wednesday morning at nine o'clock.

Wednesday, April 23d, 1884, at nine o'clock, A. M., court called.

Present—as before.

Upon calling over the jury it appeared that Lafayette Smith, one of the jurors, was not present, being sick and unable to attend. Whereupon, by consent of counsel, it was ordered that the trial go on and be tried by the remaining eleven men on the jury, and the evidence in the cause being closed and the arguments of counsel summed up, the court charged the jury and they retired to their room to consider of their verdict, with Thomas L. Russell, a constable, sworn to attend them; and after deliberation the said jury (of eleven men) attended by said constable, returned into court and being called over all appeared, and being asked say that they have agreed upon their verdict, and by Stephen Tyler, their foreman, do say that they find that the said defendant did undertake and promise in manner and form as the said plaintiffs have in their declaration alleged; and they assess the damages of the said plaintiffs by reason of the non-performance of the said promises and undertakings, at the sum of fourteen hundred and twenty-two dollars and forty-two cents (\$1,422.42) with interest thereon from August 2d, 1883, to this date, over and above their costs and charges in this behalf to be taxed, and for those costs and charges to six cents, and so they say all.

Whereupon judgment is ordered accordingly on motion of Charles T. Reed, attorney of plaintiffs.

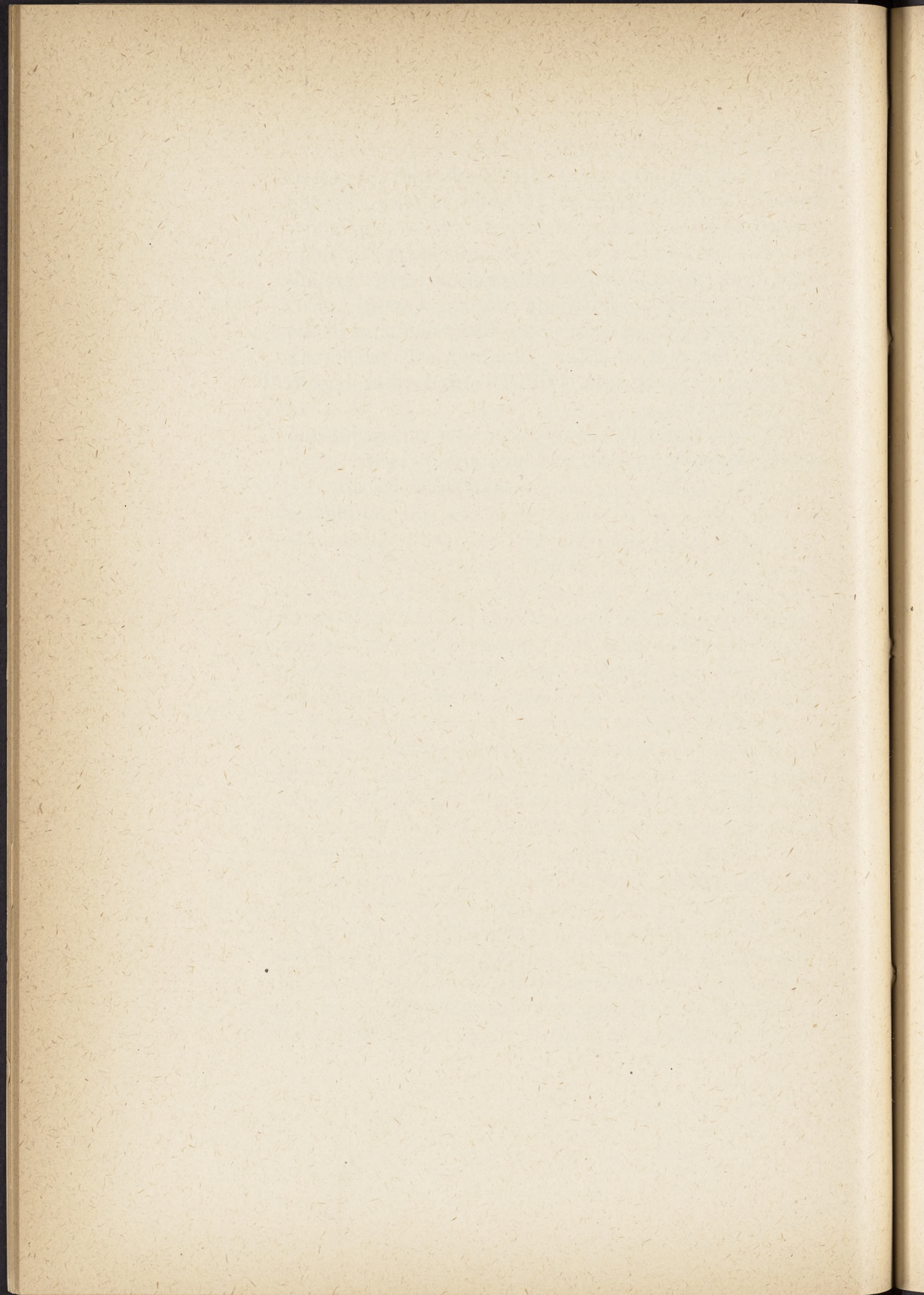
Therefore it is considered that the said Darius M. Peck and Stanton Barnard, trading, &c., as "Peck & Barnard," do recover against the said James Mooney, both builder and owner, generally and also specially, (to be made of the buildings and lands in said declaration described)

the said sum of fourteen hundred and twenty-two dollars and forty-two cents (\$1,422.42) with interest as aforesaid, for their damages aforesaid, in form aforesaid assessed, and also the sum of forty-two dollars and sixty-two cents (\$42.62) for their costs and charges by them about their suit in that behalf expended now here adjudged to the said plaintiffs and with their assent:

Which said damages, costs and charges amount in the whole to the sum of fifteen hundred and twenty-six dollars and sixty-six cents (1,526.66) and the said defendant in mercy, &c. 10

Judgment signed this twenty-third day of April, Anno Domini, eighteen hundred and eighty-four (1884.)

ALFRED REED,  
Judge.



## CAPE MAY COUNTY CIRCUIT COURT.

DARIUS M. PECK AND STANTON

BARNARD, trading, &c.

vs.

JAMES MOONEY.

IN CASE, &c.

BILL OF EXCEP-  
TIONS.

Be it remembered, that on the twenty-second day of April, eighteen hundred and eighty-four, at the Circuit Court, holden at Cape May Court House, in and for the county of Cape May, before his Honor, Alfred Reed, Esq., one of the Justices of the Supreme Court of New Jersey, and Judge of said Circuit Court, the issue joined in the above stated cause between the said parties (pro  
ut the pleadings), come on to be tried by a jury for that purpose duly empanelled, and the trial was had as follows :

## PLAINTIFFS' EVIDENCE.

JAMES MOONEY, sworn and examined :

By Mr. Reed :

Ques. Where do you reside ?

Ans. In Philadelphia.

Ques. Are you the owner and proprietor of the New  
10 Columbia House at Cape May ?

Ans. Yes, sir.

Ques. When did you make the acquaintance of Peck  
& Barnard ?

Ans. I never made their acquaintance; I don't know  
either of them.

Ques. What money have you ever paid them ?

Ans. I don't know that I ever paid any; I gave you  
\$200 to give to them, I believe.

Ques. Did you ever pay to Peck & Barnard more than  
20 two hundred dollars ?

Ans. Not that I know.

Cross-examined :

By MR. PANCOAST :

Ques. Is that the receipt of \$200 you refer to of Mr.  
Reed, the examining counsel ? (Same shown witness.)

Ans. Yes, sir.

Ques. State under what circumstances that was given ?

30 Ans. Judge Reed came to my office.

Ques. You mean this gentleman here ? (Indicating  
the Hon. Charles T. Reed.)

Ans. Yes, sir; after Mr. Groff's mill was shut up they  
wanted some money to pay the men to get out some  
material that were required for the New Columbia and  
said they would not work unless he got some money to

pay them to get the material out; they would not work unless they got money to pay their men's wages.

Ques. Had you a contract with any party to furnish material for the addition to the New Columbia House?

Ans. No, sir; not particularly, only the contract with Mr. Groff.

Ques. Was your contract with Mr. Groff in writing?

Ans. Yes, sir.

Ques. Do you know whether a copy was filed or not?

Ans. I think so; yes, sir.

10

Ques. By that contract was Harrison Groff to furnish all the material?

Ans. Yes, sir.

Ques. You had a certain contract with Harrison Groff?

Ans. Yes, sir; I have a copy home, I think.

Ques. Had you a contract with Messrs. Peck & Barnard?

Ans. No, sir; I never saw none of them; I don't know who they are.

20

Ques. Look at that paper and see if you know in whose handwriting it is, and whose signature is to it? (Paper shown witness.)

Ans. This, I think, is in Mr. Reed's handwriting, signed by Harrison Groff, the man who I made the contract with.

Ques. From whom did you get this paper?

Ans. From the architect; he had all those agreements and articles signed and got it from Mr. Groff.

Ques. Do you know who the subscribing witnesses are?

30

Ans. They were made in Mr. Deery's office—Mr. Deery's clerk.

Ques. In the State of Pennsylvania?

Ans. Yes, sir.

Ques. Do you know where either of them live?

Ans. No, sir.

Ques. Where was it signed by Harrison Groff?

Ans. In Mr. Deery's office; all those articles were signed in his office in the State of Pennsylvania.

