

1959

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

Utah Supreme Court

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AUG 5 1959

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IN THE

Supreme Court of the State of Utah

STANTON TRANSPORTATION
COMPANY, a corporation,
Plaintiff and Appellant,
CONTINENTAL EMSCO COM-
PANY, a division of YOUNGS-
TOWN SHEET AND TUBE COM-
PANY, a corporation,

Plaintiff,

Case No.
8951

vs.

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

Defendants and Respondents.

FILED
AUG 26 1959

Clerk, Supreme Court, Utah

BRIEF OF RESPONDENTS

ANTHONY F. ZARLENGO,
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TON, partners, doing business
under the firm name of DAVIS OIL
COMPANY,

Defendants and Respondents.

BRIEF OF RESPONDENTS

PRELIMINARY STATEMENT

In this Brief the procedure adopted by Plaintiff and Appellant for the designation of the parties and others will be followed. Stanton Transportation Company will sometimes be referred to as "Stanton"; Continental Em-

sco will sometimes be referred to as "Emsco"; Davis Oil Company and its partners will sometimes be referred to as "Davis"; and Walker and Wilson Drilling Company will sometimes be referred to as "Walker-Wilson" or as "driller". The following abbreviations will be used; "R" for the Clerk's files; "TRA" for the transcript of the hearing of September 20, 1957, and "TRB" for the transcript of the hearing on November 5 and 6, 1957.

STATEMENT OF FACTS

Appellant's Statement of Facts is inadequate and in some respects misleading.

Stanton is a common carrier, operating under Certificate No. 9787 issued by the Interstate Commerce Commission, and is primarily engaged in the hauling of oil field equipment and supplies. Prior to the events leading to this case, Stanton had hauled oil and gas well drilling rigs for Walker and Wilson Drilling Company 3 or 4 times over a period of about 2 years. (TRA 7-8, 30-31) The relationship between Walker-Wilson and Stanton was governed by published tariffs on file with the Interstate Commerce Commission. (TRA 8-9)

In Appellant's Statement of Facts (pages 3 and 4 of its Brief) are statements which erroneously suggest and imply that Davis and the driller contracted for transportation to the drill site of the *particular* drilling rig that was used.

There is nothing whatsoever in the record to support those statements. No reference of any kind is made in the contract to either the particular drilling rig or its location at the time the contract was executed. Moreover, under questioning by Stanton's counsel, Marvin Davis

testified, and his testimony is uncontradicted, that he was not "informed as to the whereabouts of the drilling rig that would be used by Walker and Wilson Drilling Company to drill this well", and that he did not discuss this matter with the officers of Walker-Wilson. (TRB 23)

In essence the drilling contract provided that Walker-Wilson would drill the oil and gas well and Davis would pay for the well. Attached to the contract was a Schedule "A" checklist of items to be furnished by each of the parties, and a Schedule "B" which designated the operations to be performed by each party. Paragraph 4 of the contract in part provided:

4. In full compensation to Contractor [driller] for compliance with the terms of this contract, furnishing the items designated in said Schedule "A", and performing the operations designated in Schedule "B" hereof, shall pay the Contractor the sum computed under said Schedule "B" on the following rates: * * *

d/ For all operations designated therein by mark "X" in the column entitled "FOOTAGE DRILLING RATE", the sum of \$8.25 per EACH LINEAL FOOT OF HOLE DRILLED.

Among the operations for which the driller was to be compensated at the rate of \$8.25 per lineal foot of hole drilled were the following: moving in equipment, rigging up, drilling and reaming surface hole, drilling full sized hole, moving out. Among the items designated in Schedule "A" to be furnished by the driller, for which \$8.25 per lineal foot constituted the consideration, were the following: complete unitized draw works with two engines & sand reel, mud pumps, mud storage tanks,

mud testing equipment, fuel (butane, diesel oil, etc.) & storage, rig mats and installation, rat hole installed, water and water line to 50' from well site, water storage tanks, cranes and trucks for moving in and rigging up, cranes and trucks for tearing down and moving out, welding on rigging up, portable generator (30 KW), rig wiring and lights, drilling mast & substructure, running supplies & oils and greases.

