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Does a Lien Exist on a Motor Vehicle for Oil and Gas Furnished for Its Transportation?

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Fayette Circuit Court

NOTES

DOES A LIEN EXIST ON A MOTOR VEHICLE FOR OIL AND GAS FURNISHED FOR ITS TRANSPORTATION?*

FAYETTE CIRCUIT COURT

ESTER BELLE BROWN, &c., - - - - *Plaintiffs,*

vs.—OPINION OF THE COURT

MRS. H. H. (MARGARET C.) WILSON, - - *Defendant.*

The question herein submitted for decision is whether the plaintiff has a lien upon the automobile of the defendant for oil and gas furnished by the plaintiff to the defendant and used in the operation of the automobile.

In the case of *Doll* v *Young,* 149 Ky 34, the Court, in discussing statutory lines, said.

"The security afforded to mechanics and material men by the statutes of the several states of the union has no recognition in the common law, but rests and must find support in the statute creating the lien or security. The language of each particular statute therefore must govern its interpretation without much aid from the judicial declarations from other jurisdictions."

If I understand the language correctly, it means that each statute giving a lien to mechanics and material men must be construed according to the language of the statute, and this rule of construction is, of course, applicable to all other statutory liens.

Section 3463, of the Kentucky Statutes, gives a lien to one who performs labor and furnishes material in the erection, altering or repairing of a house, building or other structure, or for any fixture or machinery therein, or for the erection of cellars, cisterns, vaults, wells or for the improvement in any manner of

* An opinion by Judge R. C. Stoll, formerly Judge Fayette Circuit Court. This is the third in a series of opinions by Judge Stoll. In many instances they discuss the constitutionality of statutes and questions of law not as yet passed upon by the Court of Appeals of Kentucky.

real estate under certain conditions. This statute clearly means that the labor or material must actually go into the improvement of the realty, so in the case of *Avery* v. *Woodruff*, 144 Ky 227, the Court held that a material man had a lien for lumber out of which the concrete forms were made for the creation of a concrete building, the Court saying·

"In the case at bar the material furnished by the appellant was raw lumber to be used in the erection of the concrete building, and it was contemplated by the parties at the time it was furnished that it would be totally used up in making forms in the erection of Avery & Sons' plant. If the lumber had been furnished to make a scaffold, molds or forms with the intention of using them in the erection of that building and then carry them away and use them in constructing other buildings, then no lien would attach, as they would be regarded as a part of the appliances of the workman and would occupy the same place as a hammer, saw, or other tool used by the workman for which no lien is allowed by the statute."

On the other hand in the case of *Bickel* v. *National Surety Company*, 156 Ky 695, the court held that the owner of an engine who rents it to a sewer contractor to use in the construction of a sewer has no mechanic's lien for the rent of the engine, although used in the construction of the sewer.

Section 2462, of the Kentucky Statutes, gives a lien on railroads to all persons who furnish labor, material, supplies or teams for the *construction or improvement* of a canal, railroad or turnpike, and therefore the Court held, in the case of *Carson & Co.* v *Shelton, Etc.*, 128 Ky 248, that a storekeeper who furnished supplies to hands who were working on a railroad was not entitled to a lien for supplies so furnished because they were not furnished for the construction or improvement of the road.

It will be noticed that Sections 2463 and 2492 of the Kentucky Statutes, as construed by the Court of Appeals, require by express language that the material or supplies should actually go into the construction or improvement of the property

The Automobile Statute, however, differs materially in language from the two statutes above referred to, in that it nowhere contains any express language requiring the accessories or supplies to go into the improvement of the car. This statute is in part as follows. (2739h-1.)

"All persons, individuals or corporations in conducting the business of selling, repairing, furnishing accessories or supplies for motor vehicles shall have a lien on such motor vehicle for the reasonable or agreed charges for repairs, work done, accessories or supplies furnished for or on machines, and for storing or keeping said machine, and such

persons, individuals or corporations may detain all motor vehicles in their possession on which work has been done by them until the reasonable or agreed charges therefor have been paid."

The question then to be determined is whether the supplies for motor vehicles must actually go into the improvement or repair of a motor vehicle, or whether it includes gasoline and oil, which are necessary for its operation. It must be remembered that Courts do not concern themselves with the wisdom of an Act, that is for other branches of government. It is the duty of the judiciary only to interpret an act, and in so construing it the Courts seek to arrive at the legislative intention. Unless prohibited by the constitution the Legislature may pass any act it desires, and, this being the function of the legislative branch of the government, it is the duty of the Executive to approve or disprove the Act, or to permit it to become a law without his approval.

It must be presumed that the legislative branch of the government has knowledge of the statutes of Kentucky as well as the interpretation placed on such statutes by the Courts; and in Sections 2463 and 2492 the Legislature, by the language in the statute itself, provided that the material and supplies should go into the improvement or repair of the property, and the courts, following the language of the Legislature, so construed the statutes.

In the Motor Vehicle Statute, there is no such expressed provision, and so in order to arrive at the intention of the Legislature, we must consider why the Legislature used different language in the Motor Vehicle Statute than it used in the other statutes above referred to, and to ascertain, if possible, the significance of this fact. If the Legislature meant that the supplies must go into the repair and improvement of an automobile, we are naturally compelled to inquire why the Legislature, having knowledge of the former statutes and the interpretation placed on them by the Courts, did not so expressly provide, and why it did not use language identical or similar to that used in the former statutes. By using different language did the Legislature not mean something different?