Ques. Whom did Mr. Reed represent at the time you made him this payment, according to his statement to you?

Ans. After Mr. Groff made this assignment to Peck & Barnard he represented Peck & Barnard, as I understood it.

10 Ques. Whom did he represent before?

Ans. Mr. Groff I understood it; it was so mixed up I couldn't tell.

Ques. Did you pay him that money or did you receive that paper first?

(Two papers shown witnesses.)

Ans. That I received first. (Indicating the receipt for \$200.) That I paid Judge Reed at my office on Front street; the men would not work unless they got money; afterwards I paid that money to Mr. Reed for the men to  
20 go to work and get out stuff and material; they had no money to pay them, and they would not work, and we wanted the mill work.

Mr. Reed: This paper has been examined; I will read it: (Referring to paper signed by Charles T. Reed.) "Received, Philadelphia, July 16, 1883, of James Mooney, \$200 on account on order for \$1,000."

Ques. To whom was that order drawn?

Ans. That I don't know.

30 Ques. Can you say that you paid this \$1,000 to me on account of Peck & Barnard, or on account of Harrison Groff?

Ans. I don't know who I paid it to; I paid it to you to pay the men.

Mr. Reed. (To the witness.) You have answered my question.

H. HARRISON GROFF, sworn :

By Mr. Reed :

Ques. Where do you reside ?

Ans. In Philadelphia.

Ques. How long have you lived in Philadelphia ?

Ans. About three or four months.

Ques. Previous to that where did you live ?

Ans. In Camden, N. J.

Ques. Previous to that ?

10

Ans. In Philadelphia.

Ques. What was your business in 1883 up to the last of June ?

Ans. Manufacturer of mill work and lumber.

Ques. Where was your mill located ?

Ans. At Point and Elm streets, Camden, N. J.

Ques. When did you go in business there ?

Ans. I think it was in July, 1880.

Ques. How long did you stay in business there.

Ans. Until the 27th of June, 1883.

20

Ques. While engaged in that business, between 1880 and 1883, did you have any business transactions with James Mooney ?

Ans. Yes, sir.

Ques. What were the business transactions ?

Ans. Furnishing mill work and part of lumber for the New Columbia House at Cape May.

Ques. When did your business connection with Mr. Mooney stop if at all ?

Ans. On the 27th of June.

30

Ques. How did they come to stop at that date ?

Ans. The Sheriff had taken possession of my premises and had closed the mill.

Ques. You failed on that day ?

Ans. Yes, sir.

Ques. After the 27th of June in your own name, and in your own business, what, if anything, did you have to do with the mill with which you were connected in business?

Ans. Not anything.

Ques. What became of the old effects you had in the mill on the 27th of June, 1883?

(Objected to as irrelevant. Objection overruled. Ex-  
10 ception noted for defendant, and sealed accordingly.)

Ans. They were sold by the Sheriff.

Ques. Were you present at the sale?

Ans. Yes, sir.

Ques. Who bought?

(Objected to. Objection overruled. Exception noted  
for defendant and sealed accordingly.)

20

Ans. Mr. Peck, for Peck & Barnard.

Mr. Reed: I offer in evidence bill of sale to Peck & Barnard. (Same shown witness.)

(Defendant objects to its irrelevancy and incompetency.)

Ques. Is that the bill of sale?

Ans. Yes, sir.

30 Ques. Were you present at that sale?

Ans. Yes, sir; I was.

Ques. Were you present at the time of the delivery of these goods by the Sheriff to Peck & Barnard?

Ans. Yes, sir.

Ques. That took place after that sale at your mill?

Ans. Yes, sir.

Ques. When did the mill, if at all, and if you know of Peck and Barnard, or your mill previously, start up again?

(Objected to. Objection overruled. Exception noted for defendant.)

Ans. I don't recollect the date exactly, but it was shortly after the sale had taken place, within say a week.

Ques. After the sale, were you employed in or about that mill?

Ans. Yes, sir. 10

Ques. Who were you employed by?

Ans. I was employed by yourself.

Ques. Acting for whom?

Ans. Peck & Barnard.

Ques. Were you at the mill frequently, or were you not?

Ans. Yes, sir; I was there daily.

Ques. Was the business carried on, and at what time did that business commence in the mill again? At what date was it commenced again? 20

Ans. I cannot recollect positively the date, but it was within a week after the sale, I think.

Ques. Who commenced that business?

Ans. Peck & Barnard.

Ques. What business did that mill carry on?

Ans. The same as we had been doing—the manufacture of mill work and the sale of lumber more particularly. 30

Ques. Who acted for Peck & Barnard; who had charge of it?

Ans. John F. Tudor.

Ques. Do you know that book? (Cash book shown witness.)

Ans. Yes, sir; I recognize that as Mr. Tudor's cash book.

Ques. Do you know that book? (Another book shown witness.)

Ans. That is the day book; that is Mr. Tudor's day book—Tudor, agent for Peck & Barnard.

Mr. Reed: We offer the book in evidence.

(Objected to. Objection sustained.)

Ques. Whose handwriting is that book?

10 Ans. I recognize in there three handwritings; one is in the handwriting of John F. Tudor, the other by Mr. Rudderow, the bookkeeper, and the third by Mr. Drown, the foreman.

Ques. Were you present at the time to see the entries were made in the book?

Ans. Yes, sir.

Ques. Were you employed in and about the mill at that time?

Ans. Yes, sir.

20 Ques. Do you know in what capacity Mr. Rudderow acted?

Ans. He was the bookkeeper for Mr. Tudor, agent for Peck & Barnard.

Ques. In what capacity was Mr. Drown acting?

Ans. He was the foreman of the mill.

Ques. Did you have repeatedly occasion to have access to the books?

Ans. Yes, sir.

30 Ques. Were the charges made at the time in that book they bear date?

Ans. Yes, sir.

Ques. Was the book placed in your hands by Mr. Tudor, agent for Peck & Barnard, to examine?

Ans. Yes, sir.

Ques. And to straighten up and examine?

(Objected to.)

Mr. Reed: I want to find out what the witness knew about the day book.

(Objected to. Objection overruled. Exception for defendant, and sealed accordingly.)

Ans. Yes, sir.

Ques. Did not you on very many occasions stand by while entries were made in that book, as lumber and material were delivered on the cars to be sent away to Cape May? 10

Ans. Yes, sir.

(The books are offered in evidence.)

Counsel for defendants objected to the evidence of the books on the ground they were not sufficiently proved, because the witness, from the statement he made to the court, has not sufficient knowledge to speak as to the items entered in these books so as to make them a charge against the defendant. 20

(Objection overruled. Exception\*for defendant allowed and sealed accordingly.)

CHARLES T. REED, being duly sworn, testified as follows:

This paper (a bill of sale) I hold in my hand, was subscribed by Theodore B. Gibbs, Sheriff, in my presence; my signature is attached to it. 30

Direct examination of H. HARRISON GROFF, resumed:

Mr. Reed: I offer the bill of sale in evidence.

(Objected to as irrelevant and incompetent. Exception for defendant allowed and sealed accordingly.)

By Mr. Reed :

Ques. Is that the bill of sale made of your property to Peck & Barnard ?

Ans. Yes, sir.

10 Mr. Reed reads bill of sale :

Know all men by these presents, that I, Theodore B. Gibbs, Sheriff of the county of Camden, for the consideration of six thousand six hundred and sixteen dollars, to me paid by Darius N. Peck and Stanton Barnard, trading, &c., as Peck and Barnard, of the city of Williamsport, State of Pennsylvania, the receipt whereof is hereby acknowledged, have and by these presents do give, grant and sell unto the said Darius N. Peck and Stanton Barnard, trading, &c., as Peck and Barnard, their execu-  
 20 tors, administrators and assigns, the following goods and chattels, viz: about 10,000 feet cherry boards; 12,000 feet barn boards; 10,000 feet white pine cut-ups; 16,000 feet  $1\frac{1}{4}$  inch white pine cut-ups; 3,000 feet wide white pine cut-ups; stove and fixtures; office fixtures; 6,000 feet white pine boards; 300 feet  $1\frac{1}{2}$  inch plant lot of yellow pine plank; 100 boxes; moulding machine; sash machine; lot of flooring plank and strips under shed; lot of boards and plank in shed; lot of loose boards and plank; 10,000 feet hemlock boards; 15,000 feet  $4\frac{1}{4}$  inch  
 30 flooring; 8,000 feet  $1\frac{1}{2}$  inch plank; 25,000 feet  $1\frac{1}{2}$  and  $1\frac{1}{4}$  inch white pine plank; lot of yellow pine plank and boards; lot of scantling; lumber wagon; lot of boards and strips under shed adjoining mill; two jig-saws and frames; band-saw and frame; two circular saws and benches; boring machine; lot of patterns; floor boards;

planing machine; circular sawing machine for re-sawing; up and down machine for re-sawing; circular saw and bench; planing machine; blind-slat machine; two moulding machines; two circular saws and benches; turning lathe and fixtures; lot of lumber on first floor of mill; small boring machine; tennoning machine; reeding machine; panel raiser; moulding machine; two sand paper machines; three saw benches and fixtures; jointing machine; mortising machine; small plower; moulding machine; circular saw; staple machine for blinds; lot of old iron; outside blind-slat cutter; inside 10 blind-slat cutter; moulding machine; twelve work benches; lot of sash, doors and blinds in course of construction; two iron vises; saw bench and saw; thirty small desks; lot of finished and unfinished cases; lot of school companions; lot of moulding; two old saw benches down cellar; balance of odds and ends not enumerated; thirty-three boxes of glass; two hundred and thirty glazed windows; eighty-five pairs of blinds; one hundred and eighty-four shutters; one hundred and six doors; thirty pairs blinds; lot of ballusters; all the 20 odds and ends on first floor and shed; twenty windows; fourteen glazed windows; lot of worked lumber; one pair blinds; eight pair shutters; two transoms; lot of shafting and pulleys; belting, engine and boiler, to them and their use forever.