At the drill site Stanton's employees erected the rig. (TRA 13, 22, 34) For these services its charges were \$1,244.50. Walter Utzinger, President of Stanton, testified that these were "freight charges" just as were the charges for actual transportation. His testimony in this connection was as follows:

A. I'd like to explain that freight charges. A lot of this freight charges are essential to the transportation. In fact all of them are. They are for, they are all freight charges. Even though they show hourly rates, they are in performance either in origin or destination for setting the equipment that has been transported, and are still transported materials and related to the transportation, and therefore, they are regulated by the Interstate Commerce Commission and if they weren't then they would be subject to— * * *

Q. What I was referring to was that some of these were for freight charges, that is transportation, moving the rig, and some of them I believe you testified were for setting the rig in place after it was moved on to the location.

A. Still part of the transportation. (TRA 33-34)

Stanton's charges for the transportation of the rig totaled \$10,984.64.

The trial court found that the charges of \$10,984.64 for actual transportation and \$1,244.50 for erecting the drilling rig were fair and reasonable for the labor and work performed and were made "in accordance with the tariffs of Stanton Transportation Company lawfully on file with the Interstate Commerce Commission" (R. 80). The court concluded that Stanton was not entitled to recover the sum of \$10,984.64 representing charges for transporting the rig to the well site because "Such charges are not lienable and do not constitute the performance of work or the furnishing of materials for the prospecting, developing, preservation or working of an oil and gas well" (R. 83). The court concluded that Stanton was entitled to recover the sum of \$1,244.50 "representing charges for labor and work performed in erecting the drilling rig" (R. 82).

STATEMENT OF POINTS RELIED ON

POINT I

FREIGHT CHARGES FOR TRANSPORTING
DRILLING RIG ARE NOT LIENABLE UNDER
OUR MECHANICS' LIEN STATUTE.

- (a) Construction of Statute
- (b) Legislative History of Statute

POINT II

THE CONTRACT BETWEEN DAVIS AND THE
DRILLER DID NOT COVER TRANSPORTA-
TION CHARGES.

POINT III

CHARGES FOR TRANSPORTATION OF EQUIPMENT SUCH AS A DRILLING RIG ARE NOT LIENABLE UNDER MECHANICS' LIEN LAWS.

POINT I

FREIGHT CHARGES FOR TRANSPORTING DRILLING RIG ARE NOT LIENABLE UNDER OUR MECHANICS' LIEN STATUTE

(a) Construction of Statute

While Section 68-3-2, UCA 1953, provides that the statutes of Utah should be "liberally construed with a view to effect the objects of the statutes and to promote justice", it should be remembered that mechanic's liens are purely statutory, not contractual, and that where the statute fails, courts cannot create rights and should not do so by unnatural and forced construction. *Eccles Lumber Co. v. Martin*, 31 U. 241, 87 Pac. 713. As was stated by this Court in the case of *Park City Meat Co., et al. vs. Comstock Silver King Mining Co., et al.*, 36 U. 145, 103 Pac. 253:

All courts agree that these liens are the mere creatures of some statute, and that unless the provisions of the particular statute creating the liens are substantially complied with no lien is acquired.

The rules for construing mechanic's lien statutes are stated in 36 Am. Jur. Mechanics' Liens, Sections 11, 12 and 13, as follows:

Sec. 11. *Generally.*—Mechanics' lien statutes are construed in accordance with the general rules of statutory construction. Thus, such statutes are to be construed as a whole, so that each provision may be in harmony with every other, and the remedial purposes of the law preserved. * * *

Sec. 12. *Strict or Liberal Construction.*—Although in some jurisdictions mechanics' lien statutes are given a strict construction as being in derogation of the common law, the general rule is that such statutes, being remedial, should be liberally construed in order to carry out the purposes of their enactment. As to the provisions of the statutes which are not remedial, however, the majority of courts are inclined to a strict construction. Even remedial provisions of the statutes are not given such a liberal interpretation as will unsettle or destroy the rights of third persons which have intervened. Nor will the rule of liberal construction permit a claim to be sustained when that can be done only by a forced and unnatural interpretation of the language of the statute. Furthermore, although a mechanic's lien is said to be a favorite of the law, a statute cannot be so extended to be applied to cases which do not fall within its provisions. * * *

