Fitzgerald, Francis v Brannock, Jones et al 1863

50317

629/19 33/587

DJ Jewett (A)

Gavesche et Bakewell (R)

Fitz A
V P

Brannock R
Maguire Geo D

March 63
Sept 60
St Louis

Maguire are lot of land in St Louis
built a brick dwelling
Brannock was contractor
w/ Maguire furnishing material & erection house
hired 77 to be a sub contractor for
Stairs $280

entry
Mechanic lien

Dryden
Reversed & remanded

State of Missouri }
County of Saint Louis } Be it remembered that on the 17th of January 1860 there was filed in the office of the Clerk of the Saint Louis Circuit Court a petition which is in the words and figures following, to wit,

Francis Fitzgerald = Pltff
vs
Brannock Jones, & George Ma Guire } Defts

Circuit Court
February Term
1860
Saint Louis County

Petition

The Pltff states that the Deft George Maguire is the owner in fee simple of the following described lot or parcel of land - to wit, a lot in the City of Saint Louis, on the East side of Seventh Street commencing about twenty five feet south of Labadie Street, thence running Southerly on said Seventh Street about forty four feet & running or extending one hundred and one feet, more or less easterly to an alley & bounded South & North by other land owned by said Maguire said lot being about forty four feet front on Seventh street and one hundred and one feet deep to the alley. That upon said lot the said Maguire has erected or caused to be erected two brick dwelling houses joining each other and each being three stories high with back buildings That the defendant Brannock Jones was the original contractor with said Maguire for furnishing materials and erecting said houses & that in pursuance of and under his said contract, the said Jones emp

2 = loyed the plff as subcontractor to furnish the material and build the flights of stairs in and for said houses and for which the said Jones agreed to give the Plff the sum of Two hundred and Eighty Dollars That in pur= = suance of said agreement the Plff as subcontract= =or did furnish the materials and build the flights of stairs in said houses according to his agreement for which materials and work as aforesaid there is justly due him from said Jones the sum of Two hundred and Eighty Dollars all which is still due and owing the Plff. no part thereof having been paid The Plff further says that on the 27th day of December A D 1859 and within four months after the said indebtedness had accrued (in accordance with the provisions of a special act of the General Assembly of the State of Missouri, approved February 14th A D 1857) & entitled an act for the better security of Mechanics & others erecting buildings or furnishing materials for the same in the County of Saint Louis he filed with the Clerk of the Saint Louis Land Court a just and true account of the demand due him as aforesaid after all just credits given, there being no credits no part having been paid, together with a true description of the property aforesaid and the names of the owner, contractor and subcontractor all of which was verified by affidavit Plff further states that at least ten days before he filed said lien as above stated he gave written notice to the said defendant Maguire of his said claim against said

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property for the sum of Two hundred and Eighty Dollars and that the same was due him from said Jones for work and materials aforesaid and that he claimed a lien on said houses and lot for the security and payment of the same. Wherefore and in consideration of the premises the Plff prays judgment against said Defts for the sum of Two hundred & Eighty Dollars & interest and that the same may be levied out of the said houses & lots of said Deft Maguire unless sufficient property of said Jones may be found to satisfy said judgment or unless otherwise paid as provided by the provisions of the act aforesaid

D. P. Dewitt
Atty for Plff.

Francis Fitzgerald, Plff. upon oath says that the above petition & the matters therein as stated, he believes to be true

Francis Fitzgerald.

Subscribed and Sworn to before me this 17th January 1860

Geo Clk.

On the filing of which petition the following Summons was issued.

Summons The State of Missouri }
County of Saint Louis }

To the Sheriff of Saint Louis County Greeting

We Command you to Summon Brannock Jones and George Maguire to appear before the Judge of our Circuit Court on the First day of the next Term thereof to be held in the City of Saint Louis

4

within and for the County of Saint Louis on the first Monday of February next then and there to answer the complaint of Frances Fitzgerald, as set forth in the annexed petition and have you then and there this writ

Witness, Stephen Rice, Clerk of our said Court with the seal thereof hereto affixed at office in the City of Saint Louis this 17th day of January in the year of our Lord Eighteen hundred and Sixty

(Seal)

Stephen Rice Clk

Sheriffs Return

There is endorsed on said writ the following Return

Executed this writ in Saint Louis County on the Eighteenth day of January 1860 by delivering a copy of the writ and petition as furnished by the Clerk to Barnock Stone & also by delivering a copy of the writ as furnished by the Clerk to George Maguire

Thomas E Courtnay Sheff
by Eugene Alean. Deputy.

