

1958

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

Utah Supreme Court

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AUG 1 1959

CLERK

In the
Supreme Court of the State of Utah

STANTON TRANSPORTATION COMPANY,
a corporation,
Plaintiff and Appellant,

CONTINENTAL EMSCO COMPANY,
a division of YOUNGSTOWN SHEET
AND TUBE COMPANY, a corporation,
Plaintiff,

vs.

MARVIN DAVIS, JACK DAVIS,
JEAN DAVIS and JOAN PRESTON,
partners, doing business under
the firm name of DAVIS OIL COMPANY,
Defendants and Respondents.

FILED

DEC 15 1958

Clerk, Supreme Court, Utah

Case No.
8951

BRIEF OF APPELLANT

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

Defendants and Respondents.

BRIEF OF APPELLANT

PRELIMINARY STATEMENT

The parties will sometimes be designated in this brief as follows: Plaintiff and appellant, Stanton Transportation Company, as "Stanton," plaintiff, Continental Emsco Company, a division of Youngstown Sheet and Tube Company, as "Emsco," and defendants and respondents, Marvin

Davis, Jack Davis, Jean Davis and Joan Preston, partners doing business under the firm name of Davis Oil Company as "Davis."

STATEMENT OF THE CASE

This appeal involves a very narrow question. The problem is simply whether the trial court erred in ruling that Stanton was not entitled to a mechanic's lien under the Utah mechanics' lien statute for work performed in transporting an oil well drilling rig to a drilling site where it was used to drill an oil well.

STATEMENT OF FACTS

There is no serious dispute as to the facts related to the issue presented on this appeal. The trial court below found upon all of the essential facts, which findings are not here objected to by Davis. Record references will therefore for the most part be to the findings of the court below. References to the clerk's files will be designated as "R." and to the transcript of the evidence of the hearing on September 20, 1957, as "T.R.A." and to the transcript of the evidence of the hearing on November 5 and 6, 1957 as "T.R.B."

Stanton Transportation Company is a corporation organized and existing under the laws of the State of Colorado and authorized to do business in the State of Utah as a common carrier of equipment and supplies used in drilling oil and gas wells (R. 78). The Davis Oil Company is a partnership consisting of Marvin Davis, Jack Davis, Jean

Davis and Joan Preston, which is engaged in the business of drilling oil and gas wells and related activities. Davis was at all times herein material the owner of an oil and gas lease covering the following described property in San Juan County, State of Utah:

“The Northeast Quarter of the Northeast Quarter of Section 27, Township 41 South, Range 24 East of the Salt Lake Meridian.”

On December 19, 1956, Davis entered into a contract with Walker-Wilson Drilling Company, oil and gas drilling contractors, whereby Walker-Wilson agreed to drill an oil and gas well for Davis on the premises covered by the oil and gas lease referred to above (R. 78). At the time the parties entered into this contract, it was contemplated that the drilling rig was to be on the new location and ready to drill on or before December 25, 1956. The drilling rig which was to be used had been dismantled and stacked at a former drilling site located approximately 36 miles southeast of Hayden, Colorado. In order to reach the location where the rig had been stacked, it was necessary to travel over 30 miles on unimproved roads and there was several feet of snow on the ground where the rig had been stacked. The total distance from the old site to the new site was 496 miles. In order to reach the new site it was necessary to travel over another 42 miles of unimproved roads and ford the San Juan River. Some of the individual items which had to be transported weighed as much as 40,300 pounds (R. 79). Both Davis and Walker-Wilson knew that in order to drill the oil and gas well it would be necessary to obtain specially designed cranes and trucks to transport the

drilling rig to the new site and to assist in erecting the drilling equipment thereon. Their contract specifically provided that Walker-Wilson was to obtain the necessary equipment and that Davis was to pay for the cost of transporting the drilling rig to the new site and erecting it thereon (R. 78, 79).