Sec. 13.—*As to Classes of Persons, Nature of Improvement, and Property Covered by Lien.*—According to the weight of authority, mechanic's lien statutes are strictly construed as to the class or classes of persons who may assert the right to such a lien, the nature of improvements for

which a lien may attach, and the kind of property on which it may be fastened. * * *

(b) *Legislative History of Statute*

When the statutes of Utah were revised in 1933, Sections 3722, 3731, 3732 and 3747, of the Compiled Laws of 1917 were condensed into what became Section 52-1-3, Revised Statutes of 1933 and what is now Section 38-1-3, UCA 1953. So the Court can readily determine the effect of the 1933 revision we set out Section 38-1-3 in full and all material parts of Sections 3722, 3731, 3732 and 3747. Words italicized in Section 38-1-3 were added in the revision. The language italicized in Sections 3722, 3731, 3732 and 3747, was *deleted* when the 1933 revision was enacted.

Section 38-1-3 UCA 1953

38-1-3. Contractors, subcontractors 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. (All of the italicized words were added to the 1933 revision. The language following the first comma in the last sentence should be compared with Section 3732.)

Sections 3722, 3731, 3732, and 3747, Compiled Laws of 1917.

3722. *Mechanics, materialmen, contractors, sub-contractors, builders, and all persons of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, bridge, ditch, flume, aqueduct, tunnel, fence, railroad, wagon road, or other structure or improvement upon land, and also architects, 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 in whole or part, describing, illustrating, or superintending such structure or work*

done or to be done, or in any part connected therewith, shall have a lien upon the property upon which they have rendered service, or performed labor, or furnished materials, for the value of such service rendered, labor done, or materials furnished, by each respectively, whether at the instance of the owner or of any other person acting by his authority or under him as agent, contractor, or otherwise; provided, that a lien or liens shall attach only to such interest as the owner or lessee may have in the real estate. (Italicized words do not appear in the 1933 revision.)

3731. *The provisions of this chapter shall apply to all persons who shall do work or furnish materials for the working, preservation, or development of any mine, lode, mining claim, or deposit yielding metals or minerals of any kind, or for the working, preservation, or development of any such mine, lode, or deposit in search of such metals or minerals, and to all persons who shall work or furnish materials upon any shaft, tunnel, incline, adit, drift, drain, or other excavation of any such mine, lode, or deposit; * * ** (Italicized words do not appear in the 1933 revision.)

3732. *The next preceding section shall not be deemed to apply to the owner or owners of any mine, lode deposit, shaft, tunnel, incline, adit, drift, or other excavation when the same shall be worked by a lessee, under bond or otherwise; but, in such case, persons entitled to a lien under this chapter shall have a lien on the leasehold interest and on the ores and mineral bearing rock or dirt*

mined and excavated by the lessee. (Italicized words do not appear in the 1933 revision.)

3747. All foundrymen and boilermakers *and* all persons performing labor or furnishing *machinery, or boilers, or castings, or other* material for the construction *or* repairing or carrying on of any mill, manufactory, or hoisting works *shall have a lien on such mill, manufactory, or hoisting works, for such work or labor done on such machinery, or boiler, or castings, or other material furnished by each respectively. And all the provisions of this chapter respecting the mode of filing, recording, securing, and enforcing the liens of contractors and others, and the word superstructure whenever it occurs in this chapter shall be applicable to the provisions of this section.* (Italicized words do not appear in the 1933 revision.)

The gist of Appellant's argument on pages 8 to 14 of its brief is that the revised version of the mechanics' lien law (Section 52-1-3, Revised Statutes 1933) broadened the previously enacted statutes to provide that work performed for the prospecting, development, preservation or working of an oil or gas well need only *concern* the property involved and need not be done *upon* such property or *for* the prospecting, etc. of such property. This was accomplished, it is argued, by the addition of the word "concerning" and the words "oil or gas well" in the revised statute. Because there is nothing in the revised statute to limit the applicability of the word "concerning" to liens for work done for the development of an oil or gas well (and Appellant makes no such contention), Appellant's argument *must* be that ever since

1933 work performed by *all persons named in the statute* need only *concern* the property involved and need not be performed *upon* or *for* such property.