Answer of Maguire

And on the 10th of February 1860 the separate answer of Deft Maguire was filed

Defendant George Maguire for a separate answer to Petition of Plff. admits that he is the owner of the property described in Plffs petition and that the improvements

5 described therein are erected or in process of erection thereon.

Defendant says that he has no knowledge or information sufficient to form a belief whether or not Brannock Jones employed plaintiff to build the flight of stairs for said houses, nor whether he agreed to give plaintiff $280 or any other sum therefor nor whether plff did furnish said materials or any part thereof nor whether there is due plaintiff therefor the sum of $280.00 or any part thereof of all which allegations Defendant demands strict proof

Defendant further says that he has no knowledge or information sufficient to form a belief whether or not within four months after said indebtedness accrued Plaintiff filed with the Clerk of the Saint Louis Land Court a just and true account of the demand due him together with a true description of the property & the names of the owner & contractor verified by affidavit nor whether ten days before filing the lien he gave to this defendant notice of his said claim as alleged in plaintiffs petition, nor whether the plaintiff is entitled to the judgment claimed, Defendant asks judgment in his favor for costs &c

Garesché & Bakewell
for Deft.

George Maguire above named Defendant being duly sworn upon his oath says that he believes the foregoing answer & facts therein stated are true

Sworn to & Subscribed before me 10th Jany 1866

Geo Maguire
S Rice Clk

6 And at the February Term 1860 and on the 4th May 1860 the following proceedings were had herein.

On Mechanic's Lien

Now at this day come the parties by their respective attorneys and the defendant Brannock Jones withdraws his answer herein, leaving this suit undefended, wherefore on motion of the plaintiff the petition herein is taken against him as confessed And a Jury being waived this cause is submitted to the Court upon the pleadings and proofs and the Court proceeds as well to try the issues joined between the plaintiff, and defendant George Maguire, as to assess the damages against the defendant Brannock Jones, and the trial progressed and being finished the Court doth find the issues joined between the parties aforesaid in favor of the plaintiff and assess the damages at the sum of Two hundred and Eighty seven Dollars and ninety cents, And it appearing to the Court that the said demand has been filed as a lien against the following described property, to wit, a lot in the City of Saint Louis on the East side of Seventh street commencing about twenty five feet south of Labadie Street, thence running Southwardly on said Seventh Street about forty four feet and running or extending one hundred and one feet, more or less Easterly to an alley and bounded South and North by other Land owned by said Maguire said lot being about forty four feet front on Seventh Street and one hundred and one feet deep to the

Talley

and also two Brick dwelling houses erected on said premises, joining each other and each being three stories high with back buildings, that within four months after the accruing of said demand said plaintiff filed his lien upon said premises according to law, and that said lien was filed within ninety days next preceding the institution of this suit, It is therefore ordered and adjudged by the Court that the plaintiff recover of the defendants the damages aforesaid in form aforesaid as assessed and also his costs in this behalf expended and have execution therefor, and if no sufficient property of said defendants can be found to satisfy this judgment and costs then the residue thereof to be levied out of said property as herein before described as charged with said lien, Defendant Maguire files a motion in arrest of judgment

And at the same Term and on the 5th of June 1860 the following order was made herein

The motion of the defendant Maguire in arrest being heard and fully considered by the Court is sustained and the judgment herein is accordingly arrested and for naught held and esteemed and on motion of said defendant it is ordered by the Court that this cause be dismissed at the costs of ~~the~~ said plaintiff and that execution issue therefor

And at the same Term and on 6th of June 1860 the following further order was made herein