Because of the tremendous weights involved and the extremely rough terrain which had to be traversed, it was necessary to use specially designed trucks and equipment and men specially trained in the transporting of oil well drilling equipment. Stanton owns equipment designed to make such moves and employs men who are trained in this type of work (R. 79). It has been engaged in the business of transporting such equipment in the intermountain area since 1926 (T.R.A. 7).

Walker-Wilson entered into a contract with Stanton whereby Stanton agreed to move the drilling rig and other equipment necessary to drill the oil well from the old site to the new site and to assist in erecting the drilling rig and preparing the new site so that an oil well could be drilled thereon. Pursuant to said agreement, Stanton transported the drilling rig from the old site to the new location. In so doing, Stanton used 23 trucks and approximately 30 men. In order to erect the drilling rig and prepare the drilling site so that an oil well could be drilled thereon, it is necessary to use winches, cranes and other special equipment such as that owned by Stanton. Before the drilling equipment could be loaded at the old location, in many cases it was necessary to use winches and cranes to break the equipment loose from the frozen ground. After they reached the

drilling site, Stanton's men and equipment were used to erect the superstructure, to lift draw works to the drilling floor, install mud tanks and do other work in preparing the drilling rig and equipment so that it could be used to drill an oil well. Without Stanton's men and equipment it would have been impossible to have erected the drilling rig or to have drilled an oil well on the Davis lease (R. 79, 80).

All of the equipment had been moved to the new site, the drilling rig had been erected and was ready to start drilling on December 25, 1956. The drilling rig was used in drilling an oil well which was completed as a producer on or about February 27, 1958, on premises described above (R. 18, 80, T.R.B. 21).

The value of work and labor performed and services rendered by Stanton in moving the drilling rig and other equipment to the new site was \$10,984.64. The value of work and labor performed and services rendered by Stanton in erecting the drilling rig and preparing the site for drilling was \$1,244.50. These charges are fair and reasonable for the work and labor performed and the services rendered and are made in accordance with Stanton's tariffs which are on file with the Interstate Commerce Commission. Walker-Wilson was billed for said amounts but all attempts to collect said charges have failed and the full amount is now due and owing (R. 80).

The contract between Davis and Walker-Wilson involved more than \$500.00 but Davis did not obtain a bond for the protection of mechanics and materialmen from Walker-Wilson in accordance with the provisions of Section 14-2-1, Utah Code Annotated, 1953 (T.R.A. 4).

Stanton filed a notice of lien for the above stated amounts with the County Recorder of San Juan County on March 12, 1957, and commenced action on June 26, 1957, to foreclose its mechanic's lien and/or to obtain a personal judgment against the respondents for the amount of its claims pursuant to the provisions of Section 14-2-2, Utah Code Annotated, 1953 (R. 1-4). Stanton caused notice to be published to lien claimants and Continental-Emsco Company, a division of the Youngstown Sheet and Tube Company, appeared, presented its lien claim and was made a party plaintiff. Continental-Emsco obtained a judgment against Davis, from which Davis has appealed and which has been consolidated with Stanton's appeal for the convenience of the court. No further discussion of the Davis appeal and the problems related to Continental-Emsco will be mentioned in this brief.

On September 13, 1957, Stanton entered into a stipulation with Davis whereby Stanton released its lien claim which was the subject matter of the action with the understanding that if the trial court should adjudge and decree, that except for said release Stanton would be entitled to a lien upon the property of Davis and would be entitled to foreclose said lien, and if upon the judgment becoming final and after all appellate procedures had been exercised or waived, Davis did not forthwith pay the principal amount of the judgment with interest accrued thereon as determined by the court, then judgment could be entered on Stanton's motion in its favor against the surety named in the corporate surety bond which respondents filed with the court (R. 26-28).

