Lare, John G. v. Matlack, George et al 1862 St. Louis 468/4

Old Box 615/13

George Matlock & Sons

mechanic's lien 157.60
lumber
remitted 7.60 as it'd be in
juris. of Law Comm. Court

32
262

A = CO Colman
Bary
R & R
M 62
F 59

LC = found for M

O = property wasn't described
w/enough certainty for lien
to be enforced

1.

State of Missouri }
County of St. Louis } ss.

Be it remembered that heretofore, to wit; on the 17th day March 1859 there was filed in the office of the Clerk of the Law Commissioner's Court of St. Louis County a petition in the words and figures following:

State of Missouri }
County of St. Louis } In the Saint Law Commissioners Court. April Term 1859.

George Matlack, Albert Matlack & Earl Matlock Copartners doing business under the name and style of George Matlack & Sons, plaintiffs

vs.

John G. Gare, Defendant

Plaintiffs state that defendant owes them the sum of one hundred and fifty seven $\frac{60}{100}$ Dollars on a/c of lumber and materials furnished and delivered by plaintiffs to defendant at defendants instance and request, Plaintiffs also further state that said lumber and materials were furnished to and used in the construction of two certain two story brick buildings situated on the East side of 5th Street, between Franklin Avenue and Morgan Streets in the City of St. Louis, Plaintiffs also further state that said lumber and materials were furnished to said defendant as the owner of said buildings and that they filed in the office of the Clerk of the Saint Louis Land Court Mechanics Lien containing a just and true account of the demand due them a certified ~~of~~ copy of which said lien, here

2.

with filed. Plaintiffs therefore ask Judgment against said Defendant for the said sum with Interest and costs

Aug. W. Lewis.
C.P. 7

Aug. W. Lewis atty for plaintiffs makes oath and says that he believes the above and foregoing petition and the matters therein to be true as stated.

Sworn to and subscribed before me this 17th day of March 1859
H Dusenbury
Law Commr.

Aug. W. Lewis.

Seven Dollars and sixty cents of the amount claimed in the above petition is hereby remitted, leaving only one hundred and fifty Dollars as the amount claimed by plaintiffs

Aug. W. Lewis.
for plaintiffs

And afterwards to wit: on the 19th day of March 1859 a Summons was issued of which the following is a copy:

The State of Missouri
To the Marshal of St. Louis County. Greeting
We Command you to summon John G. Gare, to appear before the Law Commissioners Court of St. Louis County on the first day of the next term thereof, to be held at the City of St. Louis, within and for the County of St. Louis, on the first Monday of April next, then and there to answer the complaint of George Matlack, Albert Matlack and Earl Matlock as set forth in the annexed petition, and have you then and there this writ.

3.

Witness, Frank Sell Clerk of the Law Commissioners Court of St. Louis County with the seal of said Court hereto affixed at office, in the city of St. Louis this 19th day of March in the year of our Lord one thousand eight hundred and fifty nine.

S. S.

Frank Sell Clerk

Endorsed on the writ is the following return:
Executed this writ in St. Louis County March 19th 1859 by delivering a true copy of the same with the petition to the within named defendant

Peter Wegman
Marshal.

And afterwards on the 9th day of April 1859 the following proceeding was had.

George Mattock and others vs John G. Lare } Answer filed.

Said answer is as follows, to wit: ——

George Mattack, Albert Mattack & Carl Mattock, plaintiffs vs John G. Lare Defendant } In the Law Commissioners Court of St. Louis County

April Term 1859.

The Defendant for answer to the petition of the plaintiffs says that he has not any knowledge or information sufficient to form a belief whether the said plaintiffs constitute the firm of George Mattack & Sons or whether the said plaintiffs delivered to the said defendant lumber, for which the defendant now owes them the sum of One hundred and fifty seven