It is our position that the word “concerning” has applicability only to liens given to architects, engineers and artisans. There being nothing indicating an intention to restrict applicability of the word to liens for work done for the development of oil or gas wells, we can test the soundness of Appellant’s argument by applying the word to liens given to other persons named in the statute. If the word “concerning” was interpreted as applying to the persons first named in the statute the following conflict would be produced: Whereas the first part of the statute gives liens to contractors, sub-contractors and all persons “performing labor *upon*, or furnishing materials *to be used in*” (Emphasis added) the construction, etc. of any building, structure or improvement “upon land”, the word “concerning” as construed by Appellant would broaden the act to give liens to persons whose labor is not *upon*, and whose materials are not *to be used in*, but which only “concern” such properties.

We submit that if the legislature had intended to make the sweeping change in the applicability of the statute, it would have done more to accomplish that result than to merely add the word “concerning” when the former statutes were condensed and revised. Realizing that it cannot base its case upon the mere addition of the word “concerning”, the Appellant tries to establish that the legislature made other changes in 1933 which, it is argued, indicate an intent to “specifically provide 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" (See page 13 of its brief). In so trying to support its position, Appellant makes a number of erroneous statements or assumptions. At the top of page 11 of its Brief, it states that 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." Appellant ignores the fact that prior to 1933 Section 3731, Compiled Laws of 1917, gave liens:

* * * to all persons who shall do work or furnish materials for the working, preservation, or development of any mine, lode, mining claim, or deposit yielding metals or minerals of any kind, or for the working, preservation, or development of any such mine, lode, or deposit in search of such metals or minerals, and to all persons who shall do work or furnish materials upon any shaft, tunnel, incline, adit, drift, drain, or other excavation of any such mine, lode, or deposit; * * *

On page 11 of its Brief, Appellant also erroneously states that "Prior to 1933, the statute gave liens only upon property *upon* which the parties named therein had rendered service, performed labor or furnished materials". Appellant overlooks the fact that prior to 1933 liens were given to architects, engineers and artisans for furnishing designs, plats, plans, maps, drawings, etc. describing or illustrating "such structure or work done or to be done, or in any part connected therewith". (Section 3722, Compiled Laws of 1917) The preparation of designs, plans and specifications certainly is not the performance of work or labor *upon* buildings or improve-

ments, nor is the furnishing of such documents the furnishing of materials *to be used in* the properties.

On page 12 of its Brief, Appellant argues about the meaning of the words "perform labor upon" and the words "shall do work for", and on page 13 concludes: "Again, it is no coincidence that these three changes appear together for the first time in 1933". It is not entirely clear what *three* changes Appellant means. Apparently, it refers to (1) the extension of the statute to oil and gas well properties, (2) the claimed change of policy to give liens for work which merely "concern" property, and (3) a change in the language from "perform labor upon" to "do work for" with reference to development of oil or gas wells. A careful comparison of the statutes as they existed prior to 1933 and as they were condensed and revised will disclose that the words "do work or furnish materials for" were in the earlier statute with reference to mines and mining claims.

A careful reading of the statutes will also disclose that there has been no broadening of the statute except to give liens to persons who work for, or furnish materials for, the development of oil or gas wells and quarries. Certainly there has been no broadening or extension of the statute to give liens to all persons, regardless of the classifications set out in the statute, who perform work or furnish materials which merely "concern" properties. The difficulty with Appellant's whole argument is that it is based on the entirely false premise that the legislature, by using the words "upon or concerning which", intended to broaden the definitions of all classifications of persons entitled to liens. Properly construed, the words "upon or concerning which" constitute a general description of the types or kinds of work and services performed

by the various classes of persons described in the statute—work done *upon* buildings by contractors, services performed by architects and engineers with respect to, or “concerning” buildings or other improvements, etc.

Some comparisons of statutory provisions will illustrate our contention that the legislature did not intend to broaden the classifications of persons entitled to liens other than to give liens to persons who worked or furnished materials for the development of quarries and oil and gas wells.