Under the foregoing state of facts, the trial court found that Stanton was entitled to a mechanic's lien for the value of services rendered and labor performed in erecting the drilling rig and preparing the site for drilling and also to a personal judgment against the individual partners for this amount for failure to obtain a bond from Walker-Wilson in accordance with the provisions of Section 14-2-1.

The court also found that Stanton was not entitled to a mechanic's lien for the value of the services rendered and work performed in transporting the drilling rig to the new site since this did not constitute the performance of work for the prospecting, developing, preservation or working of an oil and gas well within the meaning of the Utah mechanics' lien statute. It is from this finding that Stanton appeals.

STATEMENT OF POINTS RELIED ON

POINT I.

ONE WHO TRANSPORTS DRILLING EQUIPMENT TO SITE WHERE IT IS USED TO DRILL AN OIL WELL IS ENTITLED TO A MECHANIC'S LIEN FOR VALUE OF WORK PERFORMED UNDER UTAH MECHANICS' LIEN STATUTE.

- (a) Legislative History and Wording of Statute Support This Conclusion.
- (b) Cases From Other Jurisdictions Have Held That Transportation is a Lienable Item Under Mechanics' Lien Statutes Which Con-

tain Language Much More Restrictive Than That Contained in the Utah Statute.

- (c) Utah Mechanics' Lien Statute is to be Construed Liberally to Effect Object of Statute.
- (d) Public Policy Favors the Granting of Mechanics' Liens to Persons Who Perform Work Such as That Performed by Stanton.

ARGUMENT

POINT I.

ONE WHO TRANSPORTS DRILLING EQUIPMENT TO SITE WHERE IT IS USED TO DRILL AN OIL WELL IS ENTITLED TO A MECHANIC'S LIEN FOR VALUE OF WORK PERFORMED UNDER UTAH MECHANICS' LIEN STATUTE.

- (a) Legislative History and Wording of Statute Support This Conclusion.

The primary question before the court on this appeal is whether the Utah legislature in enacting Section 38-1-3, Utah Code Annotated, 1953, intended that one who renders service or performs work in transporting oil well drilling equipment to a site where it is used to drill an oil well is entitled to a mechanic's lien for the value of the work performed. This is the first time the question has been before this court; it is of extreme importance because of the tremendous growth of the oil and gas industry in the State of

Utah during the past few years and the indications that it will continue to grow in the future.

The Utah statute expressly provides that one who performs work for the development of an oil well shall be entitled to a mechanic's lien for the value of the work performed. We have found no other mechanics' lien statute which contains a provision relating to oil and gas wells as broad as the provision which appears in the Utah statute. Therefore, cases from other jurisdictions having different statutes are of little help in construing the Utah statute and we must rely to a large extent on the wording of the statute itself and upon its legislative history in determining the legislative intent.

The statute provides as follows:

"38-1-3. Those entitled to lien—What May Be Attached—Lien on Ores Mined.—Contractors, sub-contractors and all persons performing labor upon, or furnishing materials to be used in, the construction or alteration of, or addition to, or repair of, any building, structure or improvement upon land; all foundry men and boiler makers; all persons performing labor or furnishing materials for the construction, repairing or carrying on of any mill, manufactory or hoisting works; *all persons who shall do work or furnish materials for the prospecting, development, preservation or working of any mining claim, mine, quarry, oil or gas well, or deposit; and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which*

they have rendered service, performed labor or furnished materials, for the value of the service rendered, labor performed or materials furnished by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor or otherwise. Such liens shall attach only to such interest as the owner may have in the property, but the interest of a lessee of a mining claim, mine or deposit, whether working under bond or otherwise, shall for the purposes of this chapter include products mined and excavated while the same remain upon the premises included within the lease." (Emphasis Added.)

It would seem clear that one who performs work in transporting drilling equipment to an isolated site where it is used to drill an oil well has performed work for the development of an oil well. This is the only reason that the work is done and without it there can be no oil well. The statute provides that those who have done such work shall have a lien upon the property *upon* or *concerning* which the work was done. The legislature thereby clearly expressed its intent that the work need not actually be performed upon the property so long as it is work which concerns the development of an oil well which is drilled on the property.