4. 60/100 Dollars or any other sum of money: or whether any materials furnished by the plaintiffs were used in the erection of the two houses described in the petition of the plaintiffs: or whether the said plaintiffs filed in the office of the Clerk of the St. Louis Land Court their Mechanics Lien or a just and true account of the demand dew them; and therefore denies the same and requires proof thereof, on the trial of the cause. This defendant further answering states that he did procure of a firm by the name of and known as Geo. Matlock, and son a quantity of lumber which was used in the construction of two certain houses erected by him upon a lot of ground belonging to one Chalmer D. Blossom and held by this defendant under a lease thereof, which said lease was for a term of years and has been forfeited for nonpayment of the Rent, prior to the commencement of this suit or the filing of any alleged lien, but whether the same referred to by plaintiffs in their petition he does not know, nor has he any knowledge or information sufficient to form a belief; and the defendant denies that the plaintiffs are entitled to a judgment in this action against him for the sum of one hundred and fifty seven 60/100 Dollars or any other sum whatever.

Bland & Coleman
Deft's attys

St. Louis County, ss

Charles D. Colman, one of the Attorneys of the Defendant, being sworn says that he believes the foregoing answer and the matters therein as stated he believes to

be true.
Sworn this 9th day of April 1859 before me
A. Dusenbury
Law Commissioner

C. D. Colman

And afterwards, to wit: on the 23d day of June 1859 the following proceedings were had:

George Mattock, Albert Mattock & Earl Mallock vs John G. Lare

This day come the parties by their attorneys and waiving a Jury submit the case to the Court and the Court having heard the evidence and proofs herein doth at the request of counsel order this case to be placed on the Law Docket for argument

Afterwards on the 2d day of July 1859 the following proceedings were had

George Mattock vs John G. Lare

This case being argued and submitted by counsel of the parties, is taken under advisement by the Court.

And afterwards on the 11th day of July 1859 the following proceedings were had:

George Mattock, Albert Mattock and Earl Mattock vs John G. Lare

This day come the parties by their attorneys and submit this case to the Court and the Court having heard the evidence and proofs herein and being fully advised of the premises doth find that the defendant is indebted to the plaintiffs in the sum of One

6. hundred and fifty Dollars. It is therefore considered by the Court that the plaintiffs recover of the defendant the sum aforesaid in form aforesaid by the Court found and their costs herein expended and thereof have execution. And it appearing to the Court that this is an action upon a Mechanics Lien, it is further considered and adjudged by the Court that if no sufficient property of the defendant be found to satisfy the judgment, the same shall be levied out of the property chargeable with the lien herein, viz: two certain two story brick buildings, situated on the East side of Fifth Street between Franklin Avenue and Morgan Streets in the City of St. Louis. And it is further ordered by the Court that a transcript of this Judgment and the proceedings herein be filed in the Clerk's office of the St. Louis Land Court.

And afterwards on the 13th day of July 1859 a motion in arrest of Judgment ~~and~~ also a motion for a new trial were filed.

Which said motions are as follows. to wit:

George Mattock & others vs John G. Lare } In the Law Comrs Court of St. Louis Co. June Term 1859.

And now at this day comes the defendant and moves the Court to arrest the Judgment in this cause for the following reasons.

1st Because the Court has no jurisdiction of the subject matter of the suit, the Land Court of St. Louis County having exclusive Jurisdiction thereof

7. 2d. Because the amount claimed by virtue of the Lien filed in the Office of the Clerk of the St. Louis Land Court exceeded the sum of one hundred and fifty Dollars and the Jurisdiction of the Court

C. D. Colman
Deft's atty

Copy of Motion for new Trial.

George Mattock and others
vs
John G. Lare

In the Law
Comrs Court of
St. Louis Co.
June Term 1859.

And now at this day comes the said defendant and moves the Court to set aside the Judgment rendered in this cause and grant him a new trial therein for the following among other reasons:

1st Because the Court had no jurisdiction of the subject matter of the action.

2d Because the amount claimed by the Lien exceeded the amount which this Court can take Jurisdiction of.

3d Because the amount claimed by the petition exceeded the Jurisdiction of the Court.

4th Because the Court without right or authority allowed the plaintiffs to amend their petition so as to bring the amount for which Judgment is claimed within the Jurisdiction of the Court, under Defendants objection.

5th Because the proof did not sustain the petition.

6th Because the Court ~~rejected~~ admitted in proper ~~and legal~~ evidence ~~offered by defendant~~.

on the trial under the objection of the defendant.