And I, the said Theodore B. Gibbs, Sheriff as aforesaid, do hereby covenant and agree with the said Darius N. Peck and Stanton Barnard, trading as aforesaid, that I am the Sheriff of the said county of Camden, and that I 30 sold the above enumerated goods and chattels, by virtue of an execution issued out of the Camden County Circuit Court, wherein William C. Lloyd and John C. King, trading as Lloyd & King, are plaintiffs, and Henry Harrison Groff is defendant.

Witness my hand and seal this sixth day of July, A.  
D. eighteen hundred and eighty-three.

THEODORE B. GIBBS, [L. s.]  
Sheriff.

Signed, sealed and delivered in the presence of

CHAS. T. REED,

HENRY M. SNYDER, JR.

Ques. Among those that I mentioned, was there any  
10 material that had been made by yourself for the New  
Columbia House that was sold to Peck and Barnard  
among other material?

Ans. Yes, sir; considerable.

Ques. A considerable amount that has been made and  
sold to you?

Ans. Made and partially made.

Ques. This had been made to fit the New Columbia  
House?

Ans. Yes, sir.

20 Ques. Do you remember James Mooney giving to Mr.  
Tudor, in your presence, on or about the 7th of July,  
any order in regard to materials as to who furnished  
materials?

Ans. Yes, sir.

Ques. State what Mr. Mooney said?

Ans. There was among this material on hand, a very  
large portion of it which Mr. Mooney was very anxious  
to have to complete his building.

30 (Objected to as not being responsive to the question.)

Witness resuming: Mr. Mooney said that he was very  
anxious to have this material as soon as possible, and  
told Mr. Tudor to furnish it as soon as possible and send  
it down, and sent to know at the same time how soon it  
was possible to have it there. Mr. Tudor told him

within a week or ten days he would be able, probably, to have it all shipped that was then on hand, complete, manufactured and uncomplete.

Ques. Who did Mr. Tudor state at that time was the owner of that mill, if he did at all?

Ans. He told him that Peck & Barnard owned the mill.

Ques. What relationship did he say he had with Peck & Barnard?

(Objected to as leading. Objection overruled.)

10

Ans. He told him he was the agent for Peck & Barnard; that he would have charge of the mill and the measurement of the material.

Ques. What interest had you in the mill, or the lumber in the mill?

Ans. I had no interest whatever.

Ques. State if you ever heard a subsequent conversation by Mr. Mooney with anybody, with Mr. Tudor in the presence of any one else, in regard to furnishing of this material to said Peck & Barnard for his house at Cape May?

Ans. When he was with Mr. Hill he told Mr. Tudor to furnish Mr. Hill with whatever was necessary for the completion of the house and get it out as soon as possible, and that he could not order this material anywhere else in time, or probably get as soon as he could from Mr. Tudor, and he also told him to send forward whatever Mr. Hill would order necessary for the house; that he told Mr. Tudor in my presence and in the presence of Mr. Hill; Mr. Hill came over with him.

30

Ques. Mr. Mooney did?

Ans. Yes, sir.

Ques. Was that after the mill had been closed or before?

Ans. After it had been closed.

Ques. After the Sheriff's sale?

Ans. Yes, sir.

Ques. After the Sheriff's sale, were you present to see the material shipped to John Hill for the New Columbia House by John Tudor?

Ans. Yes, sir; a good deal of it.

Ques. Who were the bills of lading sent to?

Ans. That I don't know.

10 Ques. Turn to the accounts in the day book for material furnished to James Mooney at and after the 7th of July, and after you had ceased business; in whose handwriting is this, that line (indicating on the book) Columbia?

Ans. That is my handwriting.

Ques. What did you get it from?

Ans. From this book. (Indicating.)

Ques. Then the line Columbia was taken from that book?

20 Ans. Yes, sir.

Ques. Was that book used in making it?

Ans. Yes, sir.

Ques. Look through the line Columbia and look over the book and see if you can swear that the items charged in there are the items taken from that book of original entry to James Mooney?

By The Court:

30 Ques. Did you make them?

Ans. Yes, sir.

Ques. Did you say you took it from this book:

Mr. Reed: He might have made a mistake.

Witness: I could not decide that without going over it item for item.

By Mr. Reed :

Ques. Did you take it directly from the book ?

Ans. Yes, sir.

Ques. Who gave the orders for the stuff after Mr. Mooney had left there ?

Ans. Mr. Hill.

Ques. Do you know why he gave them ?

(Objected to.)

Ans. He was the Superintendent for Mr. Mooney. 10

Ques. Did Mr. Mooney so direct Mr. Tudor and consider him in your presence ?

Ans. Yes, sir.

(Objected to as leading.)

Cross-examined :

By Mr. Pancoast :

Ques. Who was your attorney before and at the time 20  
you made the assignment ?

Ans. The assignment of what ?

Ques. The failure.

Ans. I don't know as I had any occasion for any attorney prior to that time.

Ques. Did you say you had none ?

Ans. No.

Ques. Who was he ?

Ans. I don't understand your question.

Ques. Who was your attorney at law up to the time of 30  
your failure ?

Ans. I had no occasion——

Ques. Do you say you had no attorney ?

Ans. I had none.

Ques. Mr. Reed was not your attorney ?

Ans. No, sir ; I don't know that Mr. Reed ever did anything for me.

Ques. Look at your signature to this paper ; whose handwriting is that paper ? (Paper shown witness.)

Ans. I don't know who.

Ques. Do you know it is in the handwriting of Charles T. Reed ?

Ans. I don't know it.

Ques. Whose signature is to that bill of sale ?

Ans. Mine.

10 Ques. Who are these subscribing witnesses ?

Ans. I don't know either one of them.

Ques. Did they put their names there at your request when you executed the instrument ?

Ans. I don't recollect.

Ques. You cannot say what the names were at the time you executed the instrument, but that is your signature ?

Ans. That is my signature.

Ques. Where was it executed ?

20 Ans. I don't recollect.

Ques. You do not know who drew the paper ?

Ans. No, sir.

Ques. You do not know the subscribing witness ?

Ans. No, sir ; I do not know them now, I may have known them at the time. Those men must have been in Mr. Reed's office ; I do not know.

Ques. If they were, what were they doing there ?

Ans. I do not know.

30 Ques. What is the meaning of that instrument ?  
(Paper shown witness.)

(Objected to, on the ground that the paper should state for itself.)

Ques. Read it.

Witness commences reading: I do hereby certify that the contract made between myself and James Mooney for furnishing mill work.

(Objected to.)

By the Court: Is it in writing?

By Mr. Reed:

Ques. Is the contract you made with Mr. Mooney in writing? 10

Ans. Yes, sir.

Ques. Where is it?

Ans. I don't know where it is.

Ques. You have not a copy of it?

Ans. No.

Ques. Is the contract in writing for a general purpose?

(Objected to.)

Ques. Read it.

Witness reads: "I do hereby certify that the contract 20 made between myself and James Mooney for furnishing mill work, &c., has been duly assigned to Peck & Barnard and all moneys due on said contract or for extra work on said new building at Cape May is due and owing to said Peck & Barnard, and I hereby authorize the payment of the same to the said Peck & Barnard or their attorneys.

I do further certify, that Charles T. Reed is their duly 30 authorized attorney to act for them in these premises.

Signed, sealed and delivered in the presence of A. F. Norris and William—I don't know who.

Mr. Reed: We offer this paper in evidence.

By Mr. Pancoast:

Ques. When was this paper executed ?

Ans. I don't know.

Ques. You can't tell who was present ?

Ans. No, sir.

Ques. Out of what circumstances did this paper arise ; what led to it ?

Ans. I don't recollect ; that is my signature ; that is all I remember about the matter.

Ques. This was your contrivance was it not ; it was  
10 meant to accomplish some purpose you had in view ?

Ans. I suppose so.

Ques. What purpose had you in view that you meant  
to accomplish by this paper ?

Ans. The paper speaks for itself I think.

Ques. That is all you can say about it ?

Ans. Yes, sir.

Ques. When did Peck & Barnard get judgment against  
you ?

Ans. I think the 27th of June, 1883. No, Peck &  
20 Barnard, I don't know when they got judgment.

Ques. Who were you referring to ?

Ans. Lloyd & King.

Ques. When did they get a judgment against you ?

Ans. On the 27th day of June, 1883 ; I think that was  
the time ; it was about that time, I cannot positively re-  
member.

Ques. Was that a confessed judgment ?

(Objected to, unless the judgment is produced. Objec-  
30 tion sustained. Exception noted for defendant.)

Ques. Who was the attorney for Lloyd and King ; who  
entered this judgment, acting for them at that time ?

(Objected to, on the ground that the judgment would  
show for itself. Objection sustained. Exception noted  
for defendant.)

