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Stanton Transportation Company et al v. Marvin Davis et al : Brief of Respondent

Utah Supreme Court

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AUG 6 1959

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In the Supreme Court of the State of Utah

STANTON TRANSPORTATION
COMPANY, a corporation,

Plaintiff,

CONTINENTAL EMSCO COM-
PANY, a division of YOUNGSTOWN
SHEET AND TUBE COMPANY, a
corporation,

*Plaintiff, Respondent
and Cross Appellant,*

—vs.—

MARVIN DAVIS, JACK DAVIS,
JEAN DAVIS and JOAN PRES-
TON, partners, doing business under
the firm name of DAVIS OIL COM-
PANY,

*Defendants, Appellants
and Cross Respondents.*

FILED

APR 11 1959

Clerk, Supreme Court, Utah

Case No. 8950

BRIEF OF RESPONDENT and CROSS APPELLANT,
CONTINENTAL EMSCO COMANY, a division of
YOUNGSTOWN SHEET AND TUBE COMPANY

ADAMS & ANDERSON,
*Attorneys for Plaintiff and Re-
spondents, Continental Emsco
Company, a division of
Youngstown Sheet and Tube
Company, a corporation.*

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*Defendants, Appellants
and Cross Respondents.*

BRIEF OF RESPONDENT and CROSS APPELLANT,
CONTINENTAL EMSCO COMANY, a division of
YOUNGSTOWN SHEET AND TUBE COMPANY

PRELIMINARY STATEMENT

The parties will be designated in this brief as fol-
lows: Appellant Stanton Transportation Company, as
“Stanton”; Plaintiff, Respondent and Cross Appellant
Continental Emsco Company, a division of Youngstown

Sheet and Tube Company, as "Emsco"; and defendants, Appellants and Respondents, Marvin Davis, Jack Davis, Jean Davis, Joan Preston, partners, doing business under the firm name of Davis Oil Company, as "Davis." The Walker-Wilson Drilling Company will sometimes be referred to herein as "Walker-Wilson" or as "Driller."

STATEMENT OF THE CASE

This brief contains an answer to the brief filed herein in the appeal of Davis from the judgment of the trial court holding that Emsco is entitled to a Mechanics' Lien in the amount of \$4,158.64 for rock-drilling bits furnished by Emsco to the Driller and also is a cross appeal by Emsco from the judgment of the trial court holding that Emsco was not entitled to a lien for materials furnished other than the rock drilling bits above referred to having a value of \$2,620.10.

STATEMENT OF FACTS

References to the Clerk's files and transcripts of the hearings will be designated herein in the same manner as in the brief of Davis.

With respect to the appeal of Davis against the judgment in favor of Emsco for the rock drilling bits, Emsco does not controvert Davis' Statement of facts except the following statement:

"The rock bits did not become part of the improvement of well and the claim of Emsco is only for the service given by the rented bits." (Page 5 of Davis' brief).

Emsco contend that the statement of facts by Davis with respect to the part played by the rock bits in the drilling operations, including the extent to which they became a part of the well, and the terms under which they were furnished is incomplete, and that the following facts also appear from the record:

In the process of drilling an oil and gas well, it is the rock bit which actually does the drilling, that is, the teeth of the bit cut the hole as it rotates at the end of the drill stem. (T R A pp. 67-68).

Under the terms of the agreement under which the bits were furnished in this case, the driller had the right to use the bits until they had served their useful life as instruments of drilling, that is, until the cutter teeth were worn away or they became "dull." (Emsco's Exhibits A(A); B through F; A-4; A-9; A-12; A-13; A-16; A-17; TRA p. 71).

The charge for the rock drilling bits, upon which the lien claim of Emsco is based, is for the bit and the promise of the customer to return the same after it becomes dull and the customer is through with it. (TRA p. 71)

The bits for which Emsco claims a lien were actually used in the making or drilling the oil and gas well in question. (TRA pp. 67-74; Emsco's Exhibits A(A), B thru F, B-1). The claim of Emsco is for the service of the bits furnished in making the hole which included a consumption or wearing away of the teeth of the bits (TRA pp. 63-64) and the value of this use of the bits was \$4,158.64 (TRB pp. 106-107; Emsco's Exhibits A-4; A-9; A-12; A-13; A-16; A-17; B through F; A(A) and O),

which sum is consistent with the usual consumption of bits in the drilling of a well to the depth involved here. (TRB pp. 108-109).

