Report of the Legislative Committee of the Building Congress of Wisconsin

The Legislative Committee of the Building Congress of Wisconsin herewith respectfully submits its report concerning the proposition of limiting the aggregate of liens on a given job of construction or improvement:

1. The Committee finds as follows:

a. The Wisconsin laws relating to mechanics’ liens on real estate, contained in Sections 289.01 to 289.15, inclusive, constitute the so-called Pennsylvania type of mechanics’ lien act. under which liens are not limited to the contract price fixed by the contract between the owner and the contractor, but are dependent only upon the performing of lienable services by the claimant and for non-payment for these services by the person with whom the claimant contracted. This type of law prevails in approximately half of the United States.

b. In the remaining twenty-four states of the Union, there exist mechanics’ lien acts which vary somewhat in form, but all of which incorporate provisions limiting the aggregate of mechanics’ liens on a given job of construction or improvement to either the original contract price of the balance due on the contract after deducting amount “properly paid” on the contract.


The Committee, in stating some of its general objects and purposes, said:

"The committees have endeavored to safeguard the interest of the owner at every step, and at the same time to accord to the contractor, the subcontractor, the materialman, and the laborer a facility for filing and proving their liens so as to insulate security to them upon the real property for which their work or materials were furnished or upon a bond substituted for it."

"The committees are of the firm belief that credit practices in the industry will be improved through the adoption by state legislatures of the Uniform Act, as it is necessary that claimants shall give the owner timely notice before their rights of lien accrue. They believe also that the number of irresponsible contractors would be reduced since their credit standing will be subject to careful scrutiny before they can obtain materials necessary to prosecute their contracts or before they can obtain a bond under the provisions of the act."

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d. Prior to 1889, Section 33.15 of the Wisconsin Statutes contained a provision limiting liens as follows:

"In no case shall the owner be compelled to pay a greater sum for or on account of such house, building or other improvement than the price or sum stipulated in the original contract or agreement; provided, if it shall appear to the court that the owner and contractor fraudulently, and for the purpose of defrauding subcontractors, fixed an unreasonably low price in their original contract for the erection or repairing of such building, then the court shall ascertain how much of a difference exists between a fair price for labor or material used in said building or other improvement and the sum named in said original contract. Said difference shall be considered a part of the contract, and be subject to a lien; but in no case shall the original contractor's time or profits be secured by this lien, only so far as the sum named in the original contract or agreement."

But in 1889, the legislature repealed the restrictions upon the liability of the owner and made him absolutely liable to subcontractors without regard to the contract price for the building. In the repealing act the legislature added a provision requiring the principal contractor to defend lien claims and giving the owner the right to recover from the principal contractor any amount which the owner had to pay in excess of his contract price.

In the case of Mallory and others vs. La Crosse Abattoir Co. (80 Wis. 174 to 177), the court said:

"When the statute restricted the lien of a subcontractor to the amount which the owner of the property owed the principal contractor when the claim for a lien was served upon such owner, and to any indebtedness of the owner to such principal contractor accruing after such service, there was no room to question its perfect fairness and justice to the owner of the property sought to be charged with the lien. But when the restrictions for the protection of the owner were swept away, and his property subjected to a lien charge for the amount of any claim of a subcontractor against the principal contractor for labor or material used in the building or improvement, without regard to the state of the account between such principal contractor and the owner, it must be conceded that there is much room to question the reasonableness and justice of the statute which thus adds to the responsibilities of the owner. But statutes which the courts may think are opposed to a sound public policy, or which may operate unjustly in certain cases, may not always be invalid."

The court then went on to show that technically the repealing act was valid.

In a subsequent opinion in the case of Wright vs. Pohls and wife (83 Wis. 563), the court charged the legislature with establishing an objectionable public policy in the law of 1889 lifting the limitation on liens. The court said on page 563:

"The majority of the members of the court felt bound by its former adjudications to uphold the act of 1889, but each of them fully appreciated the ethical objections heretofore urged by Mr. Justice Cassoday in his dissenting意见. It must be conceded that the law of 1889 is a harsh one and will frequently operate unjustly against owners who improve their real estate, as it did in the case last referred to. Its tendency necessarily is to discourage such improvements, and it would seem that by its enactment the legislature has established an objectionable public policy. The majority of the court, being unable to find any sufficient constitutional objection to it, were constrained to hold it a valid law. The court is not now disposed to overrule that decision. Probably it comes fairly within the rule stare decisis."

2. On the basis of the foregoing findings, the undersigned Committee recommends that the present Wisconsin law relating to mechanics' liens and containing no limitation on the owners' liability, which the Supreme Court of the State of Wisconsin has described as a harsh law and an objectionable public policy, be amended by restoring the provisions of limitation contained in Section 33.15 of the Wisconsin laws prior to 1889, or some similar provisions in keeping with such law and with the modern trend as exemplified by the Uniform Mechanics' Lien Act.

