Kentucky Law Journal

Volume 31 | Issue 4 Article 7

1943

Leslie's Adm'x et al v. Branham et al

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enjoin the use of artificial means to stimulate the flow because the flow of his adjoining well is lessened.[10]

The leading case holding that one may pump a gas well is that of *United Carbon Co. et al.* v *Campbellsville Gas Co.*[11] In their opinion the court stated:

> "It being settled that the owner of an oil well may pump the same, although the flow of wells in adjoining land may be thereby diminished, we see no reason why the same result should not attach to the question of pumping from gas wells."

The court also reasoned that if the use of nitroglycerine were allowed, there was really no valid reason for not allowing them to use a pump, the latter being merely another artificial means.[12] This view and the reasons advanced in support of it seem to be the most logical.[13]

In conclusion, it appears that the more reasonable rule is to the effect that one can use artificial means to stimulate the flow of either oil or gas if there is no prohibitive statute to aid in the conservation of natural resources.

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LESLIE'S ADM'X et al v. BRANHAM et al

The defendant, under a contract to cut, haul and deliver logs to a sawmill, employed laborers and bought material for carrying out the contract. Later he became insolvent and was sued by a number of his employees for their wages and by a materialman for materials furnished and cash advanced. Before the defendant had acquired any such indebtedness, however, he had executed to the plaintiff a mortgage on his teams, harnesses, wagons and logging equipment. When the plaintiff sued to obtain a judgment for his debt and a sale of the mortgaged property, the actions of the laborers and materialman were consolidated with the plaintiff's petition. Under Chapter 79 of the Kentucky Statutes,[1] the laborers and the

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[10] Manufacturers' Gas and Oil Co., et al. v Indiana Natural Gas and Oil Co., 155 Ind. 461, 57 N.E. 912, 50 L.R.A. 768 (1900) (A statute made pumping illegal and in this case there would also be a destruction of the field if they allowed the use of a pump), Hathorn et al. v. Natural Carbonic Gas Co., 194 N.Y. 326, 87 N.E. 504, 23 L.R.A. (NS) 436, 128 Am. St. Rep. 555, 16 Am. Cas. 989; affirming 128 App. Div. 33, 112 N.Y. Supp. 374, modifying 60 Misc. Rep. 341, 113 N.Y. Supp. 485 (1909) (In this case the defendant, by pumping, was wasting part of the product and the court said he could be enjoined under common law and by statute).

[11] 230 Ky. 275, 281, 18 S.W (2d) 1110, 1113 (1929).

[12] "If the flow of natural gas may be stimulated by the use of nitroglycerine, we see no good reason why it may not be stimulated by the use of a pump." *Id.* at 283, 18 S.W (2d) at 1113.

[13] Louisiana Gas and Fuel Co. v. White Bros., 157 La. 728, 103 So. 23 (1925), *Mills, op. cit. supra* note 5, Sec. 271.

[1] Now K. R. S. Chapter 376.

materialman claimed priority, but the plaintiff contested their right to a superior lien on the grounds (1) that none of the claimants had filed notice as required by Section 2463[2] so as to perfect superior liens, and (2) that all claims relied on as superior to the mortgage accrued after the mortgage was given and for that reason were not entitled to priority over his mortgage. The property was sold and the court directed the net fund for distribution to be prorated between the laborers and the materialman. Upon appeal it was held that Section 2463 was inapplicable and that Sections 2487 to 2491[3] were to be applied. The Court of Appeals found it was error to allow the furnisher of material a lien superior to the mortgage, but affirmed the decree as to the laborers. *Leslie's Adm'x et al.* v. *Branham et al,* 289 Ky. 409, 158 S. W (2d) 949 (1942).

By Section 2487, a lien is created in favor of the employees on the "property or effects of any mine, railroad, turnpike or canal or other public improvement company, or of any owner or operator of any rolling mill, foundry or other manufacturing establishment" when the owner becomes insolvent and the property is assigned for benefit of the creditors, or when it "shall come into the hands of an executor, administrator, commissioner, receiver of a court, trustee or shall in any wise come to be distributed among the creditors, whether by operation of law or by the act of such company, owner or operator in such business "

Section 2488[4] makes the lien for wages arising within six months prior to distribution among creditors given by Section 2487 superior to any mortgage theretofore or thereafter created.