7th. Because the Court rejected proper and legal evidence offered by defendant.

8th. Because the Judgment is contrary to Law & Evidence and is unsupported by either Law or Evidence.

C. D. Colman
Deft's Atty

And afterwards to wit: on the 23d day of July 1859, the following proceedings were had:

George Mattock, Albert Mattack & Earl Mattack vs John G. Lare } Now at this day comes the defendant by his attorney and moves the Court to set aside the Judgment herein rendered and grant a new trial and the Court having heard the said motion of defendant's attorney and being fully advised thereof doth overrule the same.

And afterwards to wit: Same day. the following proceedings were had:

George Mattack Albert Mattack & Earl Mattack vs John G. Lare } And now at this day comes the defendant by his attorney and moves the Court to arrest the Judgment in this cause, and the Court having heard the said motion and being fully advised thereof, doth order the same to be overruled.

And afterwards to wit: July 27th. 1859 the following proceedings were had:

9.

George Mallack, Albert Mallack & Earl Mallack
vs
John G. Lare

} Bill of Exceptions filed.

said Bill of Exceptions is as follows:

George Mallack and others
vs
John G. Lare

} In the Law Commissioners Court of St. Louis County. June Term 1859.

Be it remembered that this cause came on to be tried before this Court on the 7th day of July A.D. 1859 before this Honorable Court, a Jury being waived by both parties.

The plaintiffs to maintain and prove the issue on their part offered in evidence an exemplified Transcript of the Lien filed by them in the office of the Clerk of the St. Louis Land Court, of which the following is a copy:

"(said Transcript being filed on same day with the petition)

St. Louis Jany 1st 1859

Jno. G. Lare,

Contractor and owner,

Indebted to George Mallack, Albert Mallack and Earl Mallack, copartners doing business under the name and style of George Mallack & Sons.

For lumber delivered to and used in construction of two three story brick houses situated on the East side of 5th Street between Franklin Av. and Morgan Street and reputed to be owned by the said Jno. G. Lare

10.

1858.

May 21st	Do 500 of 3 rate		2c	10.00
" "	" Hauling			.30
June 24	" 500 of 3 rate		2c	10.00
"	" Hauling			.50
July 1st	" 1400 ft. 3 rate		1½	23.10
	164 " 2 rate Y.P. flooring		3½	5.74
19	" 104 " Dress 2 Rate		3½	3.64
	250 3 Rate	14s	1¾	4.37
	290 " Do	16	"	5.07
	500 " 2 Rate		3c	15.00
29	500 " Do		3c	15.00
	308 " 3 Rate	14s	1¾	5.39
	200 " Do	12	"	3.50
Aug 12.	3p 12f 3-4 = 8 lf		2c	.72
	500 ft. 12f 2x4		1¾	8.75
	500 " 1in 2 Rate		3c	15.00
16	500 " 2x4		1¾	8.75
	Amt Brot over			134.83
Sept. 1	250 f. 3 Rate	18	1¾	4.37
	120 " Do	16	"	2.10
	4p 12f 3x4			.96
" 16	500 f. 3 Rate		1¾	8.75
	200 " 1x2 Rate		3c	6.00
	17 ft Y. Pine			.59
				157.60

State of Missouri
County of St. Louis } ss.

Earl Matlack for himself and co-plaintiffs being duly sworn upon his oath says that the above and foregoing is a just and true account of the amount due Geo. Matlack & Sons by the said John G. Lane for materials furnished upon the building erected, as above described and

11. that the balance due of one hundred and fifty seven dollars and sixty cents accrued within six months from the date of the last delivery of lumber and materials as above stated, and that the above is a true description of the buildings and improvements upon which said materials were furnished and upon which he claims a lein and also that the said lumber and materials were furnished and delivered to said John G. Lare under contract with said Lare, as the owner of said houses herein before described.

Earl Matlack

Sworn and subscribed
before me this 16th
February 1859.
Seal S. J. Levi
Notary Public.

State of Missouri }
County of St. Louis } ss. I, Charles A. Mantz
Clerk of the St. Louis Land Court within and for the County aforesaid, certify the foregoing to be a true copy of the Mechanics Lien No. 1162. filed March 14th 1859. as fully as the same remains on file in my office.