In view of the point relied on in the Davis Brief, Emsco also questions the materiality of the statement in that brief that: "Walker-Wilson did not complete their drilling contract, and Davis had to go in and complete the work. Davis suffered damages running into several thousand dollars over and above the contract price." (Davis' brief pp. 5 and 6).

With respect to the Cross appeal of Emsco against Davis, for the sake of brevity, Emsco hereby incorporates herein, the statement of facts set forth in the brief of Stanton. (Case No. 8951). In addition, the record shows the following facts:

Pursuant to the contract of December 9, 1956, between Walker-Wilson Drilling Company and Davis to drill the well in question, Walker-Wilson established a line of credit whereby Emsco agreed to furnish Walker-Wilson Drilling Company such materials on a credit basis as might be needed to drill said well. (TRA pp. 40-43).

Pursuant to the establishment of this line of credit and during the time said well was being drilled, Emsco furnished materials to the Walker-Wilson Drilling Company from their store in Farmington, New Mexico. These materials can be divided into two classifications: First, rock drilling bits which are referred to above and, second, materials, such as parts for the drilling rig, more particularly identified by Emsco's exhibits A-5, R, V, I, A-23, A-19, H, A-18, A-10, A-15, G, A-11, A-20, A-14, A-22, A-21,

N, Y, P, A-24, X, W, J, A-7, Q, T, S, U, A-8, K, A-6, L, A-2, Z, A-1, A-3 and M, and which materials are adapted to, required, and are expendable in the operation of the drilling rig. (TRA pp. 83-91, TRB pp. 25-26).

It is the items in the second classification which are the subject matter of this cross appeal of Emsco. With reference to these items, some of the materials, valued in the sum of \$371.62, were delivered by Emsco to employees of the Driller working at the well in question at Emsco's store in Farmington, New Mexico (Emsco's Exhibits Q; R; S; Counter Order Slip No. 278192, a part of Emsco's Exhibit I; Counter Order Slips Nos. 278191 and 278251, parts of Emsco's Exhibit K). Some of these materials, having a value of \$1,082.81, were delivered at Cortez, Colorado, to Mr. F. L. Wilson, the tool pusher or foreman of the Driller on the rig drilling the well in question. (Counter Order Slips Nos. 388334, 388-188, 156476, parts of Emsco's Exhibit G; Counter Order Slips Nos. 388479 and 388372, parts of Emsco's Exhibit H; Counter Order Slips Nos. 388090 and 388165, parts of Emsco's Exhibit K; Counter Order Slips Nos. 388201, 388460, 388462 and 388436, parts of Emsco's Exhibit N; Emsco's Exhibit A-18; A-10; A-15; A-23; A-19; A-7; A-8; A-11; A-14; A-22; A-21; TRB pp. 28-29, 32-36, 42-44. The balance of these items, having a value in the sum of \$1,155.77, were delivered to the location of the well in San Juan County, State of Utah, by Emsco. (Counter Order Slips Nos. 388056 and 278357, parts of Emsco's Exhibits I; Counter Order Slips Nos. 278460, 278412, and 278353, parts of Emsco's Exhibit K; Counter Order Slip

No. 164012, a part of Emsco's Exhibit L; Counter Order Slips Nos. 278494, 278492, 278493 and 278495, parts of Emsco's Exhibit M; Emsco's Exhibits A-5; V; Y; P; W; T; U; A-6; Z; A-1 through A-3; TRB pp. 37-43).

ARGUMENT

IN ANSWER TO DAVIS' POINT NO. 1, ONE WHO FURNISHES ROCK DRILLING BITS USED IN THE DRILLING OF AN OIL WELL IS ENTITLED TO A LIEN ON SAID WELL UNDER THE PROVISIONS OF SECTION 38-1-3, (UTAH CODE ANNOTATED, 1953) FOR THE REASONABLE VALUE OF THE USE OF SAID BITS.

It appears to be the contention of Davis that the word "material" as used in Section 38-1-3, UCA, 1953, does not embrace the rock drilling bits furnished by Emsco under the facts of this case.

In common usage the word material has been defined as

"The apparatus or implements necessary to the doing of anything."

as well as

"The substance or substances, or the parts, goods, stock, or the like, of which anything is composed or may be made." (Webster's New International Dictionary, Second Edition, P. 1514.)