The legislative history of the statute supports the conclusion that the Utah legislature intended that persons who perform work such as that performed by Stanton should be protected. The Utah mechanics' lien statute has contained substantially the same provisions since 1894. Laws of the Territory of Utah, 1894, Chapter XLI. However, prior to 1933, there was no specific provision in the

statute relating to oil wells. In 1933 the statute was amended to give mechanics' liens to all persons who shall do work or furnish materials for the prospecting, development, preservation or working of any mining claim, mine, quarry, oil or gas well or deposit. Rev. Stat. Utah, 1933, Section 52-1-3. Prior to 1933, the statute gave liens only upon property *upon* which the parties named therein had rendered service, performed labor or furnished materials. At the same time the statute was amended to specifically provide for oil and gas wells, its coverage was broadened to give liens not only upon property *upon* which services had been rendered, labor performed or materials furnished but also to give liens on property *concerning* which said activities had been performed. It is important to note that though the rest of the statute remained substantially the same, these two additions were made at the same time. The fact that these two changes were made at the same time was no mere coincidence. The legislature must have realized that in the development, preservation and working of an oil and gas well there are many activities that must be performed such as transporting drilling equipment to isolated well sites which might not technically be considered services rendered or work or labor performed *upon* the particular property but are certainly services rendered or work performed *concerning* the property and that this work is just as essential to the development of an oil well as the work which is performed upon the property. By inserting the word *concerning*, the legislature undoubtedly intended that the parties rendering such services or performing such work should be protected even though the work or services

were not actually rendered or performed *upon* the property.

It should also be noted that the provisions of Section 38-1-3 which give liens to those who construct, alter, add to or repair any building, structure or improvement on land provides that those who "*perform labor upon*" shall have a lien whereas the provision pertaining to oil wells gives a lien to all persons "*who shall do work for*" the prospecting, development, preservation or working of any oil and gas well. Certainly the legislature did not intend to be more restrictive in granting liens to those doing work for the development or working of oil by providing that those who "*shall do work for*" shall have a lien instead of limiting it only to those "*who perform labor upon.*" On the contrary, the provision regarding oil and gas wells is much broader. It includes the activities covered by the term "labor performed upon," but in addition it was intended to extend the coverage beyond that. That this is true is evidenced by the fact as noted above, that at the same time the legislature amended the mechanics' liens statute to specifically provide for oil and gas wells, it also extended the property upon which liens could be imposed from property upon which services had been rendered, labor performed or materials furnished to include property *concerning which* such activities had been directed.

In this connection, the courts that have considered the difference between the words labor and work have almost universally held that the word work has a much more com-

prehensive meaning than labor. The Court in *State v. Rose*, 125 La. 463, 51 So. 496, 497, said that:

“ * * * the word ‘work’ has a much more comprehensive meaning than the term ‘labor’ and has been thus defined: ‘to exert one’s self for a purpose, to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty or the like.’ The term as thus defined covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement. * * *”

and the court in *Silver v. Harriss*, 165 La. 83, 115 So. 376, 378, stated that:

“* * * when the statute accords its benefits to all persons, natural or artificial, who may have done any ‘work’ or performed any ‘labor’ it is clear that it recognizes the distinction between the terms and that the use of the former is intended to cover a broader field of activity than the use of the latter; * * *.”

Again, it is no coincidence that these three changes appear together for the first time in 1933. The legislature must have realized that in the development of an oil well there is much work, such as transporting drilling equipment to isolated drilling locations which technically might not be considered as labor performed upon the property. The legislature, therefore, specifically provided that all persons who do work for the development of an oil well shall have a lien upon the property concerning which they have performed the work. The statute certainly did not restrict the lien to one who has actually performed labor

upon the property otherwise the words "*doing work for*" or "*concerning which*" would have no meaning.