Ques. What business dealings had you at that time with Peck and Barnard, that interested them in your property and business?

Ans. I don't know that I had any.

Ques. Were they any relation to you, or either of them?

Ans. No, sir.

Ques. Where do they do business?

Ans. At Williamsport, Pa.

Ques. They did not owe you anything?

10

Ans. No, sir.

Ques. Had you ever any business relation with them at all?

Ans. No, sir.

Ques. How did they come to buy in this property at Sheriff's sale for you, or in the way it was purchased?

Ans. I presume they thought it was to their interest to do so.

Ques. Who got them to do so, do you know?

Ans. No.

20

Ques. Did not you?

Ans. No.

Ques. What made them take this interest in this property to make a purchase at a Sheriff's sale?

Ans. I don't know.

Ques. You cannot form any idea?

Ans. I can form some idea.

Ques. Were you present the day the Sheriff made the sale?

Ans. Yes.

30

Ques. Was Peck or Barnard there?

Ans. Peck was there.

Ques. Was he an acquaintance of yours?

Ans. Not very much of an acquaintance; I met him occasionally.

Ques. Was he comparatively a stranger?

Ans. No, not comparatively a stranger I should not term it, I met the gentlemen frequently.

Ques. Did Mr. Peck do the bidding that day?

Ans. Yes, sir.

Ques. Who else bid?

Ans. Two or three parties.

Ques. Who were they?

Ans. I don't recollect.

Ques. Did he pay any money to the Sheriff?

10 Ans. I presume so.

Mr. Reed: Do you know; did you see him?

Ans. No.

Ques. Did you see Peck and Barnard after that?

Ans. Yes, sir.

Ques. How often?

Ans. Probably two or three times.

Ques. Where?

Ans. At Camden.

20 Ques. What was said about this matter, on these two or three occasions—about this property in suit?

Ans. No more than a general conversation,—no nothing special.

Ques. Were you ever employed by them?

Ans. No, I was employed by Mr. Reed.

Ques. You were not employed by Peck & Barnard?

Ans. I was not.

Ques. What were the terms of your employment by Mr. Reed?

30 Ans. Looking after the accounts and assist him in looking over them.

Ques. Assist him for whom?

Ans. For Peck & Barnard.

Ques. What was your compensation to be?

(Objected to. Objection overruled.)

Ans. We made no terms about that.

Ques. Have you been there at work ever since?

Ans. No, sir.

Ques. Are you at work there now?

Ans. No, sir.

Ques. When did you go to work after the sale?

Ans. Directly.

Ques. What did you go to work at?

Ans. Looking over these books, straightening out this account. 10

Ques. Who managed the business of getting out the material for Peck & Barnard?

Ans. John F. Tudor.

Ques. Did you do anything?

Ans. I did not do anything at the mill.

Ques. Did you stay about the mill?

Ans. No, sir; I went there in the morning; I was there generally at dinner times, and in the afternoons in and out.

Ques. For how long a time, until after the mill was 20 closed up, who received the orders?

Ans. The orders for the mill?

Ques. For material out of the mill, while you were there?

Ans. Mr. Tudor.

Ques. Himself personally?

Ans. Yes, sir.

Ques. Had you anything to do with them?

Ans. No, sir; the correspondence was all addressed to him. 30

Ques. Who filled these orders?

Ans. Mr. Tudor did.

Ques. Who entered the memoranda in the cash book and the day book?

Ans. The bookkeeper.

Ques. What is his name?

Ans. Charles F. Rudderow.

Ques. He lives in Camden ?

Ans. Yes, sir.

Ques. Who else ?

Ans. He did in the day book.

Ques. Who kept the day book ?

Ans. Three different people, Mr. Rudderow, Mr. Tudor and Mr. Drown, the foreman of the mill.

Ques. It was no part of your duty to keep the day  
10 book or cash book ?

Ans. No, sir.

Ques. You do not pretend to say you saw those entries in the cash book and day book all entered at the time ?

Ans. No, I don't say so.

Ques. The business was closed out by Peck and Barnard ?

Ans. Yes, sir.

Ques. You staid there until it was closed out ?

Ans. I staid at Mr. Reed's office ; yes.

20 Ques. Did you make his office your headquarters, while this was being done ?

Ans. Yes, sir.

Ques. You did this without compensation ?

Ans. There was no compensation fixed upon.

Ques. Have you ever received any compensation ?

Ans. Yes, sir.

Ques. Did you receive a share of the profits of the business ?

Ans. No, sir.

30 By Mr. Reed :

Ques. After Peck & Barnard were closed out, and you were closed out by the Sheriff, what interest had you in that business ?

Ans. Not one single cent.

Ques. Had you anything to do, in any way, with or-

dering or sending away the material, or the payments of money in any shape in the business?

Ans. No, sir.

Ques. You were familiar with the books, came in connection with the stuff of the old mill and the stuff of the new mill, did you not?

Ans. Yes, sir.

Ques. You saw the stuff of the old mill and fixed its price and regulated it in that manner?

Ans. Yes, sir.

Ques. The prices attached to this bill were the correct 10 market prices at that time?

Ans. The market prices.

John J. DEERY, sworn and examined:

By Mr. Reed:

Ques: Where do you reside and what is your business?

Ans. I live in Philadelphia, and am an architect.

Ques. Are you the architect for the New Columbia Hotel?

20

Ans. I am the architect for the New Columbia.

Ques. Of whom did you get your mill work up to June 29th, 1883, on the New Columbia House?

Ans. The mill work up to that date, as far as I can recollect, was furnished by Harrison Groff.

Ques. What, if anything, happened in a business way to Harrison Groff on or about June, 1883?

Ans. He made an assignment.

Ques. What do you mean by an assignment?

30

Ans. I am not sure he made an assignment, but, as I was informed,—

Ques. Did he make an assignment or was he sold out by the Sheriff?

Ans. I presume it was the latter; he was sold out by the Sheriff.

Ques. After the 29th of June, I think about July 10th, of whom did you get your mill work for the New Columbia House, after July 9th.

(Objected to.)

Ques. Whom did Mr. Mooney get the mill work from?

Ans. Of Peck & Barnard.

Ques. How do you know that this mill work was got off of Peck & Barnard?

10 Ans. From my position as architect I should know it, and was made acquainted with it by Superintendent Hill, and by James Mooney.

Ques. They both informed you that this mill work was coming from Peck & Barnard?

Ans. They did.

Ques. What else did Mr. Mooney tell you, if anything, in regard to this mill work coming from Peck & Barnard?

20 Ans. He desired to pay no more money to Harrison Groff.

Ques. What did he state to you in effect as regards the relations between him and Harrison Groff, at that time, after the mill had closed down?

Ans. He told me they had made an assignment or failed, or there was a change, and that Peck & Barnard would furnish all this material, that is, any new material required to complete the building.

Ques. About what time was this?

30 Ans. Somewheres in the first week of July.

Ques. Look over that bill of particulars of material furnished since the 9th of July? (Paper shown witness.) As architect you say it was your duty to know about the material; was it your duty to know what material was furnished to the New Columbia, from whom it came, and the amounts?

Ans. It was.

Ques. Did you make it your business as such architect for James Mooney to know what material was furnished to the building, from whom it came, and in what amounts?

Ans. I did.

(Objected to as leading. Objection overruled.)

Ques. What did you know about the material furnished, from whom, the amounts, and the quality, and so forth? What do you know about it, if anything? 10

Ans. Because the bills should be submitted to me for examination to audit as to correctness—

(Objected to. Objection overruled.)

Ques. What was your duty as an architect in regard to material that was furnished?

Ans. To examine the account, audit the bills; as to their correctness, I had vouchers; where vouchers did not exist I must have the authority from the superintendent as to the correctness of them. (Objected to as hearsay.) In order that I might draw the usual certificates for payment. 20

Ques. Was a bill the same as that placed in your hands for careful examination? (Same shown witness.)

(Objected to.)

The Court: Ask what examination.

Ques. What examination did you make of the bill in your hand, if any. 30

Ans. I made examination without any one's assistance as to whether the items were in contracts; whether the charges were right with which I was familiar; after that I went over them with the superintendent and struck out

a number of items as not being correct, and the balance I believe to be correct.

By the Court :

Ques. Correct in that respect ?

Ans. Correct in price and in details.

By Mr. Reed :

10 Ques. Then is the footing of that bill correct from your examination and information ?

(Objected to. Objection overruled.)

Ques. Is that bill which you have in your hand correct as to its footing, its price and the items furnished ?

(Objected to. Objection overruled.)

Ques. Do you know whether the items in that bill were furnished to that building ?

20

(Objected to unless the witness has personal knowledge.)

By Mr. Reed :

Ques. From your personal knowledge do you know ?

Ans. Only in that way.

Ques. Do you know whether the footings of the bill are correct ?

30

Ans. I went over them and believe them to be correct.

Cross-examined :

By Mr. Pancoast :

Ques. You have a suit against Mr. Mooney pending here, have you not ?

Ans. I have.

Ques. Has not also Mr. Hill a suit pending against Mr. Mooney?

Ans. Yes; I believe he has.

JOHN J. HILL sworn and examined :

By Mr. Reed :

Ques. Where do you live?

Ans. I live in Philadelphia.

Ques. What was your business? 10

Ans. That of a carpenter and builder.

Ques. Whom did you work for during the months of June, July and August of 1883?

Ans. James Mooney, at Cape May.