Thus we see there is nothing inherent in the word "material" which excludes items which are used in the drilling of an oil or gas well even though they do not become a permanent attachment to the well. The ultimate question then, is whether or not the legislature intended to give a lien for the use of the items such as the rock bits,

which are used in the drilling of the well until they become dull, and thus have no further value as an instrument of drilling until the cutting teeth are replaced.

Admittedly the cases from the various states are not uniform in their rulings with respect to the general question of the lienability of the rental value of equipment furnished for use in drilling an oil and gas well. It is the contention of Emsco that (a) the rule which allows the lien is the better view and is more consistent with the wording of the Utah Statute and (b) the terms under which the bits involved here were furnished and the use made of them is different from the ordinary lease situation, and even under the strictest view, the value of that use is lienable.

The more liberal rule is set forth in *William M. Graham Oil and Gas Company v. Oil Well Supply*, 128 Okla., 201, 264 P. 591, wherein the Court said:

“One other item not listed above, contained in the account of the Oil Well Supply Company, is also challenged as being nonlienable. This is an item of \$8.75 in an account of \$31,167.37, representing one day’s rental of certain necessary drilling tools furnished to and used by lessees. Defendants in their attack thereon rely on the case of *Arkansas Fuel Co. v. McDowell*, 119 Okla. 77, 249 P. 717, wherein it was held in paragraph 5 of the syllabus, that ‘One who rents ‘fishing tools’ to the owner of an oil or gas lease, at a stipulated price per day, for the use of such tools on a ‘fishing job’ is not entitled to a lien for the rental value thereof, under the sections 7464-7466, Comp. St. 1921.’

“And where, in the body of the opinion in reference to the principle announced, it was said:

'With reference to the lien of the Acme Fishing Tool Company, we are of opinion the court erred in rendering judgment establishing a lien in its favor. This company neither furnished labor nor materials, but this was purely a rental contract of certain tools with which to do a fishing job, and does not fall within the purview of the statute.'

"We think that to be a restricted or limited interpretation of the word 'furnish' used to express the legislative will, as there is no legislative manifestation in the Statute indicating an intention that the term should be given an interpretation other than that of its ordinary meaning.' Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained.' Section 3528, C.O.S. 1921.

"The word 'furnish' is not one of the words 'hereinafter explained.' In its ordinary sense, the term means to supply a thing for use in the accomplishment of a particular purpose. This may be either by sale absolute or by hire at a specified rate. The rental plan is not new to the oil industry as is shown by the case relied on, and the case of U. S. Supply Co. v. Andrews, 71 Okla. 293, 176 P. 967, referred to therein. The interpretation of the law there made in that respect is inharmonious with the broad application of the statute made to other phases of the case, and is not consonant with the prior decisions of this Court where lien laws were involved. *To hold that statute gives to the one a lien for commodities furnished which become a part of the property, either by consumption in the use thereof, or by attachment as a part of the equipment or machinery or otherwise, and that it denies to the other who likewise furnished com-*

modities equally as essential and necessary as furnished by the one, though such commodities furnished by the other be not consumed nor become a part of the properties developed by attachment, and retain individuality, and be capable of further use upon completion of the immediate purposes for which they were purchased, it is to say that the lawmaking body of the state acted in a most discriminatory manner in the enactment of the statute, when it is known as a matter of common knowledge that a large quantities of such necessary and essential commodities, never become a part of the leasehold either by consumption or attachment thereto. In the language of Kansas City Southern Ry Co. v. Wallace, supra; 'The Legislature that would make a discrimination at once so unjust and unreasonable would, in the very act lay at its door an impeachment for besotted ignorance or gross partiality.'

"We are unwilling to make this intimation. In our view, therefore, we think the language of the statute was answered when the challenged items were furnished under the line of credit established by the agreement of the parties and employed in the development of the leaseholds involved, and to keep in repair the machinery and equipment used in the operation thereof, we therefore conclude that the items in question are lienable. The case of Arkansas Fuel Company v. McDowell, supra, in so far as the same is in conflict with the conclusions here reached upon this phase of the cause at bar, is hereby expressly overruled." (Emphasis added).

(See also *Standard Pipe and Supply Co. v. Red Rock Co.*, 57 Cal. App. 2d 897, 135 P. 2d 659.)