- (b) Cases From Other Jurisdictions Have Held That Transportation is a Lienable Item Under Mechanics' Lien Statutes Which Contain Language Much More Restrictive Than That Contained in the Utah Statute.

There are no cases that have considered the question of whether work performed in transporting drilling equipment to a location where it is used to drill an oil well is a lienable item under the Utah statute. The Utah statute gives a lien to all persons who do work for the development of an oil well, upon the property concerning which their work is directed. We have found no other mechanics' lien statute which purports to give protection to such a large class of persons and no decisions on this question under statutes that are even roughly similar to the Utah statute. However, there are many cases where the courts have held that those who perform work in transporting equipment or supplies that are used in improving property are entitled to a mechanic's lien for the value of the work performed even though the mechanics' lien statutes involved were much more restrictive than the Utah statute. A discussion of the reasoning of the courts which have held that transportation is a lienable item under more restrictive statutes may be of assistance in the instant case.

We have found cases from only two jurisdictions where the courts have directly ruled on the question of whether a person who performs work in transporting drilling equip-

ment to a well site is entitled to a mechanic's lien for the value of the work performed. The Oklahoma courts have held that such persons are entitled to a mechanic's lien while the Texas courts have held that they are not. *Gray v. Magdalena Oil Co.*, 240 S. W. 683. It should be noted, however, that the Texas courts have held that their mechanics' lien statute is to be strictly construed. *McClellen v. Haley*, 237 S. W. 627, 629. This rule of construction is contrary to the majority rule and contrary to the rule adopted in Utah. U. C. A. 1953, Section 68-3-2.

In *Cleveland v. Hightower*, 108 Okla. 84, 234 Pac. 614, the Oklahoma Supreme Court in construing a statute which provided that:

“* * * any person * * * who shall, under contract express or implied, with the owner of a leasehold for oil and gas purposes * * * perform any labor in constructing or putting together any machinery used in drilling * * * shall have a lien,’ * * *.”

held that one who performs work in transporting pipe and casing to an oil and gas leasehold is entitled to a mechanic's lien under the Oklahoma statute. In so holding, the court stated:

“* * * why should the Legislature give a lien to the person who takes the casing when delivered upon the leasehold, screws the different joints together, lets them down into the well, as necessary for its operation and completion, which casing could not be on the leasehold but for the labor of the man who hauled it there, and at the same time deny the same character of protection to the laborer, the culmination of whose toil, though begun

off the premises, resulted in the delivery of the casing where it should play its part necessary for constructing and operating the machinery or equipment for an oil well. * * *"

Also see *Hays Drilling Co. v. Sartain*, 108 Okla. 181, 235 Pac. 615, 617; *Comm. Oil Corp. v. Lumpkin*, 113 Okla. 158, 241 Pac. 137; *Arkansas Fuel Oil Co. v. McDowell*, 119 Okla. 77, 249 Pac. 717; *Osage Oil & Refinery Co. v. Gromley*, 23 Okla. 186, 252 Pac. 37; *Cont. Supply Co. v. George Grenan Co.*, 140 Okla. 221, 282 Pac. 598, to the same effect.

The reasoning of the court in the *Hightower* case should also apply under the Utah statute. The language of the Utah statute is much broader than that used in the Oklahoma statute which applies only to those who perform labor in constructing or putting together the machinery used in drilling the well while the Utah statute applies to anyone who does work for the development of the oil well.

Although there are relatively few cases that have considered the question of the lienability of work performed in transporting drilling equipment, there are many that have considered the question of whether transportation for other purposes is a lienable item under statutes much more restrictive than the Utah statute.