The Committee makes its recommendation having in mind that such limitation of lien liability will result in more favorable credit practices, thereby preventing to a greater extent the usual losses suffered by building material and supply firms, as well as protecting owners against contractors who unscrupulously or ignorantly permit an owner to be charged with liens in excess of the owner's contract and contrary to his wishes. To eliminate needless losses in the building industry is to bring down the cost of construction and to build up public confidence in those engaged in building industries. The Committee is of the opinion that limiting lien liability will be one step in such direction.

Dated at Milwaukee, Wisconsin, this 29th day of November, 1940.

Respectfully submitted,

THE LEGISLATIVE COMMITTEE OF THE BUILDING CONGRESS OF WISCONSIN

BUILDING CONGRESS MEETING
The Building Congress of Wisconsin will hold its December Meeting at the Builders Exchange at 4:30 P.M. December 18, 1940.

The board of governors will vote on the proposed changes in the Wisconsin Mechanics Lien Law which have been prepared by the committee on Lien Laws.

The Congress has for its subject for discussion the question of stabilization and lowering real estate taxes. An invitation is extended to those interested in this vital subject to attend this meeting.

CHAPTER MEETING
The December Meeting of the Wisconsin Chapter A. I. A. will be held at the City Club, Milwaukee, at 12:15 P.M. Wednesday, December 18, 1940. This will be a Christmas Party.

CORRECTION
The Publisher acknowledges the correction and wishes to apologize for the error in the November issue of the Wisconsin Architect in the title of the cover photograph. The corrected title should read:

Milwaukee Country Club
Fitzhugh Scott
Roger H. Bullard
Associated Architects

When Corresponding With Our Advertisers Please Mention The Wisconsin Architect
Are We Teaching Architecture?

By Paul Philippe Cret


In the course of years given to educational work, we are at times compelled to question the value of our methods. They may carry the authority of tradition, the warrant of famous teachers — even those more tangible proofs, successful students (insofar as we can credit ourselves for their achievements). Still we wonder if results could not have been achieved otherwise — if prize students, under another rule or left to themselves, might not have found their way ultimately to the top. In other words — are our methods efficient?

Instead of finding a solid basis, unaffected by time or fashions, we must venture on quicksands where the fundamentals have always been, and still are, in a turmoil of conflicting theses, where even the glossary holds different meanings for each of the disputants.

This uneasiness of mind, unpleasant as it may be to self-esteem, has its advantages. It helps us to get our bearings, to gauge our beliefs through comparison, to probe more carefully into what was taken for granted. Theologians condemn doubt, but they rank mental sloth a mortal sin; so ought to be over-confidence in our artistic creeds.

Until two or three years ago, all the schools followed the methods of architectural training developed in France in the last century and adopted in this country about fifty years ago. Previously, but for a few exceptions, architectural education (as we understand the term), was practically non-existent. The most important element of this education was the development of taste along the standards of Classic and Renaissance architecture. Had this method failed?

The simplest way to answer this question is to see how the present generation of architects (a large portion of them former students of the Schools), compares with the preceding one; or to find out if the architecture of the U. S. shows progress or regresses over that of the Nineties. Such a survey cannot fail to reveal that during the twentieth century, American architecture gained a world-wide recognition which it did not have in the second half of the nineteenth, and this corresponds in time to the spreading influence of the Schools.

Now it may seem strange suddenly to find under suspicion (when not denounced as nefarious), a system which undoubtedly raised the level of professional ability. Looking more closely into the matter through, we discover that it is not actually educational methods which are under fire. Waged by a minority of architects, supported by those who talk and write about architecture with a superficial knowledge, the battle is essentially against classical tradition and for the triumph of the "modernistic" creed. Educational reform is merely a consequence, although there is probably no more justification for it than for revising the teaching of piano scales when Debussy instead of Mozart is to be played. It is advanced that the change of methods will turn our students into "creative artists" — creative of new forms, of course — which is obviously absurd. Students do not possess the maturity required for originality, which is an attribute of full-fledged artists — and mighty few of them at that! The student cannot be expected to reach beyond imitating what appeals to him in contemporary production.

The Schools were taken to task anyway, and being sensitive to criticism, they looked for new orientation. To guide them they had a few Committee resolutions and countless magazine articles offering the mildest to the most far-reaching proposals. We have all in the past witnessed hasty experiments of this kind. When a few years demonstrated their worthlessness, the only complainant could have been the student who played the guinea pig's role.

What is the aim pursued? On the one hand, we are told, a more "practical preparation" to professional duties; on the other, the upholding of a new esthetic creed involving the repudiation of the rules of classic art and the promotion of those forms which have been called (among other names) the International Architecture. As our "practical preparation," a few new courses in subjects of burning actuality — sociology, housing, or those concerning the economics of an office — were introduced. These additions to an already overburdened program meant the pruning of the existing curriculum, and merely increased the number of superficially taught subjects. Were they necessary to the cultural aims of university education? The object of culture, it has been said, is "to learn how to learn."