Ques. In what capacity?

Ans. I worked there in the capacity, from June 18th up to the 7th of August, as the superintendent of the whole building, as well as the master carpenter.

Ques. What did you have to do with the building as regards material and mill work and so forth that came? 20

Ans. I had to order it as it was needed, saw that it was delivered, and saw that it was put in place when it was delivered; I had full authority from Mr. Mooney in several ways, by writing, verbally and by telegram, to order all and everything that I wanted or needed for the proper completion of that building.

Ques. Whatever material came into the building passed under your supervision? 30

Ans. It did.

Ques. From whom did you get mill work until the latter part of June, 1883?

Ans. From H. Harrison Groff.

Ques. Whom did you get mill work from in the first part of July, 1883, say the 7th, 8th, 9th and so on?

Ans. From the time the mill was closed and sold out

by the Sheriff I purchased the mill work from Peck & Barnard; I never met Peck & Barnard, but I met their agent, John F. Tudor—John T., I think is his name—I was dealing with Mr. Tudor, who was their agent. I asked him if Mr. Groff had anything further to do with the mill; he said no, he has nothing further to do, he is frequently here, but has nothing to do with it; he pointed where the sign of H. Harrison Groff was painted over.

10 Ques. Did you ever go with James Mooney to the mill of Peck & Barnard, about the 7th, 8th or 9th of July; and, if so, what conversation took place, and in the presence of whom?

Ans. At that time we were greatly pressed for mill work.

Ques. Whom do you mean by "we"?

Ans. That is Mr. Mooney and myself, the carpenter, builder and superintendent of the work. I found it a very difficult matter to get mill work anywhere. In one  
20 place, after taking the order, they wrote me a letter, stating they would like to see me. When I went to their place and saw what was the matter they told me. (Objected to.) I went with Mooney to Camden to this mill, and Mr. Mooney asked how soon the mill would start up again. Mr. Tudor said he didn't know; he thought in a few days the sale would take place, and Mr. Mooney asked Mr. Tudor and Mr. Groff who was to run the mill, and Mr. Tudor, as near as I can recollect, said that the sale would  
30 develop that, and that was something he could not tell —he turned around and said to Mr. Groff first, and turned around again half-way to Mr. Tudor, speaking to them both, as they were a little piece apart, and said "whoever starts the mill let them send whatever is ordered, I have placed Mr. Hill in charge of the work, we are doing all the work by the day, all the carpenter work, and whatever Mr. Hill orders send it down immediately, because

I have discharged Mr. Watson, who was formerly superintendent"——

Ques. Stop there. Did you ever hear any conversation between Mr. Mooney and Mr. Tudor as to who was the owner of that mill?

Ans. I think I did.

Ques. State what the conversation was.

Ans. As near as I can recollect, Mr. Mooney asked Mr. Tudor who was running the mill now, and Mr. Tudor said Peck & Barnard, and I am their agent.

Ques. Then there was further an instruction to you 10 that whatever you ordered, whatever you wanted to finish that building, was to be sent to you by Peck & Barnard, or Mr. Tudor, their agent?

Ans. Yes, sir.

Ques. Did I act for Peck & Barnard in furnishing you a bill to examine of the material furnished by Peck & Barnard to James Mooney to finish the New Columbia Hotel?

Ans. Yes, sir; you did furnish me such a bill.

Ques. Look over that bill and state if that is the same 20 bill, or to all intents and purposes the same bill? (Same shown witness.)

(Objected to as to the form of the proof. Objection overruled. Exception noted for defendant, and sealed accordingly.)

Ans. Yes.

Ques. When the bill was handed to you what did you 30 do with the items upon the bill or with the bill?

Ans. I examined them carefully.

Ques. You examined the items carefully?

Ans. Yes, sir.

Ques. Explain how you examined those items?

Ans. I had that bill in my possession at least two days,

and I went all over the building carefully, and I found out where every item on the bill was located, and if I failed to locate I made a cross opposite to that item on the bill, but all the items were found correctly; in fact, there was one or two items not on the bill that was served on the building, I think.

Ques. Is that the corrected bill as it foots up in amounts and in items as you proved it? (Same shown witness.)

Ans. Yes, sir; it is.

10 Ques. Did you make a careful examination of this bill in the presence of Mr. Deery and myself, occupying not less than a period of three hours at Cape May City?

Ans. I did, at the instance of Mr. Mooney, because he wrote to me a day or two before.

Ques. The appointment was made by you at the instance of Mr. Mooney with Mr. Deery and myself?

Ans. Yes, sir.

Mr. Potter: We ask that the instruction given by  
20 letter be stricken out by the court unless the letter is produced.

By Mr. Reed:

Ques. Have you the letter that Mr. Mooney gave you?

Ans. I am not certain.

Ques. Have you not looked among your papers for all letters by Mr. Mooney?

30 Ans. I think I have not got it, because there are so many—yes, sir.

Ques. Are those the letters and papers you got from Mr. Mooney? (Package of papers shown witness.)

Ans. Yes, sir.

Ques. Examine them and see if it is there?

(The witness proceeded to examine the papers in the package.)

Mr. Pancoast: We waive the production of the letter if it cannot be found.

Ques. This arrangement was made by Mr. Mooney with you by letter?

Ans. Yes, sir; verbally, too. He told me to examine all bills, and especially that of Peck & Barnard.

Ques. Mr. Deery, yourself and myself were present?

Ans. Yes, sir.

Ques. And you examined them?

Ans. Yes, sir.

10

Ques. Was all the material mentioned in this bill furnished to the New Columbia House by John F. Tudor, agent of Peck & Barnard?

Ans. It was.

Ques. Are the prices placed to these items the correct prices for the material so furnished?

Ans. They are.

Ques. Are the calculations made and the price per foot correctly carried out?

Ans. They are.

20

Ques. Did you make those calculations yourself?

Ans. I did.

Ques. In the presence of whom?

Ans. In your presence and in Mr. Deery's presence. I spent about three hours on the bill.

Ques. Was the material mentioned in there actually furnished to the New Columbia Hotel?

Ans. Yes, sir.

Ques. And in that building?

Ans. And set in place in that building.

30

Ques. Is that your letter? (Letter dated June 20, 1883, subscribed John J. Hill, New Columbia House, N. J., shown witness.)

Ans. That is my letter.

Ques. Directed to whom?

Ans. It is directed to H. Harrison Groff.

Ques. To whom were all the letters previous to June 20 directed, in ordering material for the New Columbia House?

Ans. To H. Harrison Groff.

Ques. To whom was that letter directed? (Letter dated July 10, 1883, signed John J. Hill, shown witness.)

Ans. That is directed to John S. Tudor.

10 Ques. Were all your letters after the 9th or 7th of July, when this mill opened, under Peck & Barnard, directed to John S. Tudor?

(Objected to. Objection overruled. Exception noted for defendant, and sealed accordingly.)

Ques. To whom were they directed after that?

Ans. To John S. Tudor.

20 (Objected to. Objection overruled. Exception noted for defendant, and sealed accordingly.)

Ques. Who do you mean by John S. Tudor?

Ans. I mean the agent of Peck & Barnard, who had charge of their mill.

Ques. That is the same gentleman you meant as the John F. Tudor who kept these books.

Ans. Yes, sir.

30 Ques. Were these letters written at the time they bear date?

Ans. Yes, sir.

Ques. To whom was the letter of July 16th directed?

Ans. To, "John S. Tudor," meaning John F. Tudor.

Ques. For the work of the mill of Mr. Mooney on the New Columbia House?

Ans. Yes, sir.

Cross-examined :

By Mr. Pancoast :

Ques. Did you order all the material in this lien claim that has been shown you ?

Ans. Yes, sir.

Ques. Did you order the whole of it ?

Ans. Yes, sir.

Ques. How ?

Ans. By letter and word of mouth. 10

Ques. How often by letter, as near as you can tell, and how often did you order by word of mouth ?

Ans. That I could not remember ; I would go to Philadelphia from Cape May and I would stop there at the mill, crossing the river, and leaving an order ; sometimes writing it down on paper right in the mill on my memorandum book and tearing a leaf out.

Ques. So that for all the items ordered Mr. Tudor had specific orders either in writing or verbally ?

Ans. Yes, sir ; he had an order from me either by 20 word of mouth or written.

Ques. When was it you said that Mr. Deery and Mr. Reed went over this bill ?

Ans. After the building was finished.

Ques. How long after the building was finished ?

Ans. Not a great while ; I could not remember.

Ques. Where ?

Ans. At Cape May.

Ques. Whereabouts at Cape May ?

Ans. In the house where I boarded. 30

Ques. Where was that ?

Ans. On south Lafayette street.

Ques. Was it in the night or in the day time ?

Ans. In the day time.

Ques. At whose invitation ?

Ans. I looked over it, by Mr. Mooney's order.

Ques. At whose invitation did you meet Mr. Reed and Mr. Deery?

Ans. They called on me there. They came down from the city and met me there; they didn't know where I was, and sent a telegram.

Ques. What paper did you have to verify this account by?

Ans. It was a copy of that bill sent to me previously  
10 by Mr Mooney, and it was delivered to him, I suppose, and I got it from him.

Ques. What other data had you before you went to verify it in Mr. Deery's absence?

Ans. This bill I got from Mr. Mooney, with which I examined every item.

Ques. That was a duplicate of this bill? (Indicating.)