On the other hand, the more restrictive view is set forth in the Kansas cases of *Wilkinson v. Pacific Mid-West Oil Co.*, 152 Kan. 712, 107 P. 2d 726, which involved the rental of well casing, and *Bridgeport Machine Co. v. McKnab*, 136 Kan. 781, 18 P. 2d 186, wherein the type of tools rented is not set forth.

The other Kansas cases cited in the brief of Davis do not involve the lienability of rental at all, but of the purchase price of equipment used in equipping a string of tools used in drilling the well (*Marion Mach. Co. v. Allen*, 119 Kan. 770, 241 P. 450), and of "miscellaneous equipment of a drilling company used on this well today and on another tomorrow, such as 'bull rope, belt, wrench, hammer, water pail, sandline reel and drilling line.'" (*Given v. Campbell*, 127 Kan. 378, 273 P. 442.) The Court, in these cases, considered that there was a lack of relationship between the benefit conferred on the particular well and the amount of the lien claimed, as is evidenced by the following language from *Given v. Campbell*, *supra*:

"Now, it is perfectly obvious that if this well were drilled to completion, these articles would not become fixtures of the leasehold. They would constitute no part of the improvement of the property. They will be carried away and used on a second and third drilling job, and so on until they are worn out. Should appellee's leasehold be subject to a lien for the payment of this rope, belt, wrench, hammer, pail, sand line, and drilling line? If so, will plaintiffs' leasehold alone be subject to a lien therefor, or will all the leaseholds in the community on which these chattels are successively used until they are worn out be likewise sub-

jected to appellant's lien claim for their payment? Why should a vendor's lien be granted on an interest in realty for the price of a wrench, a hammer, or a water pail purchased for the use of the driller of an oil and gas well when no such lien is granted for the purchase price of a carpenter's hammer, a plumber's wrench, or a plasterer's water pail similarly used in the construction of any other improvement on realty?"

Fees v. Ritchey, 136 Kan. 221, 14 P. 2d 652, involved the question of rental of casing but does not decide the issue of lienability because it holds that the person furnishing the pipe was paid by accepting an interest in the well.

Bridgport Machine Co. v. McKnab, *supra*, is the decision which established the rule in Kansas that rent for the use of tools used in an oil or gas well is not lienable and that case cites as authority for that proposition *Road Supply & Metal Co. v. Bechtelheimer*, 119 Kan. 560, 240 P. 846, and *Arkansas Fuel Oil Co. v. McDowell*, 119 Okla. 77, 249 P. 717.

The Arkansas Fuel Oil Co. case was and had been overruled by the *William M. Graham Oil and Gas Co.* case, referred to above, at the time the *Bridgport* case was decided so that the only existing authority cited therein is the *Road Supply & Metal Co.* case.

Thus the Kansas rule had its inception in the latter decision which held that the rental of grading machinery, tools and implements used in building a road were not "material" because:

“Material, within the meaning of our statute, is that which enters into, becomes a part of, and remains with the completed work.” (*Road Supply & Metal Co. v. Bechtelheimer*, supra, 119 Kan. at page 563, 240 P. at page 847.)

Clayton v. Bridgeport Mach. Co., Tex. Civ. App., 33 S.W. 2d 787, does contain some dicta to the effect that the word “materials” under the Texas decisions does not include the rental of tools. It defines “supply” as:

“Available aggregate of things needed or demanded, * * * anything yielded or offered to meet a want.”

The definition of “material” found in Webster’s Dictionary set forth above as “the apparatus or implements necessary to the doing of anything” is not materially different from the definition of “supply” in the Clayton Case.

Section 68-3-11, (U.C.A. 1953), provides:

“Words and phrases are to be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined by statute, are to be construed according to such peculiar and appropriate meaning or definition.” (See *Cache Auto Co. v. Central Garage*, 63 Utah 10, 221 P. 862).

From the foregoing it is apparent that there is nothing in the “approved usage” of the word “material” which requires that it “enter into, become a part of, and

remain with the completed work” as required under the Kansas definition.