1. Prior to 1933 Section 3722 gave a lien to contractors etc. who performed labor *upon*, or furnished materials *to be used in* buildings, etc. There was no change in this classification in the revision which still provides that “contractors * * * and all persons performing labor *upon*, or furnishing materials *to be used in*, the construction * * * of any building, structure or improvement upon land” shall have a lien. Despite this specific language, Appellant would relate the word “concerning” back to this definition and broaden it to include contractors, etc. whose labor or materials merely “concerned” such buildings. We submit that this classification has not been broadened.

2. Prior to 1933 Section 3722 gave a lien to architects and engineers who furnished drawings, plans, specifications, etc., or superintendence or who rendered other like professional services or bestowed labor “in whole or part, describing, illustrating, or superintending such structure or work done or to be done, or in any part connected therewith”. The only change of any significance

with reference to this classification was that the legislature deleted the awkward and ambiguous words quoted above. The classification of architects, engineers and artisans entitled to liens is the same under both statutes.

3. Prior to 1933 Section 3731 gave liens to all persons who did work or furnished materials for the working, preservation or development of any mine, mining claim or deposit. The revised statute gives 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. The 1933 revision deleted language referring to mines or mining claims "yielding metals" and those "in search of such metals". Except for the addition of the words "quarry, oil or gas well" the revised provision is essentially the same as that which was in Section 3731 before 1933. With reference to the addition of the words "quarry, oil or gas well" it should be pointed out that in 1933 Section 3736, Compiled Laws of 1917, was not similarly changed. That provision is now Section 38-1-7, UCA 1953. It provides that original contractors and other persons must file their claims for record within certain periods after "performance of any labor *in*, or furnishing any materials *for*, any mine or mining claim. Regardless of the significance of the failure to extend the wording of Section 3736 to cover work on oil or gas wells, it seems obvious that the revision of 1933 did not broaden the classification of persons entitled to liens for work in developing mines

(and oil or gas wells) so far as the question whether the work had to be done for or upon the properties concerned or need only “concern” such properties.

As previously noted, the words “upon or concerning which” constitute a general description of the types or kinds of work required to be performed by the several classes of persons entitled to liens. The statute might just as well have provided that each of the classes of persons therein described shall have a lien upon the property “involved” and eliminate at this point in the statute a general description of the types of work or services performed.

POINT II

THE CONTRACT BETWEEN DAVIS AND THE DRILLER DID NOT COVER TRANSPORTATION CHARGES

Transportation of the rig from the site where the driller had last used it, or where the driller had it stored, to the drill site was not a subject about which Davis and the driller contracted. Marvin Davis’ uncontradicted testimony was that he was not “informed as to the whereabouts of the drilling rig that would be used by Walker and Wilson Drilling Company to drill this well”, and that he did not discuss that matter with Walker-Wilson. (TRB 23).

The distance that Walker-Wilson had to have the rig transported had no bearing whatsoever upon what Davis agreed to pay for drilling the well. For all that Davis knew, the driller might have had a rig on the immediately adjoining property—or it might have been

1000, or more, miles away. Transportation charges for hauling the rig from some near or distant point to the drill site was not an element considered by the parties in agreeing upon a price of \$8.25 per lineal foot of hole drilled. Among the drilling operations which the driller agreed to perform, for which he was to receive the compensation of \$8.25 per lineal foot drilled, were: "Moving in equipment", "rigging up", "drilling and reaming surface hole", "drilling full size hole", "reaming and conditioning hole for formation test", etc., etc., and "moving out". (Schedule "B" of the Contract, Plaintiffs Exhibit No. 37)

To move in equipment does not mean to transport it from some distant undisclosed location. To move it out does not mean to transport the equipment to some distant undisclosed location. At most those terms mean moving the rig onto and off the particular property where the drill site was located.

This Court in the case of *Morrison, Merril & Co. v. H. W. Willard & W. E. Stewart and J. B. Clayton*, 17 Utah 306, 311, 53 Pac. 832, pointed out that:

The extent of the right of the subcontractor under his lien will depend upon the original contract between the owner and the contractor.

The contract between Davis and the driller not having made any provision for the payment of transportation charges for hauling the drilling equipment, the Appellant has no lien for such charges.