Under these statutes the only basis for the superior lien of the employees is that their employer was engaged in a "manufacturing establishment." It is difficult to tell what the term "manufacturing" as used in Section 2487 includes. It has been held that cutting ice and storing it in a building is not manufacturing, as nothing new is produced.[5] Nor is an ice cream confectionery a manufactory, although various complicated machinery is used.[6] These are but two instances showing the term has reference to producing something new by machinery which the defendant in the principal case was not required to do by his contract. This same idea was expressed in *Muir* v. *Samuels,*[7] when the question considered was whether or not a laundry was a manufacturing establishment within the meaning of the lien laws of this state, and the court, in holding that it was not, said: "The only business of a laundry is to transform soiled into clean linen. It is true that this is done largely by means of machinery, and requires the use of an engine and boilers, and other

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[2] Now K. R. S. 376.010.
[3] Now K. R. S. 376.150 to 376.190.
[4] Now K. R. S. 376.160.
[5] Hittinger v. Inhabitants of Westford, 135 Mass. 258 (1883).
[6] City of New Orleans v. Manessier, 32 La. Ann. 1075 (1880).
[7] 110 Ky. 605, 62 S. W 481 (1901), *accord,* Commonwealth v. Keystone Laundry Co., 302 Pa. 289, 52 Atl. 326 (1902).

appliances ordinarily used in a manufacturing establishment; but, after all, nothing new is produced. Where only labor is applied to a material and that material remains unchanged, that process is not manufacturing."

In defining a manufacturing establishment within the ordinance exempting such an establishment from taxation, the term "manufacturing" has been limited to concerns producing goods from raw materials by manual skill and labor.[8] Therefore, it would appear that the laborers' lien in the case under discussion is not superior to the plaintiff's mortgage, although the statute gives a lien in case of manufacturing establishments. The opinion cites *Bogard* v. *Tyler's Adm'x*,[9] to the effect that the business in which the defendant was engaged was that of a manufacturer and came within the terms of Section 2487. That case really held that a sawmill at which lumber is sawed for sale on the market is a manufacturing establishment. Many other cases,[10] one of which cites the Bogard case,[11] stand for the same proposition. The defendant's business, however, did not consist of a sawmill and he was not required to produce goods from a raw state; he was simply to cut, haul and deliver logs. The work included in the term "manufacturing" is of a more permanent nature than that which the defendant contracted to do. This view is substantiated by a Pennsylvania case,[12] in which the court stated that "works, mines and manufactory," in a statute preferring claims of laborers against the owner, etc., of any works, mines or manufactory, import complete and independent branches of business, of a fixed and permanent character as opposed to a temporary employment that is merely incidental to any particular branch of business.

It would seem from the cases already referred to, that the business of cutting, hauling and delivering logs does not come within Section 2487 of the Kentucky Statutes. It follows that if the materialman or laborers in the principal case have a lien, it is under Section 2463. However, all liens created by that section are inferior to a mortgage given before the furnishing of materials or the beginning of the labor, and since the plaintiff's mortgage was prior, the appellate court should have adjudged it superior to the defendant's liens for labor and materials.

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[8] Standard Tailoring Co. v. City of Louisville, 152 Ky. 504, 153 S. W 764, 44 L. R. A. (N.S.) 303 (1913)

[9] 21 K. L. R. 1452, 119 Ky. 637, 55 S. W 709 (1900).

[10] In Re Chandler, 5 Fed. Cas. 447 (1870), Graham v. Magann, Fawke Lumber Co., 26 K. L. R. 70, 118 Ky. 192, 80 S. W 799 (1904), State ex rel Browne v. A. W Wilbert's Sons Lumber & Shingle Co., 51 La. Ann. 1223, 26 So. 106 (1889), Gilpatrick v. Downie, 143 Wash. 671, 255 Pac. 1028 (1927)

[11] Graham v Magann, Fawke Lumber Co., 26 K. L. R. 70, 118 Ky. 192, 80 S. W 799 (1905) cited *supra* note 10.

[12] Pardee's Appeal, 100 Pa. 408 (1882).