In fact, the “context” of the word “material” in the Utah lien statute (Section 38-1-3, U.C.A., 1953) negatives that requirement. The language of the statute with respect to the “furnishing” of “material to be *used in* the construction or alteration of, or addition to, or repair of, any . . . improvements upon land” provides that the person so furnishing said materials shall have a lien “upon the property” on which they have furnished the materials. (Emphasis added.) Under this provision there may be some merit to the contention that there must be a permanent attachment of the items for which a lien is claimed. The items must be “*used in*” the “construction,” etc. of the “*improvement.*” Had our legislature intended the restrictive meaning claimed by Davis and announced in the Kansas cases, to be applied to oil and gas wells in this state, it would have used this same language with respect to an oil and gas well when making the 1933 amendment referred in the brief of Stanton in Case No. 8951. Instead, there is a complete absence of any requirement that the materials be “used in the construction or alteration of, or addition to” the well. By the use of different language, a completely new standard or test is substituted, so that the question is whether or not the materials are “furnished for the prospecting, development, preservation or working of any . . . oil or gas well,” not whether the materials were “used in the construction of” or “additions to” the well. Who can doubt that Emseo, in furnishing the rock bits which actually cut the

hole or well here involved, furnished them for the "prospecting" and "development" of the well and actually contributed to the drilling or "prospecting" and "development" of the well, the value of the use of said bits in the sum of \$4,158.64. Is the bit any less furnished for the prospecting and development of the well because it is returned to Emsco after the cutter teeth have served their useful life.

Further, it is submitted that even under the Kansas rule requiring permanent attachment by complete consumption of the items, the value of the use of the bits is lienable. To the extent that a charge is made therefore, the bits were consumed, that is, the teeth were worn away. The bits become useless, until the teeth are replaced. This is not the usual rental situation where the amount of the rent is based upon the time the equipment is used. Here the time the bits are used is immaterial. They can be kept and used until worn out, and even re-tipped, and the charge remains the same, so that the charge made is actually for the wearing out of the bit. (TRA P. 71).

In view of the foregoing, the cases cited by Davis announcing the general view that rental charges for equipment are not lienable under the general mechanic's lien laws, are not applicable.

It should be noted that the two Kansas decisions relied upon by Davis (*Wilkinson v. Pacific Mid-West Oil Co. supra*, and *Bridgeport Machine Co. v. McKnab, supra*) do not determine the lienability of items such as rock drilling bits, the practical utility of which is

consumed so that there is a direct relationship between the amount of the lien claim and the benefit conferred. That said relationship is present here is evidenced by the testimony of Davis' Witness Ed Karns that although it is impossible to estimate exactly how many bits will be used in a well there was nothing unusual about the fact that the Driller used \$4,158.64 worth of bits in drilling the well in question. (TRB pp. 108-109).

In fact, the Kansas Court has indicated that the materials need not be completely consumed in allowing a lien for the lumber used in the concrete forms in the construction of a building even though they were removed and did not actually become a part of the building. (Chicago Lumber Co. v. Douglas, 89 Kan. 308, 131 P. 563). The Court said in that case:

“Here the material was used in the erection of the building, and it became temporarily a part of the foundations of the building. Its use was provided for in the plans for the building, and was included in the contract of the parties. By its use most of the material was destroyed or rendered unfit for any other practical use. One witness said that lumber so used became water-soaked, twisted, and practically valueless, and that architects now generally provided in their specifications that new lumber should be used for such forms. Some of the thicker or dimension lumber was not destroyed, and that much of it was used for other purposes. For this a credit of \$88 was allowed. However, one of the contractors said that they would have been as well off if they had thrown it aside, and procured new lumber. The material having been provided for in the

contract, and *having been used and practically consumed* in the erection of the building, can it be held to be lienable under the law or can the surety company be held liable for such material?

"In our opinion the authorities last cited state the true rule of liability. The mechanic's lien, although unknown to the common law, is not to be given a narrow and strict construction. It is intended as an enlargement of the rights of those who furnish labor and material, and who cannot conveniently protect themselves in any other way. It is a general and remedial statute, and the rule that statutes in derogation of the common law shall be strictly construed does not apply to it. Gen. Stat. 1909, 9850. On the contrary, such statutes are to be liberally construed with a view of advancing the beneficent purposes which the Legislature was seeking to accomplish by the enactment. *Lumber Co. v. Water Co.* 48 Kan. 182, 29 Pac. 476, 15 L.R.A. 652, 30 Am. St. Re. 301. A reasonable interpretation of our statutes, we think, fairly includes the material used and consumed in the erection of the concrete walls. As counsel for appellee says: 'This is coming to be an age of concrete. Great Concrete buildings are constantly being erected in all our cities. Several thousands of dollars worth of lumber will be frequently used up for forms in the erection of a single building. And architects and contractors must include such lumber as specifications and contracts as an inevitable part of the cost.' *The material* in the forms furnished by appellee was understood by all to be a necessary part of the construction of the building. For a time these forms were an essential part of the walls, columns, and partitions. They were provided for in the contract, and their character was included in