Order of Appeal

The Plaintiff files a bill of Exceptions And also an affidavit for appeal and on his motion and appeal is allowed him to the Supreme Court from the judgment herein rendered and he thereupon files an appeal Bond, with himself as principal, and Daniel S Sewitt and James E Mumford as securities which bond is approved by the Court

Bill of Exceptions

Said Bill of Exceptions is as follows

Be it remembered that the parties appeared by their attorneys & the Plff introduced his evidence & proof to establish his claim and lien under the requirements of the law, after the Plff had introduced his proof the Defts Counsel moved the Court to dismiss the suit for want of Jurisdiction which motion the Court overruled, found a verdict for Plffs for the sum of Two hundred and Seventy seven Dollars and ninety cents debt or damages & costs of suit To which finding Defts Counsel then and there excepted & filed his motion in arrest of judgment and to dismiss the case as follows

And now at this day comes said defendant Maguire by his attorney and moves the Court to arrest the judgment in this case and to dismiss the said suit because he says that this Court has not jurisdiction of the subject matter of the said suit, because this Court has not jurisdiction of actions to enforce

9 mechanics liens filed in Saint Louis County under the local act of Feby 14th 1857
~~14th 1857~~

Garesché and Bakewell
for Deft Maguire

The same having been heard the Court sustained Defts motion in arrest & to dismiss to which ruling the Plffs Counsel then and there excepted and prays that his exceptions be allowed

S. M. Breckinridge Esq

Affidavit for Appeal

Said affidavit for an appeal is as follows

In the above cause D. P. Sewett agent & attorney for Plff makes oath and says that the appeal in the above case is not made for vexation or delay but because the affiant believes that the appellant is aggrieved by the judgment or decission of the Court

D. P. Sewett.

Sworn to and Subscribed
before me June 6th 1860

S Rice Clk

Appeal Bond.

Said appeal Bond is as follows.

Know all men by these presents, that we Francis Fitzgerald as principal and Daniel Sewett and James E Mumford as Sureties are held and firmly bound unto Bramock Jones and George Maguire in the sum of Two hundred Dollars, for the payment of which, well and truly to be made we bind our-selves our heirs executors and administrators

jointly and severally firmly by these presents sealed with our seals and dated at Saint Louis this 5th day of June 1860.

The Condition of the above obligation is such that whereas Francis Fitzgerald has appealed from the judgment rendered against him and in favor of said Jones and Maguire in the Saint Louis Circuit Court for the sum of One cent. together with costs

Now if the said appellant will prosecute his appeal with due delegence to a decision in the supreme Court and such as the Supreme Court may direct the Saint Louis Circuit Court to give and shall if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void otherwise it shall remain in full force and effect

Approved June 6th 1860
S M Breckinridge
Judge

James Fitzgerald (seal)
Daniel T Jewett (seal)
T. E Mumford (seal)

State of Missouri } ss
County of Saint Louis }

I Stephen Rice Clerk of the Saint Louis Circuit Court within and for the County and State aforesaid certify the above and foregoing to be a true and complete transcript of the record and proceedings in the above entitled cause as

fully as the same remains of record in my office

In testimony whereof I hereto set my hand and affix the seal of the Saint Louis Circuit Court at office in the City of Saint Louis this 22nd day of September 1860

Stephen Rice Clerk

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(19) ~~[illegible]~~ 63.

~~[illegible]~~

March Term 1863

Francis Fitzgerald
appellant

vs

Brannock Jones &
George Maguire
respondents

M.E.S.

Transcript for
Supreme Court

Filed 29 Sept. 1860.
W. L. Granville
D. T. Jewett
for Appellant

Garesché & Bakewell
for Appellee
Fee $4.50 [illegible]

$10.00 pd. by Jeff. Fitzgerald/assgt.

1862 Nov 11 Apl of error filed
1863 April 14 Submitted on argument
1863 May 7. Reversed & Remanded. Opinion filed
1863 June 17. Motion for rehearing overruled
Fitzgerald [illegible] $18.05
Dp 191
Dp 168

[12]

Francis Fitzgerald Pltff in Error
vs
Brannock Jones & als Defts

IN SUPREME COURT,
March TERM, 1861
St Louis Co

AND now come the said Pltff. Fitzgerald and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Fitzgerald assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Defts
2. That said Court rejected proper and legal testimony offered by Pltff.
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Pltff.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendants when it should have been rendered for the Pltff
10. That said Court overruled the motion for a new trial, made by Pltff.
11 That the Court refused to take ~~cognizance~~ jurisdiction of the action. ~~on account of a~~

D T Jewett
Attys for Pltff.