Ans. Yes, sir.

Ques. Have you any other date than that?

Ans. I can't say that I had, only that I had taken this  
20 bill into the building.

Ques. Then you relied entirely on that bill and your memory by going into the building?

Ans. No; I relied on the bill.

Ques. What was the state of the building at the time you went into it?

Ans. It was being used by Col. Duffy for a hotel.

Ques. When you took Mr. Deery and went in did you see where the different material went?

Ans. Yes, sir.

30 Ques. Did you say that you can trace the material such as furnished in that bill, going in a house after it is completed and in use, and seeing where the different articles have gone?

Ans. Yes, sir; I did.

Ques. You relied upon your power to fix those items in the building?

Ans. I relied on my knowledge as a carpenter.

Ques. By going to the house with the bill and seeing that the things were there ?

Ans. Yes, sir.

Ques. You did not know until you went there ?

Ans. I always knew it from memoranda kept.

Ques. If you knew it from memoranda kept why did you go to look at that house ?

Ans. Because there were a good many things ordered by carpenters for which I didn't keep a memorandum.

Ques. Was not this a bill of crude material, crude 10 lumber ?

Ans. No, sir ; it is mill work, sashes.

Ques. Can you ascertain the mill work after it is put in the building ?

Ans. Certainly I can locate it.

Ques. Locate it where it is put ?

Ans. Yes ; so any man can if he knows his business.

Ques. You say now you had a memoranda there ; you did not rely altogether upon your bill ; what memoranda had you to show this bill was correct ? 20

Ans. I had the bills of lading, which were sent to me, when the stuff arrived, by Peck & Barnard.

Ques. Where is this bill of lading ?

Ans. I don't know ; I didn't know it was necessary to save them.

Ques. They would be the best evidence of material if they could be got ?

Ans. Yes, sir ; there was a bundle of such papers we might have kept that would be advantageous to us. 30

Ques. You have a suit against Mr. Mooney ?

Ans. I have.

Ques. It comes on at this term of court ?

Ans. Yes, sir ; very justly, too.

Ques. Mr. Mooney was not present at the time you three went over this bill ?

Ans. No, sir; he was not; it was not necessary. He didn't know anything about the work, he told me that; he said he would rely on me.

Ques. Why was it necessary for Mr. Reed to be there?

Ans. He represented Peck & Barnard.

Ques. Did he represent anybody else?

Ans. I don't know that he did in reference to that bill; he did not represent anybody but the parties to whom he made out the bill.

10 By Mr. Reed :

Ques. When this material came to the New Columbia Hotel, who received it?

Ans. I received it.

Ques. At the time you received this lumber and material, most of which is headed sills of windows——

Ans. And mill work.

20 Ques. Moldings, &c., did you compare it with the way bill and see if it was there?

Ans. Yes, sir.

Ques. As each car load of this lumber came there were you satisfied from examining the way bills that the mill work was all right?

Ans. Yes, sir; going to the cars and examining it.

Ques. When did you receive that telegram? (Same shown witness.) Is that a telegram?

Ans. Yes, sir.

30 Ques. From whom was that telegram received?

(Objected to.)

Ans. James Mooney.

Ques. Is it signed so?

Ans. Yes, sir.

Ques. What was the date that telegram was received?

Ans. On the 18th of June I received that.

Ques. What does it say?

Ans. It says, (reading.) "John J. Hill, New Columbia Hotel, Cape May, N. J. Philadelphia, June 18. To John J. Hill, New Columbia. Order what stuff you want. (Signed,) James Mooney." In answer to one of mine containing—

(Objected to.)

Telegram, dated June 18, offered in evidence.

(Objected to. Objection overruled. Exception allowed 10 and sealed accordingly.)

Ques. Did Mr. Mooney ever countermand any orders for material you made?

Ans. Not to my knowledge; I ordered all the material that was ordered for that building—mill-work—

Ques. From the 1st of July on until the building was finished?

Ans. I did.

20

Mr. Reed. (To the court.) I ask if the other side go on that we may be permitted to call a witness to-morrow who has not arrived by the train.

The Court: I have grave doubt about the day book as the case stands and I think it is no more than right before the defendant's counsel go into a defence, if they choose to do it, to say my impression is that the day book 30 should be ruled out.

Mr. Reed: Then I ask that I may be permitted to wait until the morning.

The Court: You cannot do that. The day book as evidence of the delivery of this material will not stand.

Mr. Reed : I could not bring a sick man here. I will recall Mr. Hill to the stand and ask another question I neglected to ask. I wish to place the matter as clearly as possible.

(Objected to.)

The Court : If there is anything omitted by reason of the ruling of the court you can introduce it.

10 JOHN J. HILL re-called :

By Mr. Reed :

Ques. Look over this bill of particulars carefully.  
(Mechanics' lien claim shown witness.)

(Objected to, as the witness has looked over it before.)

Mr. Reed : I want to show whether the material was actually furnished him.

20

Ques. Have you examined it carefully?

Ans. Yes, sir.

Ques. Do you know whether that bill of particulars is a correct bill of the items furnished to the building?

Ans. I do.

The plaintiffs rest.

Mr. Potter : I ask your honor to make the ruling specific as to the book.

30

The Court : I overrule the day book.

The defendant rests.

Adjourned to Wednesday, April 23, 1884, at 9.30 A. M.

CAPE MAY C. H., Wednesday, April 23, 1884.

The court met pursuant to adjournment.

Mr. Reed: (To the Court.) If our case is abridged in the mind of the court at the non-proof of the books, I ask the court at this time to allow me to prove these books; Mr. Tudor is here to make our case if it is necessary.

Motion overruled.

10

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#### CHARGE OF THE COURT.

Mr. Smith, one of the jurors, being absent on account of illness, it is agreed to submit the case to eleven jurors.

*Gentlemen of the Jury:*

This action, as you are aware, is brought to recover a 20 bill for materials alleged to have been furnished by the firm of Peck & Barnard to Mr. Mooney, to be used in the construction of an addition to the New Columbia House at Cape Island City. The amount of the bill is \$1,461.52; the date of the last item is August 2, 1883. The fact that this bill of materials, which consisted of mill work, went into this building rests upon the testimony of Mr. Hill.

Mr. Hill says that from some time in June he was general superintendent of the building as far as order- 30 ing all materials for it, and he took this bill of materials, and from going through the building he is able to say from inspection of the building, and from the mill work in the building, that the items thus charged entered into that structure. If you are satisfied from his testimony that the material went in,

the question is whether the price charged here is just or excessive. The justness of the price rests upon the testimony of Mr. Hill and Mr. Deery, the architect, whose business it was to audit these bills. Mr. Deery says as the bills of lading came down he looked at them and audited them and that the charges were correct in the bills that came into his hands. If Mr. Deery audited all the items that make up this entire bill, and if Mr. Hill's testimony is correct, Mr. Mooney has had the benefit of  
10 these materials at a just price, and they now form a part of his building at Cape Island City.

The main defence in the case rests upon the allegation of the defendant that although it may be true that these materials were furnished and even should you find it true that the prices charged were not excessive, yet Peck & Barnard have no right to recover, the contention being that there was a contract in existence that Harrison Groff was to furnish the mill work for this building and that Mr. Mooney himself knew no other party except  
20 Mr. Groff; that Peck & Barnard in furnishing it did so without the defendant's order, without his consent or ratification, and therefore they were merely volunteers and have no right to recover. The rule of law undoubtedly is, that a man who chooses to do work or furnish materials for another without an order or ratification in express words, or a ratification by the reception of the work or material, knowing who furnishes it, cannot expect to be paid for it under those circumstances and cannot bring an action.

30 The question in this case is, whether there was what is known in the law technically as "privity of contract" between the plaintiffs and defendant; that is, whether Mr. Mooney ever ordered these materials from Peck & Barnard as the owners, or whether Mr. Mooney ever directly or indirectly ratified the furnishing of these materials as the materials of Peck & Barnard.

Now, the plaintiff's case upon this point is, that on June 27 the business which Mr. Groff carried on was taken from his hands; he was deprived of his control over it by reason of the sale by the Sheriff of all the materials in his building. Under that sale Peck & Barnard purchased; that thereafter Peck & Barnard opened the business and carried it on, and that there were certain dealings between Mr. Mooney and Messrs. Peck & Barnard, and Mr. Mooney's agents and Peck & Barnard, which resulted in the delivery of this bill of materials.

Now, the defendant says that the bill of sale which has been introduced shows no title to Peck & Barnard, 10 because there was a certain defect in the recitals in it. Whatever may be the legal aspect of the case so far as is affected by the irregularity of that bill of sale, I think these facts stand proved in the case as follows: That on June 27 there was a sale, whether regular or irregular, by the Sheriff. That is proved by parol. If that was an irregular sale the defendant was the man who could complain. The evidence is that after that sale there was a delivery of property to Peck & Barnard; that Mr. Groff, 20 instead of objecting to that sale, voluntarily assented to it. He thereafter was upon the premises, if in any capacity, not as a person having a cent's worth of interest in the business, but as the agent of Peck & Barnard without pay.

If you believe the testimony of Groff himself, Mr. Mooney was told that Mr. Tudor, with whom the business was done, was the agent of Peck & Barnard, who were the owners. If that is true whatever business was 30 carried on thereafter with Peck & Barnard was assented to by the defendant, the plaintiffs would be the owners in this case, so far as to entitle them to recover for the price of these materials.