the specifications. While the walls were hardening they were as essential to the structure as the cement and sand which remained in the walls in a different form after the work was completed. These forms operated to enhance the value of the land on which they were used as did the labor in setting them up. *They were finally taken down and removed, but the life and substance of the material had been used up in the erection of the building.* The material cannot be regarded as a part of the contractors' plant because it was impregnated with cement, and rendered practically unfit for other uses. It was used directly in the construction of the building, and, being consumed in that use, it can be fairly said that within the meaning of our statute it entered into and was used in the erection of the building. It is clear that it came within the terms of the bond as it was 'material furnished and used in and about said contract work'." (Emphasis added)

The same could be said of the rock bits furnished by Emsco in this case. After they were returned, they were dull and their life and substance had been used up in the drilling of the well. They were unfit for further use as an instrument of drilling, and thus were practically consumed. They were certainly understood by all to be an essential part of the drilling of the well.

STATEMENT OF POINT RELIED ON IN CROSS APPEAL

POINT I

ONE WHO FURNISHES MATERIALS NECESSARY FOR THE OPERATION OF A DRILLING RIG USED TO DRILL AN OIL WELL IS ENTITLED TO A LIEN FOR THE VALUE

OF THE MATERIALS FURNISHED UNDER SECTION 38-1-3 (Utah Code Annotated) 1953.

- (a) LEGISLATIVE HISTORY AND WORDING OF STATUTES SUPPORT THIS CONCLUSION.
- (b) CASES FROM OTHER JURISDICTIONS HAVE HELD THAT THESE MATERIALS ARE LIENABLE.
- (c) THE UTAH LIEN STATUTES IS TO BE CONSTRUED LIBERALLY TO EFFECT THE OBJECT OF THE STATUTE.

ARGUMENT

POINT I

ONE WHO FURNISHES MATERIALS NECESSARY FOR THE OPERATION OF A DRILLING RIG USED TO DRILL AN OIL WELL IS ENTITLED TO A LIEN FOR THE VALUE OF THE MATERIALS FURNISHED UNDER SECTION 38-1-3 (Utah Code Annotated) 1953.

- (a) LEGISLATIVE HISTORY AND WORDING OF STATUTES SUPPORT THIS CONCLUSION.

As with the question of transportation as set forth in the Brief of Stanton in Case No. 8951, the question of the lienability of these items is one of first impression in this State. The decision of the lower Court was that these items were not lienable because they were part of the drilling rig and the value for which the lien is claimed was not consumed in the drilling of the well, but might be used in other wells as well. (See TRB p. 114).

Emsco hereby incorporates by reference the section of the brief of Stanton in Case No. 8951 with respect to the legislative wording and history of the Statutes found on pages 8 to 14 inclusive of said brief. It is submitted

that the same broad construction claimed by Stanton with respect to those "who shall do work for" the prospecting, development, preservation or working of an oil well applies to those "*who furnish materials*" for the same purpose.

It should be noted that the difference in meanings between the words "*used in*" found in the fore part of the statute with respect to materials furnished for improvements on land and the words "*for the prospecting, development, preservation or working*" used with respect to an oil well indicates that there is no requirements with respect to an oil well that the materials be "*used in*" the well, but only that they be furnished "*for the prospecting, development or working*" of the well.

The materials in question were furnished for the latter purpose and the well could not have drilled without them.

(b) CASES FROM OTHER JURISDICTIONS HAVE
HELD THAT THESE MATERIALS ARE LIENABLE.

Inasmuch as there are no cases construing the Utah Lien Statute with respect to this question, a discussion of cases from other jurisdictions construing their particular Statutes which are no more comprehensive in their purview than the Utah Statute is helpful.