POINT III

CHARGES FOR TRANSPORTATION OF EQUIPMENT SUCH AS A DRILLING RIG ARE NOT LIENABLE UNDER MECHANICS' LIEN LAWS

Our position in this regard may be briefly stated: it is, that charges made by a common carrier for transporting a drilling rig from a distant point to the site of its use are not items which will sustain a mechanic's lien in the absence of a statute specifically providing therefor.

This position is supported in the Texas decision of *Gray v. Magdalena Oil Co.*, 240 S.W. 693, wherein it was held that one who had hauled a "string of oil well tools, machinery and casing for the drilling of an oil well" was not entitled to such a lien. In construing the general mechanic's lien statute, Art. 5621, Rev. Civil Statutes, the court said on page 694 of 240 S.W.:

The statute does not appear to provide a lien upon anything hauled, but the person who labors or furnishes material, etc., to erect any house or improvements, etc., shall have a lien on such house, lot, or lots connected therewith, etc., to secure the payment for the labor done, etc.; so for this reason he has no lien.

On motion for rehearing it was also said:

Appellant in motion for rehearing suggests that the opinion is based upon article 5621, Revised Civil Statutes, when it should be based upon article 5639a. We are of the opinion that no lien exists under either article, under the facts of this case.

This action is against the owner of the well machinery, as shown by the original opinion. The owner of the oil, gas, etc., wells is not a party, but, if it had been, the same construction of article 5639a applies. See *McClellan v. Haley et al.*, 237 S.W. 627, and authorities there cited.

The statute last referred to, i.e. 5639a, as material here and as set forth in *Duty v. Texas-Cushing Oil & Development Co.*, 242 S.W. 495, 497, is as follows:

Any person * * * laborer, or mechanic, who shall, under contract express or implied, with the owner of any * * * gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or owner of any oil or gas pipe line right of way, or with the trustee, agent or receiver of any such owner, perform labor or furnish material * * * used in the digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well * * * shall have a lien on the whole of such land or leasehold interest therein * * *

It can hardly be said that the terminology used in the Texas statute, i.e., labor in "digging, drilling, torpedoing, operating, completing, maintaining or repairing" is subject to more restricted interpretation so as to include less than "prospecting, development, preservation or working" of any oil or gas well as used in the pertinent Utah statute.

Since the *Gray* case the Texas legislature has amended the statute to provide for mechanic's liens arising from transportation charges. Art. 5473, Chapter 3, Title 90, Vernon's Annotated Civil Statutes of Texas, as material here provides:

Any person * * * who shall * * * perform labor, furnish or haul material, machinery or supplies used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well * * * shall have a lien on the whole of such land or leasehold interest therein * * *

The same is true in Kansas where it is provided by Section 213, Chapter 55, General Statutes of Kansas 1935, that:

Any person who transports or hauls oil-field equipment under express contract with the owner or operator of any gas or oil leasehold interest in real property, or the owner or operator of any gas pipe line or oil pipe line or the owner of any oil-field equipment and material, * * * shall have a lien upon the interest of such owner in the oil-field equipment so transported and hauled. Said lien shall include, in addition to the charge for hauling or transporting, labor performed, or materials used and expended in the transporting, erecting, dismantling, loading and unloading of any oil-field machinery, equipment or supplies hauled or transported and shall be of equal standing with the contractor's lien provided by Section 55-207 of the General Statutes of 1935.

This legislation we believe is indicative of and in itself supports the theory which we here propound—that a special statute is necessary before leasehold interests may be subjected to mechanic's liens arising from transportation charges. Cf. *Green v. Hawkins & Antoon, La.*, 142 So. 742.

The case relied upon by Appellants in this regard, *Cleveland v. Hightower*, 108 Okla. 84, 234 Pac. 614, which has since been followed in that jurisdiction, held that under the statute extending liens to "Any labor in constructing or putting together any of the machinery used in drilling * * * any [oil well or] gas well" gave to one who with a team had hauled casing a distance of nine miles the status of a laborer and hence entitled to a lien for casing used in and which formed a part of the well.