Seal In Testimony Whereof I hereto set my hand and affix the seal of said Court at office in the City of St. Louis this 17th day of March 1859.

Charles A. Mantz Clerk

85 cts. paid by A N Lewis Esq

to which the Defendant objected upon the ground that the Court had no jurisdiction of the subject matter of the action

the amount claimed to be due by the account filed in the office of the Clerk of the St. Louis Land Court, as also the amount claimed in the Petition, exceeding the Jurisdiction of this Court.

The plaintiffs thereupon asked leave of the Court to remit Seven 10/100 Dollars of the amount claimed in the petition, so that the amount claimed thereby would only be one hundred and fifty dollars, which was objected to by the defendant, for the reason of the want of jurisdiction in the Court, and also because the amount claimed in the account of the demand filed in the office of the Clerk of the Land Court determined the Jurisdiction, and thereupon the Court permitted the plaintiffs to amend their petition, and they did so amend the same by adding at the foot thereof the following:

(For which see foot of petition, page 2.)

which is the only change made, to all of which the defendant then & there excepted.

The plaintiffs then again offered in evidence said exemplified Transcript above set forth to which the defendant still objected for the reasons before mentioned and because the evidence was not admissible under the petition & did not prove the facts therein alleged, and because the Transcript was not competent evidence and because the necessary facts required by Statute were not set forth in the Statement filed in the Office of the Clerk of the St. Louis Land Court, or in the Transcript offered, but the Court overruled the objections and admitted the same in evidence, to all of which the Defendant then & there duly excepted

The plaintiffs also gave evidence tending to establish their copartnership & the sale & delivery of the Lumber sued for and for the purposes in the plaintiffs Petition mentioned and thereupon the cause was submitted to the Court for decision.

The foregoing is the substance of all the testimony given upon said trial and the Court rendered a judgment in favor of the Plaintiffs and against the Defendants and declared them entitled to their Lien against the property described in their petition for the sum of One hundred & fifty Dollars, to which the Defendant then and there duly excepted.

Afterwards and within four days, the defendant duly filed a motion in arrest of Judgment of which the following is a copy - viz.

(For copy of motion see pages 6 & 7.)

And afterwards on same day a motion for a New Trial as follows:

(For copy of Motion for New Trial see pages 7 & 8)

Both of which were afterwards separately submitted to the Court & were severally overruled, to the decision of each of which in overruling the same the Defendant then & there duly & severally excepted to the action of the Court upon each motion.

And because none of the exceptions so offered & made to the action & decisions of the Court on the trial of said cause, the Court therefore hath to this Bill of exceptions, setting forth such exceptions signed his name, in accordance with the Statute in such case made & provided this 27th day of July AD. 1859 as yet of Same Term 1859.

N. Dusenbury (Seal)
Law. Comm.

And afterwards to wit: on the 28th day of July 1859. the following proceedings were had:

George Mattack, Albert Mattack & Earl Mattack vs John G. Lare — This day comes the Defendant and files his affidavit and prays an appeal to the Supreme Court and also files an Appeal Bond with himself as principal and C. D. Blossom and D. S. Carter as sureties which Bond is approved by the Court and said Appeal is granted.

— which said affidavit and bond are as follows, to wit: —

George Mattack, Albert Mattack & Earl Mattack vs John G. Lare — In the Law Commissioners Court of St. Louis County.

John G. Lare the above named defendant make oath and says that the appeal in the above entitled cause is not made for vexation or delay but because this affiant believes that he is aggrieved by the Judgment or decision of this Court

Subscribed and sworn before me this 27th July 1859 — John G. Lare

A. Dusenbury
Law Commr

Know all Men by these presents, That we John G. Lare as principal, and C. D. Blossom and D. S. Carter, as sureties are held and firmly bound unto George Mattack, Albert Mattack and

15.

Earl Mattack in the sum of Three Hundred dollars for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this 28th day of July A.D. 1859,

The Condition of the above obligation is such, that whereas John G. Gare has appealed from the judgment rendered against him and in favor of George Mattack, Albert Mattack & Earl Mattack in the Law Commissioners Court of St. Louis County for the sum of One Hundred and fifty dollars and ___ cents, together with costs.

Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal and shall perform such judgment as shall be given by the Supreme Court and such as the Supreme Court may direct the Law Commissioners Court of St. Louis County, to give, and if the judgment or any part thereof be affirmed, that he will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the Supreme Court then this obligation to be void, otherwise to remain in full force and effect

John G. Gare (Seal)
C. D. Blosson (Seal)
D. S. Carter (Seal)

Law Commissioners Court of St. Louis County.
June Term 1859. July 28th 1859.

This day appeared John G. Gare, the principal and C. D. Blosson and D. S. Carter the securities in the foregoing Bond and acknowledge to have executed

16.

the same for the purposes therein expressed.

In Witness Whereof I hereto set my hand affixed the seal of said Court at office in St. Louis, the day and year last aforesaid.

Seal

A. Dusenbury
Law Commissioner

State of Missouri }
County of St. Louis } ss.

I John M. Fulton clerk of the Law Commissioner's Court in and for St. Louis County in the State aforesaid certify the foregoing to be a complete and correct Transcript of the record pleadings and proceedings in the case of George Mattack, Albert Mattack & Earl Mattack against John G. Lare, as fully as the same remain on file and of Record in my office.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Court at office this 21st day of September 1859.

John M. Fulton Clerk L.C.C.

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1852 April 28. Submitted to Court. D.C. 143
1852 May 14. Reversed and remanded. Opinion filed
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(13)

89
March Term 1862

George Matlack & Sons
respondents.

vs 3 Transcript.

John G. Lare
appellants.

W.E.

Filed Oct. 1st 1859.
[illegible] S. Granville
Clk

22/100 Dec's paid
G. Lare 104

$10.00 by John G. Lare. the appelt.
apeyt (pender)

John G. Lare	$15.22
Head Costs	1.25
Copies	1.00
Rose 15 Kick 15 Jones 30	60
	$18.07

George Mallack and others — vs John G. Lane —

In the Supreme Court of Missouri — Oct. Term 1859

And now at this day comes the said John G. Lane, by Charles D. Colman his Attorney, and says, that in the Record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error in this to wit: that the Petition aforesaid and the matters therein as contained, are not sufficient in Law to give the Law Commissioner's Court of St Louis County jurisdiction of the subject matter of the action, and insufficient for the Plaintiffs to have or maintain, their action against Defendant; that the said Law Commissioner's Court erred in permitting & allowing the Plaintiffs to amend their Petition on the trial of the action so as to bring the amount claimed within the jurisdiction of said Court, under Defendants objection — that said Law Commissioner's Court erred in admitting on the trial of said action, the evidence of the filing of the Lien in the Office of the Clerk of the Land Court, which was admitted under Defendants objection; that said Court erred in giving judgment in favor of the Plaintiffs and against Defendant, for the enforcement of said alleged Lien;

(2)

that the judgment aforesaid in form aforesaid was given, in favor of the Plaintiffs and against the Defendant whereas the same ought to have been in favor of the Defendant & against Plaintiffs — that said Court erred in overruling the Notion for a New Trial in said action —

And the said John G. Lane prays that the judgment aforesaid, for the Errors aforesaid and other Errors appearing in the Record & proceedings aforesaid, may be reversed, annulled & altogether held for naught & that he may be restored to all things which he hath lost by occasion thereof &c:

C. D. Colman
Appts Atty —

316

Sup Court.
Oct. Term 1859

George Matlack
Esal — vs
John G. Lane
Assignment of Errors —

C. D. Colman
Appts Atty —

Filed 31 Oct. 1859.
W. L. Glennie Ck

George Mallack & Sons
v.
John G. Lare

In Supreme Court
October Term 1859

There is no error in the record & proceedings in this cause as assigned by appellant.

A. M. Lewis
Atty for Appellee

And now comes the said George Mallack & Sons appellees & for joinder in error say that there is no error in the record & proceedings of said Court below in said cause as assigned by said appellant

James K Knight
for appellees

George Mallack vul,

v.