If in Vitruvius' time the branches of knowledge required were many, they are still more numerous today. No school can hope to teach them all in a five-year course, and a selection must be made. This selection corresponds to the average opinion as to their relative value at a given time and may be revised; room for the new is to be found by discarding something else. In making changes we must be careful to see that the new is more valuable than the discarded. In an address to the Royal Institute of British Architects, Sir Reginald Blomfield said . . . "Applied science has developed so fast and in so many directions that it is impossible for an architect to keep pace with every branch of it; and besides all this, he has his own art to master. For when all is said and done, the first business of an architect, that which differentiates him from other men, is his power and knowledge of design . . . ."

Of the new courses, highly ornamental in the catalogues, many will probably disappear. As Dr. Schelling wrote . . . "Quantitative education is built upon this extraordinary fallacy, that we ought to know something about as many things as possible . . . quantitative education gives us confident ignorance." The new crop of courses attempts to give satisfaction to those who believe that university training ought to be of the encyclopedia type. The heads of several of our universities have of late called attention to this error: may the schools of architecture heed the warning.

* * *

Coming to the changes in the teaching personnel, they show an effort to enroll to teach Design — the
The Industrial Designer

By JOHN MILLS

The rapid growth and popularity of the industrial artist is a response to a need of modern industry which was quick to sense and exploit. As applied science cheapened manufacture and increased the productivity of a man-hour, beauty could be added to utility at negligible increase in cost. The possibilities were advertised by the graphic arts through their manifold reproductions of the more expensive beauty of the days of craftsmanship. And in stepped the industrial artist; sometimes, I think, to get away with murder. He came as an individual, for his well-balanced staff did not evolve until his profits and enlarged sphere warranted. He has performed a socially valuable service but more I believe as a catalyzer than as a reagent. In his own office he employs today the same type of engineer as was to have been found in the employ of many of the companies which turned to him as consultant. His coming freed these men to artistic expression and his appraisal as consultant gives authority to many a design that would formerly have struggled in vain for executive approval. To business men he has been an education: to many of their design engineers a stimulus and a release. As a consultant he reports on a different level in the organization; and therein hides some injustice and some occasion for jealousy; but of the latter there is singularly little. I believe, on the part of engineers. What jealousy his rise involves is probably a two-way affair with architects, since their fields overlap and architects have long held uncontested the position of artistic counsellors for business. A gasoline filling station, for example, is a design to be reproduced in quantity. Is it to place greater emphasis on the construction features of the school projects? As noted by Dean Edgell of Harvard, all the instructors worth their salt, long ago made this the foundation of their teaching.

The abandonment of classical disciplines is neither new nor without its price. Regardless of the use made later on of the forms they proposed as examples, these disciplines had an unquestionable educational value. What is to be substituted for their proved efficacy in training the eye to proportion, to rhythm, to composition, is not as yet divulged, and those who condemn them as stifling to originality forget that an originality so easily stifled must not be very robust. Of the men doing their original work in this country at the present time, by far the greater number have been classically trained by our schools. Would they be better or worse off without this training? This is a question that the schools can well ponder before harkening to the sirens.

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Only Architects Can Collect


STATEMENT by Edward Amron (1775 Broadway, New York City), attorney for the Defendants:

The opinion of Supreme Court Rosenman in rendering judgment for the defendants was affirmed by the Court of Appeals on May 21, 1940.

As a result of the decision, only a licensed architect can recover a fee for rendering architectural services, and the concerns engaged in the business of planning and remodelling buildings, and performing similar services, will not, in the future, be able to collect their bills for any work that includes architectural services.

It must be borne in mind that the New York statute making architecture a profession is of recent origin and that our highest Court had never before passed upon the rights and privileges of an architect since the legalization of the profession of architecture.

Decisions on the right to recover on illegal practices are divided into two classes: namely, those cases in which a recovery is allowed by an unlicensed person; and other cases in which recovery is not allowed by an unlicensed person. In this connection it is interesting to note that there are any number of New York cases in which the Court of Appeals has allowed a recovery by an unlicensed person even though he admittedly fur-

(Continued on page 7)

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nished work, labor, and services illegally. It was there­
fore, a matter of conjecture as to whether the Court of
Appeals would place the practice of architecture on the
same plane with law and medicine and not allow a re­
cover by an unlicensed person, or whether the Court of
Appeals would decide that the practice of architecture,
contrary to the statute, was not such a violation as to
be injurious to the health and morals of the public. In
other words, a violation of a statute is not, in and of
itself controlling on the right to recover for services
rendered pursuant to the terms of an illegal contract.

One thing is certain, and that is, no longer will
business houses be permitted to enter into contracts in­
volving, even in a small degree, the practice of archi­
tecture, and this will consequently materially aid the
status of architects.

Above statement taken
from letter to NCAR Boards
dated October 9, 1940

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The Editor urgently requests that
members of the State Association of Wis­
consin Architects submit photographs of
their work for the cover of their maga­

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