To bolster its position as supposedly supported by this Oklahoma decision, Appellant cites *Cashman v. Russell*, 33 Ariz. 451, 265 Pac. 606, which involved the hauling of "groceries, lumber, powder, oil, steel, machinery, hay, barley, etc. to the mines as needed in their operation" and in extending a lien to such services the opinion specifically excluded in distinguishing *Santa Fe, P. & P. Ry. Co. v. Arizona Smelting Co.*, 13 Ariz. 95, 108 P. 256, and by citing with apparent approval *Union Traction Co. v. Kansas Casualty & Surety Co.*, 112 Kan. 774, 213 Pac. 169, any question which might arise with respect to a common carrier. Also cited is *Hill v. Twin Falls*, etc., 22 Idaho 274, 125 Pac. 204, wherein one hauling cement actually used in the construction of a dam was entitled to a lien for his services. The very quotation which is taken from this decision and appears in Appellant's brief on page 19 discloses the theory of that case to be that one hauling materials actually consumed in a construction thereby enhancing its value is entitled to a lien. Finally, a number of cases are cited on page 20 of the brief to the point that a mechanic's lien for transportation has been allowed when forming a part of the cost of the materials transported.

In the first place it cannot be said that these cases state what can be referred to as the uniformly accepted, or even the majority, rule. See *In re Kent Refining Co.*, 10 Fed. Supp. 662, *Williamson v. Hotel Melrose*, 110 S.C., 96 S.E. 407, 416, *Thomas v. Commonwealth*, 215 Mass. 69, 102 N.E. 428, and 57 C.J.S., pg. 540, Mechanics' Liens, Section 50. But be that as it may, we believe that a mere perusal of the authorities cited in this regard suffices to distinguish them from the case at bar. Moreover it has been held that transportation charges of a carrier, standing alone are not lienable, *Hayward Lumber & Investment Co., v. Ross*, 32 Cal. App. 2d 455, 90 P. 2d 135, and the "cost theory" can in no wise benefit the carrier here as the record is totally silent with respect to any proof of the "cost" of the rig being affected by its transportation. Cf. *Landreth Machinery Co. v. Roney*, 185 Mo. App. 474, 171 S.W. 681. The same must be true with respect to those cases which under dissimilar statutes have upheld liens for transportation charges when the transported materials, such as cement, have been used in and enhanced the value of constructed improvements, for here is a patent distinction, as pointed out in *United States v. Hercules Co.*, 52 F. 2d 451, between lienable transportation charges for such materials and charges for the transportation of heavy equipment which does not become a permanent part of an improvement but may be used thereafter for the same purposes any number of times.

We believe that any conclusion other than that reached by the trial court in this regard would undermine the very purpose and intent of all mechanic's lien laws. If it may legitimately be said that this purpose is to prevent a property owner from acquiring an unjust

enrichment at the expense of innocent laborers or furnishers of supplies, certainly to permit a common carrier a mechanic's lien for charges incident solely to the four hundred mile transportation of a drilling rig which never was nor ever would be the property of Davis and with which the latter had absolutely nothing to do, would subvert that purpose and work an undue hardship upon this or any other leasehold owner far beyond any attendant benefits which could arise from the temporary presence of a rig at the drilling site. It is readily observed that the transportation was in this instance to the benefit only of the driller, and the greater the distance involved, the greater became the detriment to the leasehold owner.

If there were a law expressly subjecting a leasehold interest to a lien for transporting a rig 400 miles, 1,000 miles, or half way across the globe, the owner of such interest could then by contract protect himself accordingly. But surely the most grave injustice would result to him were he subjected to such charges upon the basis of a general mechanic's lien law providing only for remedies against him by those whom he should have expected to render services.

We submit that no authority could be cited to support the position of Appellant and the extent to which it would now have this Court go in sustaining the lien for the charges at issue.

CONCLUSION

Appellant's forced and unnatural construction of the Utah law violates fundamental rules of statutory construction. Its arguments about public policy and liberal construction of the statute, if followed and adopted, would

lead to results clearly not contemplated by the Legislature. Appellant would have the Court, in the name of liberality of construction give a mechanic's lien to a common carrier for transportation charges about which the driller and the owner of the leasehold interest had not contracted and which bear no relationship to the subject matter of that contract.

We submit that the trial court was correct in holding that Appellant's charges for transporting the drilling rig were not lienable under the Utah Statute.

Respectfully submitted,

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