John G. Lare.

Jainder in error.

Filed 2d Novr. 1859.
Wm. S. Glanville
Ck.

(4)

Geo. Mattlack & sons appellees
vs
Geo. G Law appellant

In Supreme Court

Appeal from Law Court Court

The question in this case is one of jurisdiction

First The subject matter was within the the jurisdiction of the Court
Act 1855 R S p 1072
Act 1857 p 668

Second. The jurisdiction as to amount is not to be determined by the amt. of the lien filed in the Land Court but by the amt. claimed in the action to enforce the lien Act 1857 p 669
(Annis vs Bigney 28 Mo 247) § 6 & § 7

Third The Court did not err in permitting the Pltff to remit $7. 60/100. This may be done to bring the amt. within the jurisdiction Denny vs Eckelkamp 30 Mo. 140
Shreve vs Skeels 31. Mo. 216

Fourth There was no error in admitting evidence of the filing of the lien in Land Court
Cornelius vs Grant 8 Mo. p 59
Schulenburg vs Gibson 15 Mo. p 281

Fifth The exemplified copy of the lien was proper evidence
Sec 41 & 42 R S p 730
Act 1857. p 669. Sec 4.

J K Knight Atty for appellees

(Over)

Since making out the above appellant has filed a voluminous brief to one or two points of which I beg leave to reply

First The admission of the certified copy of the account filed in land Court in evidence was not error. The case of Cornelius vs Grant 8 Mo. 59 simply decides that the abstract kept by the Clerk is not as good evidence as the original account filed. This is readily admitted. For in this case it was not the abstract but the original account that was offered in evidence.

The certified copy of this account was admissable on general principles. A public officer whose duty it is to keep originals may certify ~~originals~~ copies & these shall be admitted 2 Phillips Ev p 252 Note 324 2 Phillips Ev p 343 where it is laid down that the copy may in all cases be introduced except upon the issue of nul tiel record No statute declaratory of this common law principal is necessary R S vs Perchman 7 Peters R p 85.

Second. Amendments should be as liberally allowed in Courts of limited jurisdiction as others. Our statute applys to all alike (R S. 1253.). Deft. was not surprised or in any way injured by the Amendment or by the judgment. His defence was purely techincal. And as in any event he was liable to a general judgment. this Court will not interfere on the frivolous grounds relied on by the appellants attorney

all of which is respectfully submitted

James K Knight atty.
for Appellee

Geo. Mattack & Sons
Appellees
vs
John G. Lare
Appellant

Brief of Appellees by
James K Knight

Filed April 16. 1862
H W Mead Jr

George Matlack et al. Respondents
vs
John G. Lare Appellant

In the Supreme Court of Missouri March Term 1862

Statement of case.

This is an appeal from a Judgment rendered in the Law Commissioners Court of St Louis County in favor of the Respondents against Appellant.

The action was commenced in the Law Commissioner's Court on the 17th day of March A.D. 1859, founded upon a Mechanic's Lien filed in the office of the Clerk of the St Louis Land Court on the 11th day of March A.D. 1859.

The amount claimed in the Plaintiffs Petition, as also the amount claimed by the Lien was one hundred fifty seven 60/100 Dollars.

The Defendant filed an answer putting in issue all the Material allegations contained in the Plaintiffs Petition.

The cause came on for trial on the 7th day of July A.D. 1859, before said Court, a jury having been waived by both Parties.

On the trial of the cause, the Plaintiffs offered in evidence an examplified copy of the Lien filed in the office Clerk of the St Louis Land Court, (a copy of which is set forth in the Bill of exceptions pages 9 & 10 of Transcript); "to which the Defendant objected upon the ground that the Court had no jurisdiction of the subject matter of the action, the amount claimed to be due by the account filed in the office of the clerk of the St Louis Land Court, as also the amount claimed in the Petition exceeding the jurisdiction of this Court".

"The Plaintiff thereupon asked leave of the Court to remit seven 60/100 Dollars of the amount claimed in the Petition, so that the amount claimed thereby would only be one hundred and fifty dollars, which was objected to by the Defendant for the reason of the want of Jurisdiction in the Court, and also because the amount claimed in the account of the demand filed in the office of the Clerk of the Land Court determined the jurisdiction, and thereupon the Court permitted the Plaintiffs to amend their Petition" accordingly, to which the Defendant duly excepted.