If they were so furnished, you dispose of another objection to this effect, that if Peck & Barnard are per-

mitted to recover the price for these materials, that Groff may himself hereafter bring suit to recover for the same materials. Mr. Groff, not only by his action at the time of the sale, but also by his action when he came on the stand to support the claim of Peck & Barnard, is estopped from ever thereafter saying he has a cent's worth of interest in this bill, so far as that is concerned. That leaves still the remaining question to be considered as to the relation between Peck & Barnard and Mooney.

- 10 As I have said, it must appear that Peck & Barnard were recognized by Mr. Mooney, directly or indirectly, as the persons who furnished these goods. Now, his relation depends upon the testimony, first, of Mr. Groff, who says that on July 8 he remembers Mr. Mooney saying to Mr. Tudor that he was very anxious to have these materials. He told Mr. Tudor to furnish them as soon as possible and send them down. Mr. Tudor told him that Peck & Barnard were the owners and that he was the agent of Peck & Barnard, and then he says Mr.
- 20 Mooney was there with Mr. Hill, and he told Mr. Tudor to let Mr. Hill have all that was sufficient to furnish the house.

Then you have the testimony of Mr. Deery, who says he thinks he heard a similar conversation. Undoubtedly if you can believe that, then Peck & Barnard had the right to furnish materials to Mr. Mooney, and for those materials which Tudor actually furnished Mr. Mooney is bound to pay.

- 30 In addition to that is the testimony of Mr. Hill, who says that from the last of June he was superintendent there, and that in pursuance of his duty, he ordered from Peck & Barnard in several instances materials, and that in response to those orders materials were sent. Now, again, if you believe that testimony, undoubtedly a privity arose between Mr. Mooney and Peck & Bar-

nard for the materials that were forwarded and furnished and Mr. Mooney is liable to pay for the amount.

The only question is, whether you can find in the testimony that the materials in this bill were furnished by Peck & Barnard by virtue of an order which Mr. Mooney gave at the time that Mr. Groff says he was there, or by virtue of the orders which Mr. Hill himself gave under the authority which he says he had from Mr. Mooney.

If you find a verdict for the plaintiff you will calculate the interest from the date of the last item, which is 10 August 2d.

The defendant excepts to the refusal of the court to charge as requested. Also to that part of the charge stating that according to the evidence there was a sale and delivery of the goods by the Sheriff to Peck & Barnard. And an exception is sealed accordingly.

The jury retired and shortly afterwards sent a request 20 to the court for the bill of items.

The Court: It is impossible for the jury to get along without this bill. If it is not already offered in evidence I will admit the lien claim in evidence.

To which action of the court in admitting the lien claim defendant excepts. Exception allowed defendant and sealed accordingly.

30

Mr. Pancoast, of counsel for defendant, states that the lien claim is sent to the jury without counsel for the defendant having seen it.

The court then sends for the jury, who return.

The Court: The counsel may prove the lien claim.

Mr. Pancoast: We object on the ground that there are only eleven men on the jury that we agreed to submit the case to, as it then stood, with all the evidence in, and having heard the arguments of counsel.

The Court: (To the eleven jurors.) You can stand aside until the other juror comes in.

10 (The defendant excepts to the action of the court in dismissing the jury at this time, they having been sent to retire and deliberate upon the case, and an exception is sealed accordingly.

A recess was taken.

#### AFTERNOON SESSION.

At 3 P. M. the jury is called, when Mr. Smith is still  
20 absent, eleven jurors answering to their names.

The Court: Gentlemen of the jury, I have thought the matter over of the case of Peck & Barnard vs. Mooney as to having the absent juror brought in. I conclude to let it stand upon the consent of counsel to submit the cause to eleven jurors. I shall let the lien claim go to the jury as evidence. It is on record and I am inclined to think it is proper to go to the jury. To which action  
30 of the court in allowing the lien claim to go to the jury defendant excepts. Exception allowed defendant and sealed accordingly.

The defendant requests the court to charge.

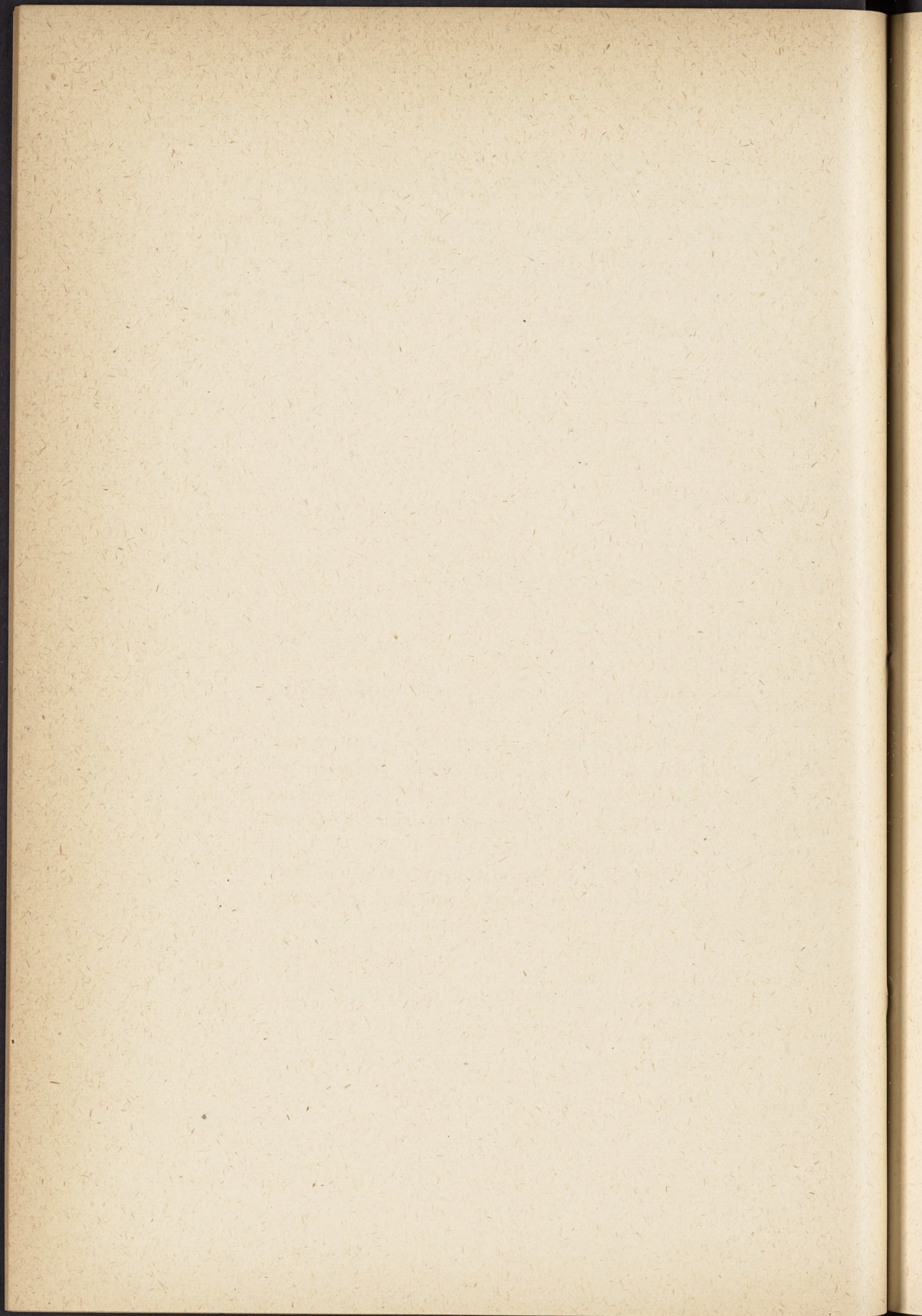
1. Request the court to charge, that the bill of sale from the Sheriff of Camden county to Peck & Barnard

admitted in evidence in this case did not operate to transfer the title to the property therein set forth to Peck & Barnard.

2. Request the court to charge, that by the evidence it does not appear that these goods were sold and delivered by Peck and Barnard to James Mooney, the defendant.

The court refuses to so charge.

Exception noted for the defendant.



NEW JERSEY SUPREME COURT.

JAMES MOONEY	}	IN ERROR TO	
vs.		CAPE MAY COUNTY	
DARIUS M. PECK AND STANTON		CIRCUIT COURT.	10
BARNARD, TRADING, &C.		ASSIGNMENT	
	}	OF ERRORS.	

Filed June 26, 1884.

Afterwards, to-wit: On the third day of June, A. D. eighteen hundred and eighty-four, in the Supreme Court of this State, comes the said James Mooney, plaintiff in error, by David J. Pancoast, his attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this, to wit: 20

First. The said judge before whom the said cause was tried, at and upon the aforesaid trial of the said issue so as aforesaid joined between the said parties, refused to admit and receive legal and competent evidence offered on the part of the plaintiff.

Second. That the said judge, at the said trial, unlawfully admitted and received incompetent and irrelevant evidence offered on the part of the defendants. 30

Third. That the said judge, at the trial, unlawfully allowed H. Harrison Groff, a witness on the part of the plaintiffs below, to testify what had become of the old effects in the mill on the twenty-seventh of June, 1883, and who bought them.