On the other hand, under Section 2487 of the Kentucky Statutes, when a railroad, manufacturing plant or other enterprise, as set out in the Statute, becomes insolvent and is in the

hands of a trustee, etc., for the benefit of creditors, the employees have a lien on the property "and the persons who shall have furnished materials or supplies *for carrying on or operating* any railroad shall likewise have a lien" on the property This language has also been construed by the Court of Appeals, and the language of the statute, as well as the construction placed on it by the Court of Appeals, are presumed to be known to the Legislature.

In the Motor Vehicles Law it is not provided that a lien shall exist for supplies used in carrying on or operating the vehicle, and, therefore, the question naturally arises that, if the Legislature meant to give a lien for supplies used in the mere operation of a motor vehicle, why did it not say so, as it did in the statute last quoted? It will then be seen that the Legislature, knowing the language used in the previous laws enacted by it, and knowing the interpretation placed on these laws by the Courts, failed to use the language used in either of the above mentioned statutes, so in accordance with the principles laid down in the case of *Doll* v. *Young,* supra, the Motor Vehicle Statute must be construed in accordance with the language used in it. The other statutes and the decisions of the Court of Appeals construing them are of very little assistance in construing the statute in question. The statute gives a lien to persons conducting the business of selling, repairing, furnishing accessories or supplies for motor vehicles for the reasonable or agreed charges for repairs, work done, accessories or supplies furnished for or on machines, and for storing and keeping said machines.

An automobile accessory, as I understand the term, means something that is added to the automobile, such as a spot-light, a clock, a speedometer, a bumper, a shock absorber, or such similar device not always necessary perhaps to its actual operation, but something which increases the utility of the vehicle as originally manufactured, and which renders its operation more comfortable, more safe or more convenient. A bolt used in repairing an automobile is not an accessory, neither is a new piston rod which is placed in the engine of the machine to take the place of an old one. Such things are merely supplies used for the purpose of repairing the automobile. Upholstering and

the curled hair padding used in such work and covered by leather or cloth would also come under the head of supplies.

In arriving at the proper construction of the language of this statute, let us leave out, for the moment, the word accessories, for I have already determined the proper definition of this word. The statute would then read that the lien is given for repairs, work done and supplies for or on the machine. What supplies? Manifestly, supplies necessary for repairing or for doing work on the machine. I am strengthened in this belief by the further provisions of the Statute, which, when read as a whole, indicates unmistakably that the lien given is for work done on a motor vehicle, for accessories furnished for a motor vehicle, for repairs done on and for the supplies used in making repairs on or for an automobile and that the word supplies, as used in the statute, does not include oil or gasoline used in the operation of a motor vehicle. Surely the Legislature did not mean, when it passed this Act, that the Standard Oil Company, or the Indian Refining Company, or any other corporation who furnishes a person at his home or place of business oil or gasoline to operate a motor vehicle should be given a lien on the car, nor did it intend that the various gasoline filling stations should have a lien on every car to which it furnishes gasoline or oil. Such a result would, in my opinion, place a construction on the statute that was never intended by the Legislature. In construing a statute it is always proper to consider the history of the time and ascertain the evil which the acts was designed to prevent. It is a matter of common knowledge that, prior to the enactment of this statute, many owners of automobiles frequently placed their cars in a garage for storage, or for the purpose of having them repaired, or to have new accessories placed upon them, and then would drive away without paying the bill which had been incurred, leaving the garage men to the unsatisfactory and inadequate remedy of an ordinary suit at law. A careful reading of this Act as a whole leads to the conclusion that the motor vehicle upon which the lien is given must be in the custody of the person in whose favor it accrues. If this were not so the Act would not provide as it clearly does, that the lien shall not be lost by the removal of such motor vehicle from the garage, shop, or premises of the person, individual or corporation performing labor, repairing, furnishing accessories or supplies therefor.

Nothing can be removed until it has theretofore been at or in the place from which it is taken. Generally, it is evident that the statute contemplates such accessories and supplies as are ordinarily put on or furnished under circumstances which require the automobile to be placed in the custody of the person performing the work, and it is a fact, known generally, that oil and gas are such commodities as may be furnished to an automobile owner without the machine ever being in the garage or place which sells these commodities. If the term supplies, as used in this statute, means gasoline or oil, then certainly every person furnishing them is entitled to a lien, and yet many persons have gasoline and oil delivered to their own premises by oil companies, and the motor vehicle in which they are used is never in the custody of the person or company dealing in these commodities. If these things are supplies within the meaning of this Act, then the Company that delivers a can of oil at the home of the automobile owner has a lien upon the car in which it is used, just the same as if the oil had been delivered to the car directly from the tank in front of the garage or from a receptacle inside the garage, and this I do not believe that the Legislature ever intended to do.

I am, therefore, of the opinion that under Chapter 75, of the Acts of 1918, which is Section 2739h-1 of the Kentucky Statutes, no lien exists on a motor vehicle for oil or gasoline furnished for the purpose of its operation.

I am of the opinion that the demurrer to the petition should be overruled, for it states a cause of action for a debt, but inasmuch as the exhibit controls the petition, the petition should be so reformed as to set out the amount claimed to be due for oil and gasoline used in the operation of the car separately from the other items for which the plaintiff has a lien, and then the Court will strike all portions of the petition which claim a lien for oil and gasoline furnished for the operation of the car.

The motion to paragraph the answer should be sustained, and I will not rule on the motions of the plaintiff until the petition is properly paragraphed.

R. C. STOLL, *Judge.*