"The Plaintiffs then again offered in evidence said Exemplified Transcript above set forth, to which the Defendant still objected for the reasons before mentioned, and because the evidence was not admissible under the Petition, and did not prove the facts therein alleged, and because the Transcript was not competent evidence, and because the necessary facts required by Statute were not set forth" therein "but the Court overruled the objections and admitted the same in evidence to all of which the Defendant then and there duly Excepted —

Afterwards a Judgment was rendered, and within four days thereafter, Motions in arrest & for New Trial were filed and overruled, and exceptions duly taken to such overrulings, as made —

C. D. Colman
Atty for Appt.

George Mallack et al
Respondents
vs
John G. Lare
Appellant

In the Supreme Court of Mo:
March Term 1862.

Brief & Points on part of Appellant —

I. The Law Commissioners Court of St Louis County, had no jurisdiction of the subject matter of the action, the amount claimed in the Petition, and in the account filed with the Clerk of the Land Court, exceeding one hundred & fifty dollars —

The St Louis Land Court has "exclusive original jurisdiction" "whenever the amount claimed exceeds one hundred & fifty dollars" —

Laws 1857. page 669 Sec 6 —

The Appellant contends, that the "amount claimed" as set forth in this Section, has reference to "amount claimed" in the Lien filed in the office of the clerk of the Land Court, and not to the "amount claimed" in the Petition in the cause filed for the purpose of enforcing the Lien; in other words, that the amount for which the Lien is filed, determines the Court in which the action must be brought —

This, it is believed, is the fair interpretation of the act, and was the intention of the Legislature, in the enactment thereof —

The action is instituted for the purpose of enforcing the Lien, the Lien being the foundation of the action, and the action being based upon it —

This construction of the act of 1857 is in conformity with the language of the act of 1855. on the same subject —

Revised Statutes 1855. page 1072. § 28 —

II. The Court below, not having jurisdiction of the subject matter of the action, as set forth in the Petition of the Plaintiffs, could not properly take any action, or determine any question in the case, except to refuse to take any action in the premises —

It would seem to be a novel proceeding, for a Court to give to itself jurisdiction of the subject matter of an action, by the allowance of an amendment, when it had no jurisdiction without such allowance —

How can a Court take any action in a cause, or relating to a matter, on the subject of which it has no jurisdiction?

The amendment proposed and allowed, was not for the purpose of conforming the Pleading to the proof, but the contrary thereof; there was no credit given upon the Lien, but only an endorsement of credit, or remission, at the end of the Petition as found on page two of Transcript, which was placed there, under the permission of the Court, on the day of trial.

Where a Court has jurisdiction of the subject of the action and of the Parties, it is conceded, that the question of allowing amendments, is entirely in the discretion of the Court, on proper terms —

The Law Commissioner's Court, being one of limited and Special jurisdiction, has only the jurisdiction and authority conferred upon it by the Statute creating the Court, and such as the Legislature may give it subsequently —

The only jurisdiction the Law Commissioner's Court has, for the enforcement of Mechanics Liens, is conferred by Sec 6. page 669. Acts 1857 —

III. The Court erred in admitting the transcript of the Lien in evidence after the allowance of the amendment of the Petition —

Neither the Lien, or the Petition of the Plaintiffs, contain any description of the property upon which the lien is intended to apply.