Fourth. That the said judge, at the trial, unlawfully allowed the introduction in evidence on the part of the plaintiffs below, of a bill of sale by Theodore B. Gibbs, Sheriff, to the said plaintiffs below.

Fifth. That the said judge, at the trial, unlawfully allowed H. Harrison Groff, a witness on the part of the plaintiffs below, to testify to whom he directed his letters after the seventh or ninth of July.

Sixth. That the said judge, at the trial, unlawfully  
10 allowed the plaintiffs below to offer in evidence a telegram dated June 18th.

Seventh. That the said judge, at the trial, unlawfully refused to charge and instruct the jury according to the request of the defendant below ; that the bill of sale from Sheriff Gibbs to the plaintiffs below did not operate to transfer title to the property therein set forth to the said plaintiffs.

Eighth. That the judge, at the trial, unlawfully allowed a paper purporting to be the lien claim of the plaintiffs below, to be given to the jury as evidence with-  
20 out any proof of it, after the case had been argued and submitted to the jury and the jury had been sent out to deliberate upon it.

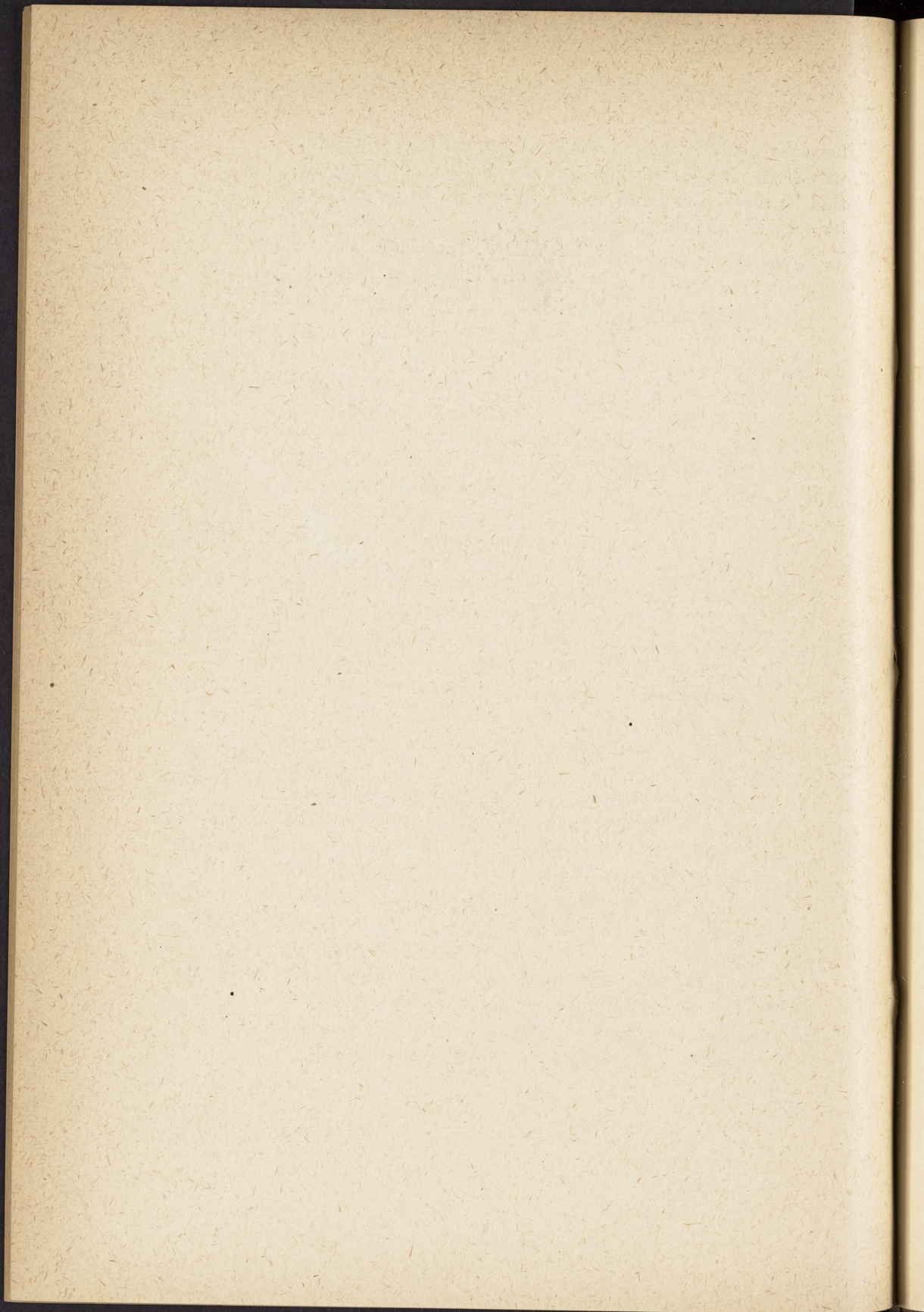
Ninth. That the judge, at the trial, unlawfully refused to charge and instruct the jury "That by the evidence it did not appear that the goods in question were sold and delivered by Peck & Barnard to James Mooney, the defendant," according to the request of the defendant below.

Tenth. That the judgment aforesaid, by the record aforesaid, appears to have been given for the said defend-  
30 ants in error and against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error.

And the said James Mooney, plaintiff in error, prays that the judgment aforesaid, for the errors aforesaid and

for other errors in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden and that he may be restored to all things which he has lost by occasion of said judgment.

DAVID J. PANCOAST,  
Atty of Plaintiff in Error.



### JOINDER IN ERROR.

And hereupon afterwards, to wit: on the first Tuesday in June, eighteen hundred and eighty-four, &c., the said Darius M. Peck and Stanton Barnard, trading as Peck & Barnard, by Charles T. Reed, their attorney, come into Court and say that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in the manner aforesaid given, may in all things be affirmed, &c. 10

CHAS. T. REED,

Att'y and of Counsel with Defendant.

But because our said Supreme Court now here are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, to wit: 20 until the third Tuesday of February, A. D. eighteen hundred and eighty-six, to hear the judgment of the said Court thereupon; at which day, before said Court, at Trenton, come the parties aforesaid by their attorneys aforesaid:

Whereupon all and singular the premises being seen, and by the Court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said James Mooney above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it appears to our said Court now here that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and that said writ of error should be dismissed. 30

Therefore it is considered that the said judgment, in

form aforesaid given, be in all things affirmed and stand in full force and effect, the said causes and matters above for errors assigned in anywise notwithstanding.

And it is further considered, that the said Darius M. Peck and Stanton Barnard, trading, &c., as aforesaid, do recover against the said James Mooney as well the sum of one thousand five hundred and twenty-six dollars and sixty-six cents for their damages aforesaid, as also forty-  
 10 two dollars and forty cents for their double costs and charges which they have sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretense of prosecuting the said writ of error by our said Supreme Court now here adjudged to the said Darius M. Peck and Stanton Barnard, trading, &c., as aforesaid, and with their assent, according to the form of the statute in such case made and provided, which said damages, double costs and charges, in the whole amount to one thousand five hundred and sixty-nine  
 20 dollars and six cents; and that the said Darius M. Peck and Stanton Barnard, trading, &c., as aforesaid, have execution thereof, &c.

Judgment signed this thirteenth day of April, A. D. eighteen hundred and eighty six.

M. BEASLEY,  
 Chief Justice.

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1886.

30

PECK & BARNARD,

vs.

MOONEY.

In this case the judgment should be affirmed.  
 The evidence we think was not only sufficient to justify, but necessarily led to the verdict.

The only difficulty was the technical one, relating to the admission of the telegram.

It is insisted that the original telegraphic message that was signed by defendant was not offered by the copy received by Hill, the agent. But that does not appear in the bill.

It is not shown whether it was the original or the copy that was offered. So we think the exception was too general; it did not specify the power of the exception.

It has been repeatedly decided that such an exception 10 will not do.

A true copy.

BENJ. F. LEE,  
Clerk.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p>JAMES MOONEY,  Plaintiff in Error,  vs.  DARIUS M. PECK AND STANTON  BARNARD, trading, &amp;c.,  Defendants in Error.</p>	}	<p style="text-align: right;">20</p> <p>IN ERROR.</p> <p>ASSIGNMENT OF</p> <p>ERRORS.</p>
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And now at this day the plaintiff in error assigns the 30 following causes of error :

First. Because the Supreme Court decided that the Circuit Court, at the trial below, properly admitted the telegram, which was the subject matter of one of the defendant's exceptions, upon which he assigned error in the said Supreme Court.

Second. Because the Supreme Court decided that the Circuit Court at the trial lawfully allowed a paper, purporting to be a lien claim of the plaintiff below, to be given to the jury as evidence, without any proof of it, after the case had been argued and submitted to the jury and the jury had been sent out to deliberate upon it, which was the subject matter of one of the defendant's exceptions in the said Supreme Court, upon which he assigned error in that Court.

10

Third. Because the said Supreme Court decided that all the exceptions taken by the defendant at the trial were bad in law.

Fourth. Because the said Supreme Court decided that all of the errors assigned by the plaintiff in error were insufficient in law.

Fifth. Because the said Supreme Court decided that there was no error at the trial below.

Sixth. Because the said Supreme Court decided that  
20 judgment below was lawful.

Seventh. Because the said Supreme Court affirmed the judgment below, when according to the law of the land it should have reversed it.

DAVID J. PANCOAST,  
Att'y of Plaintiff in Error.