In *Cashman v. Russell*, 33 Ariz. 451, 265 Pac. 606, the plaintiff brought an action to establish and foreclose a mechanic's lien on a mine and certain mining claims for the value of work performed in transporting machinery and supplies to the mine. The Arizona statute provided in part that "all miners, laborers and others who may

labor * * * in or upon any mine, or mining claim
 * * * shall have a lien upon the same for such sums as
 are unpaid." The court held that the plaintiff was entitled
 to a lien and in so doing stated that:

"* * * The object of our lien statute is to
 prevent the owner of mines or mining claims from
 obtaining the labor of miners, laborers and others
 who may labor in the improvement of such mining
 property, or in extracting ores therefrom, without
 paying for such labor.

"These lien statutes are remedial in their na-
 ture and should receive a liberal construction to
 the end that they may accomplish what they were
 designed to do. 40 C. J. 51, § 11; *Davis v. Mial*, 86
 N. J. Law, 167, 90 A. 315, Ann. Cas. 1916E, 1028.

"In construing our statute, we cannot obtain
 very much aid from the decisions of other courts
 because of the great dissimilarity of the statutes
 granting liens. However, even though the language
 in the different statutes may vary, a reading of
 them will satisfy one that they have the same gen-
 eral object and purpose. Our effort is to find out,
 if possible, what laborers on mining properties the
 Legislature intended to protect by lien. It is very
 improbable that the Legislature intended to dis-
 criminate as between persons who labor for an in-
 dividual or a corporation engaged in working and
 developing mining property. It is hardly conceivable
 that it should have provided that miners who work
 in the mines and on them should be preferred as
 against those who are bringing to them the supplies
 necessary to prosecute their work, or those persons
 who, while not actually on or in the mines, are doing
 services without which the miners could not work or
 the mines operate. It would seem to us that the leg-
 islative language should not be limited to persons

who labor only on and in the mining premises, but extended to all whose labor contributes directly and immediately to the mining operations and without which they could not very well be carried on. In such view, the plaintiff is clearly entitled to a lien for the hauling he did for the defendant, both to the mines and from the mines, * * *."

The court in *Fowler v. Pompelly*, 25 Ky. L. R. 615, 76 S. W. 173, in construing a statute which provided:

"* * * 'A person who performs labor or furnishes material in the erection, altering or repairing a house * * * shall have a lien thereon, and upon the land upon which the said improvement shall have been made.' * * *"

stated that:

"* * * It is conceded that the materialmen who furnished these articles to appellants to haul and the laborers and contractor who actually erected the building, have liens for the material furnished and the labor performed, yet it is claimed by the appellee that these appellants, who performed labor just as necessary to the erection of the buildings as the person who furnished the material or the persons who nailed the lumber on the building, have no lien. We cannot agree to this construction of the statute. In our opinion, under a proper construction of the statute, they are just as much entitled to lien for their services as any of the persons named."

The Idaho Supreme Court in construing a statute which provided that:

"* * * 'Every person performing labor upon, or furnishing materials to be used in the

construction, alteration or repair of, any mining claim, building, * * * or any other structure, * * * has a lien upon the same for the work or labor done. * * *

held in *Hill v. Twin Falls, etc.*, 22 Idaho 274, 125 Pac. 204, that a person who hauls cement from a railroad station to the site of a dam is entitled to a lien for his labor. In so holding, the court stated:

“So, in the present case the labor and services of the respondents became a part of the construction of the dam to the same extent as the labor of any other individuals and gave the respondents the same right to a lien. The respondents hauled cement to the place of use for the purpose of use, and it was accepted by the appellant and so used in the construction and as a part of the construction the same as any other material or any other labor contributing to the erection and improvement of said property. * * * There certainly can be no reason why any class or kind of labor, and it matters not what it is, which is intended to aid and enhance the construction of any particular improvement, and is received and used in such improvement, should not be and is not entitled to a lien upon such improved property under the statute of this state. * * *