The Oklahoma case of *William M. Graham Oil and Gas Co. v. Oil Well Supply*, *supra*, holds that such items are lienable. The material facts in that case as stated by the court are as follows:

“This account (of the lien claimant) had its inception upon the application of one of the Lessees for a line of credit from this plaintiff whereunder materials, machinery and supplies were to be furnished when and as required and needed by the Lessees in the due course of the development and improvement of their leaseholds. There was no definite agreement upon the quantity of the particular commodities, the total cost thereof, the particular lease or leases to be developed, nor as to the number of proposed wells, or other improvements with their location. The only definite understanding between the parties was that the Lessees were the owners of leaseholds situated in Osagee County, and that for the development thereof the line of credit was granted.”

After discussing other aspects of the case, the court said:

“This brings us to the crux of the case, which involves the application of Section 7464, C.O.S. 1921, as it then existed, by which the rights of the parties must be measured, both as to the lienability of the many items constituting the accounts and the rank to be accorded several lien established thereunder. The relevant part of said section upon the first phase is as follows:

‘Any person, corporation, or co-partnership, who shall, under contract express or implied, with the owner of any leasehold for oil or gas purposes or the owner of any gas pipeline or oil pipeline or with the trustee or agent of such owner, perform labor or furnish materials, machinery and oil well supplies used in the digging, drilling, torpedoing, completing, operating or repairing of any gas well, shall have a lien upon the whole of such leasehold or oil pipeline, or gas pipeline, or lease for oil and

gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished and upon the oil or gas well for which they were furnished, and upon all other oil or gas purposes upon the leasehold for which said material and supplies were furnished.'

"In this connection, our attention necessarily is first directed to the meaning of the language employed declaratory of the lien provided for. Defendants urge the view that the word 'used' in the phrase 'used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well,' constitutes a limitation upon the lienability of any items involved such as do not in fact become a part of the equipment necessary for the operation of the properties, either by consumption or attachment, although they be essential instrumentalities in the process of both development and operation. . . .

"To follow defendants' contentions would mean that the language of our statute must be given a restricted or limited interpretation.

"The items here challenged consist of supplies such as repairs for moveable personal property used by Lessees in improvement and operation of properties, repair parts for truck, floor sweepers, snatch block bailer, wire and nails, padlocks, oil cans, machine bolts, flash lights, hatchets, handles, hammer handles, wrench jaws, telegraph cords, hammer, pipe reamer, bit gauge, manilla cable, emery paper, files, scissors, flashlight batteries, spoke for tractor, cave watcher, water buckets, barracks brooms, square, ax handle, augers, chisels, hand saw, drilling tools, parts for drilling machine, drill cable, wire rope, bull rope, soft wire line, punch, pulling machine, tube catcher

and spudding shoe for use in development, operation and maintenance of the properties involved. In our view, the language in the statute is not susceptible of either a limited construction or application with respect to the challenged items, for it is self-declaratory in that any labor, supplies, materials, machinery, 'used' in the digging, drilling, torpedoing, completing or repairing of any oil or gas well is comprehended and lienable. That such items must become a part of the property by either consumption or attachment is not the basis of the law; it is the use thereof. The term 'used' in its common meaning and acceptance, according to Lexicons means the employment of the thing for the accomplishment of a particular purpose. No term of limitation was employed by the Legislature, if it was the intention that the language of the statute was to have a restricted interpretation. . . .

"We also take judicial notice of the fact that upon the ground of common knowledge that the challenged items are essential and necessary supplies used in the development and operation of properties in an industry of the first magnitude, which of itself, attracts the attention of capital and invites and induces investment of large sums of money, as was done in the case at bar."

It is submitted that the Oklahoma rule is most consistent with the broad meaning of the Utah Statute.

(c) THE UTAH LIEN STATUTES IS TO BE CONSTRUED LIBERALLY TO EFFECT THE OBJECT OF THE STATUTE.

For the sake of brevity, Emsco incorporates herein by reference the Section of the Brief of Stanton in Case No. 8951 dealing with this proposition at pages 20 to 22.

CONCLUSION

It is respectfully submitted that the rock bits were furnished under circumstances within the contemplation of the Utah lien statute and the trial court did not err in allowing Emsco a lien for the value of the use of those bits in drilling the well in question in the sum of \$4,158.64 and that the judgment of the trial court to that extent should be affirmed. It is further submitted that the same statute is broad enough to cover the other materials furnished by Emsco and the trial court did err in denying the lien of Emsco for the balance of the materials furnished and the judgment of the trial court to that extent should be reversed.

Respectfully submitted,

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spondents, Continental Emsco
Company, a division of
Youngstown Sheet and Tube
Company, a corporation.