The description in the Lien is as follows. "two three story brick Houses situated on the East side of 3rd Street between Franklin Av and Morgan Street, and reputed to be owned by the said John G. Lane" —

That contained in the Petition is as follows. "two certain two story brick buildings situated on the East side of 3rd Street, between Franklin Avenue and Morgan Streets in the City of St Louis" and the description in the Judgment is conformable to that of the Petition —

Neither of the descriptions specify the property upon which the lien is intended to apply, "or so near as to identify the same" —

That contained in the Lien, does not show that the property was in the City of St Louis, or where situate, and represents it as "two three story brick Houses," while that contained in the Petition & judgment, is "two certain two story buildings", and placing them in the City of St Louis, the descriptions differing in the number of Stories the Houses have —

The lien should show that the property is within the jurisdiction of the Court & should contain such a description thereof, as to enable the officer to sell it upon execution and confer a title upon the purchaser, and give a specific description in his conveyance of the property sold —

These descriptions are insufficient, in not showing the length or width of the buildings in front, on 5th Street, or the width of the lot upon which they are erected, or how the lot is bounded, in any manner —

Could any person, with the description contained in the Petition, or judgment, go upon the ground & point out the buildings?

But the description set forth in the lien is not the same contained in the Judgment, ~~and~~ the one being against "three story houses", and the other against "two story buildings" —

The only description being of "height", and those differing, which shall control?

We say, with great confidence, that neither is sufficient —

Will this Court take judicial notice, that Fifth Street, Franklin Avenue, & Morgan Street, are in the City & County of St Louis?

Could the Court below, take judicial notice of such matters? We say not —

There was no proof offered in the Court below upon that subject —

The Transcript contains "the substance" of all the evidence given upon the trial, & there is nothing relating to that matter —

A party desiring the benefit of the Statute in question, must bring himself within the provisions thereof, unless he does so, he is not entitled to the benefits thereof —

Although the Statute is remedial, it is so only to a certain class of persons, and is in derogation of common law rights, and should therefore be construed strictly —

In the language of Judge Gamble, in the case of Edgar vs Salisbury et al, in 17th No. 272. "The lien is but the creature of the Statute, and only arises, and can only be enforced as the Statute directs".

The points hereinbefore made, might each and every of them be elaborated, but it is believed, that it is sufficient, to call the attention of the Court to the points made, without anything more, and the cause having been already called, the press of other professional engagements, will not admit of my devoting more time to the present case.

Although the case is of small importance in and of itself, it is important, as settling a jurisdictional question, and to the Parties interested.

The Judgment of the Court below should be reversed, but what Judgment should be given in this Court, or what further action had, I am not prepared to express an opinion.

C. D. Coleman
Atty for Appellee.

It is also submitted, that the Exemplified or certified copy of the Lien offered in evidence, was not competent for the purpose of proving the filing of the Lien in question.

There is no Statute, that I have been able to find making such copy evidence.

It is not a record of a Court, or of any judicial proceedings.

See Cornelius vs Grant 8th Mo. 57.

No 101

Supreme Court
March Term 1862

George Meatlack
Etal -
vs

John G. Lare

Statement of case & Brief.
on part of Appellant.

C. D. Colman
Atty for Appl.

Filed April 28, 1862
A W Mead
Clerk

(12)

Mattack & Sons
vs
Lane

In Hempler vs Schneider 17th Mo. 258 and Lemmy vs Eckelkamp 30th Mo. 140 this court held that a party may give jurisdiction to an inferior court by a voluntary renunciation of a part of his demand - This case however must be remanded for the reason that there was no lien to enforce - To entitle the plaintiffs to a lien it was necessary for them to file with the Clerk of the St Louis Land court a just and true account of their demand which they sought to make a lien upon the building and a true description of the property, so as to identify the same upon which the lien is intended to apply - In this case the account filed contains no such description of the property as would enable any person to identify it -

It describes it as two three story brick houses on the East Side of fifth street between Franklin Avenue and Morgan street - No boundary is given nor is the number of the lot designated nor does it even state that the property is in the City of St Louis - To enforce a judgment upon a Mechanics Lien the law requires that the Execution shall be a special fieri facias - Such an Execution issued upon this judgment would fail to disclose to the officer the property to be sold - He

certainly could not identify the property by the description in the fieri facias. The defect is fatal as to any lien but according to the decision in Patrick vs Ables 27th Mo. 184 the plaintiffs may take a general judgment and to enable them to do so we shall remand the cause.—

Judgment reversed and cause remanded, the other judges concurring.—

W. V. N. Bay

101

Mattack et al

v

Lane

Opinion

Filed May 14, 1862

A W Mead Jr

W. V. V. Bay

Reversed & Remanded

(20)