It is clear that the language and reasoning applied by the courts in the cases cited above under statutes much more restrictive than the Utah statute should also apply in the instant case. The courts that have refused to recognize mechanics' liens for the value of work performed in transporting supplies and equipment used in improving property have generally done so because of the wording of the par-

ticular statute involved. Often the statutes are so worded as to give liens only to those who are upon the premises when the work is performed. However, even in these cases, the courts have given those who transport equipment or supplies liens under statutes that provide that only those who perform labor upon the property shall have liens. See *McClain v. Hutton*, 131 Cal. 132, 61 Pac. 273, 63 Pac. 182; *McKeen v. Hasetine*, 46 Minn. 426, 49 N. W. 195; *Hill v. Newman*, 38 Pa. 151, 80 An. D. 473. Where the courts have been unable to find that transportation is labor performed upon the property, because of the wording of the statute, they have often recognized a lien for the value of transportation services under the theory that it is part of the cost of materials furnished. *Republic Nat. Bank & Trust Co. v. Mass. Bonding & Ins. Co.*, 68 F. 2d 445; *American Liability Surety Co. v. Bluefield Supply Co.*, 70 F. 2d 187; *Fagan v. Brock Motor Co.*, (Mo.), 282 S. W. 135; *Brace & H. Mill Co. v. Burbank*, 87 Wash. 356, 151 Pac. 803; *Wisconsin Brick Co. v. Nat. Surety Co.*, 164 Wis. 585, 160 N. W. 1044.

(c) Utah Mechanics' Lien Statute is to be Construed Liberally to Effect Object of Statute.

Mechanics' liens were never recognized by the common law and are in derogation thereof. 36 Am. Jur. 19, Mechanics' Liens, Section 3. The Utah statute provides that:

"The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provi-

sions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. * * *"
Section 68-3-2, U. C. A., 1953.

This is in accordance with the great weight of authority which holds that mechanics' lien statutes are to be construed liberally so as to effect the object of such statutes, which is to permit a lien upon premises where the owner has benefited by having the value of his property increased or improved as a result of labor or services rendered, work done, or materials furnished by another. It is based upon the principal of unjust enrichment and is designed to protect those who enhance the value of property of another and are not paid therefor. The statutes place the burden upon the owner of the property who benefits from the improvements to insure that those who make his enrichment possible are paid. To achieve this end, the mechanics' lien statutes are often supplemented as in Utah by statutes which require the owner to obtain a bond from the principal contractor for the protection of those who perform labor, render services, do work or furnish materials. If the owner fails to comply with this provision, he can be held personally liable for the amount due in addition to the rights which the claimant may acquire under the mechanics' lien statute.

The Supreme Court of the United States in affirming a Utah Territorial Supreme Court decision holding that a superintendent of a mine was one who came within the purview of the Utah mechanics' lien statute stated: "Statutes giving liens to laborers and mechanics for their work

and labor are to be liberally construed.” *Mining Co. v. Callins*, 104 U. S. 176, affirming 2 Utah 219; *Davis v. Alvord*, 94 U. S. 545.

In *Eccles Lumber Co. v. Martin*, 31 Utah 241, 87 Pac. 713, the Utah Supreme Court in construing the mechanics’ lien statute then in effect quoted with approval the following language from Boisot on Mechanics’ Liens, Section 4:

“The doctrine upon which the lien is founded is the consideration of natural justice, that a party who has enhanced the value of property by incorporating therein his labor or materials shall have a preferred claim on such property for the value of his labor and materials.”

(d) Public Policy Favors the Granting of Mechanics’ Liens to Persons Who Perform Work Such as That Performed by Stanton.

Development of the vast oil and gas resources of the western states depends upon continuous exploration and drilling programs. The leasehold interests such as held by Davis in the instant case are valueless unless wells can be drilled on the property covered by the leases. This often requires the drilling of wells in isolated locations, miles from any road. This problem is exemplified by the instant case where in order to reach the location it was necessary to ford the San Juan River and travel over 42 miles on unimproved roads. In such cases, before a well can be drilled, it is necessary to bulldoze roads into the location and prepare the site for the drilling rig. Due to the depth which such wells must be drilled, the drilling equipment is extremely heavy, some of the individual items which

were transported in the instant case weighed as much as 40,300 pounds. It must be remembered that often in order to reach the location it is necessary to traverse almost impossible terrain as any one who is familiar with the southeastern portion of the State of Utah can well imagine. After the drilling rig and other equipment are transported to the site, it is necessary to erect the rigs. During the drilling of the well, drill pipe, collars, casing, mud and innumerable other items of drilling equipment and supplies must be transported to the well site. In drilling an oil well it is necessary to use tremendous amounts of water. Often the drilling location is located miles from the nearest water supply and it is necessary to truck water to the location. In many cases, this involves round-the-clock operations. Specially designed trucks are used to make electrical logs of the wells, run cement and perform other operations which are absolutely essential to modern drilling methods.

Is it possible to say that any of the forms of transportation noted above is not work performed for the development of an oil well? Is it equitable to say that one should be entitled to a mechanic's lien for the value of his work while another should not? Should the merchant who sells supplies and transports them to the rig be allowed to include the cost of transportation and obtain a lien therefor while the person who trucks water to the site be prevented from obtaining a lien? Should the person who transports the casing which becomes an integral part of the well be entitled to lien for the value of his work while he transports the drill pipe which is just as essential in the development of a well be prevented from obtaining a lien? Should those

who have specially designed trucks which are used to run cement or log a well be entitled to include the cost of driving the truck to the wellsite as a part of their services and be entitled to a lien while he who transports the very drilling rig without which there would be no well be prevented from obtaining a lien?

The answer to all of these questions is obviously no. The legislatures of the various states have long recognized the principle that one who has been enriched by having the value of his property increased through the work, labor, other services or materials furnished by a third party should be responsible for seeing that said persons are paid. It is for this reason that mechanics' lien statutes and statutes which require property owners to obtain bonds from principal contractors protecting such persons or become personally liable have been enacted.

The Utah legislature enacted legislation as early as 1890 which gave a lien to those whose labor or materials increased the value of the property of another. Thereby recognizing the principle that the property owner who is enriched as a result of the labor of another should be the one who is primarily responsible for seeing that the one who made his enrichment possible is paid. The first Utah statutes gave liens only to those who were upon the premises when the labor was performed. In 1933 the legislature recognized that in the development of oil wells, mines and other related activities it was necessary to have much work which was not actually performed upon the premises but without which such development would be impossible. There was no reason why the person whose work though

begun off the premises, was nevertheless absolutely essential for the development of such improvements as oil wells and mines should not receive the same protection as the person whose labor was actually performed on the premises. It was for this reason that the legislature provided that all persons who do work for the development of an oil well shall be entitled to a lien upon the property concerning which their work was directed.

CONCLUSION

Stanton Transportation Company performed work in transporting drilling equipment to a well site located on property covered by an oil and gas lease owned by Davis Oil Company. This equipment was used to drill a producing oil well upon said premises. Without the work performed by Stanton, it would have been impossible to develop an oil well on this location. The Utah mechanics' lien statute gives a lien to all persons who do work for the development of oil wells upon the property concerning which their work is directed. The only purpose of the work performed by Stanton was to develop an oil well on the subject premises.

Public policy has long demanded that the property owner who is enriched as a result of the labor performed or materials furnished by another should be the one primarily responsible for seeing that the one who performs such services is paid. Courts in other jurisdictions have recognized transportation as a lienable item under statutes, the coverage of which is much more narrow than that

given by the Utah statute. The language of the Utah statute is extremely broad and its legislative history indicates clearly that persons such as Stanton who perform work for the development of an oil well should be entitled to a lien for the value of the work performed.

For the reasons cited above, we submit that the trial court was in error in ruling that Stanton was not entitled to a lien for the value of the work it performed.

Respectfully submitted,

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