And now come the said Defts in Error and for joinder in error say, that there is no error in the record and proceedings of said St. Louis Circuit Court in said cause, as assigned by said Pltff in Error

Gauschi, Gauschi & Vaish
for Defts. in Error

223.

Z Fitzgerald
v
B Jones et al

Error

D Z Jennett
Atty for
Fitzgerald

Filed March 25. 1861.
Wm S. Glanville Clk.

Francis Fitzgerald
Pfff
Brannock Jones & al

IN SUPREME COURT,
Oct TERM, 1862
St Louis Co. Mo
No 174 - appeal from the Circuit Court, St Louis Co

AND now comes the said Francis Fitzgerald and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Fitzgerald assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by
2. That said Court rejected proper and legal testimony offered by
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by said Fitzgerald,
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Brannock Jones & al when it should have been rendered for the Fitzgerald
10. That said Court overruled the motion for a new trial, made by sd Fitzgerald

11th That the Court decided that it had no jurisdiction of the case & dismissed the same for want of jurisdiction when in fact it had jurisdiction of the case. & ought to have given judgment for the Pff Francis Fitzgerald

D L Jewett
Atty for sd Fitzgerald

And now come the Brannock Jones & al and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said Fitzgerald

Fitzgerald
v
Jones
Ass of Errors
No 174
Oct 1862

Filed Nov 11. 1862
A.W. Mead
Clerk

Francis Fitzgerald Appt | Supreme Court
vs | St. Louis County
Brannock Jones & al | March Term 1862.

Appeal from Circuit Court
St. Louis County.

## Statement of the case

This is a suit brought in January 1860 by the Plaintiff-appellant against the defendant Jones and another the owner of the house specified in the petition, for the purpose of enforcing a Mechanics lien (for work and material furnished in the erection of said house) under the law passed February 14th 1857, entitled "~~An act~~ An act for the better security of Mechanics and others erecting buildings, or furnishing materials for the same in the County of St. Louis"

All the facts were proved necessary to establish the lien and the right of the Plaintiff to recover, and the only question before this Court is the force of the plea of the Defendant to the jurisdiction of the Circuit Court of St. Louis County over suits brought to enforce liens under said act, since the passage of the act of February 18th 1859 (Statutes of 1859 page 467) entitled an act to change the time of holding the Circuit and Common

Pleas Courts of St. Louis County, and to enlarge the jurisdiction thereof". – The Circuit Court refused to take jurisdiction of the case, from which decision the Plaintiffs appealed. –

## Brief
### for Plaintiff, appellant,
### by D. T. Jewett.

The act to establish the Land Court for St. Louis County was passed December 12th 1855 and by the second section of that act to the Land Court was given "exclusive original "jurisdiction in actions brought in St. Louis County, "for recovering the possession of any real estate "therein; for enforcing any right, claim, demand "or lien to or upon the same; for making partitions "thereof, for quieting the title thereto; for enforcing "the rights and obligations of lessors and lessees "and their respective assignees; for recovering "damages for injuries and wrongs thereto, and "staying waste thereof; and concurrent jurisdict-"ion with the Circuit Court for the collection "of demands whose consideration is real estate "or any interest therein." *

After this Court was created, all suits for enforcing Mechanics liens in the

By the 13th Sec of the same act – "Liens of Mechanics, builders &c &c, in said County, are required to be filed in the office of the Clerk of the Land Court."

over suits brought to enforce such liens. –

Under such a state of facts then, what is the true intent, meaning and force of the 4th Section of the act of February 18th 1859, before refered to –? – That section says: –

"The St. Louis Circuit Court and Common "Pleas Court shall have concurrent jurisdiction "with the St. Louis Land Court in all suits and "actions, except those for the direct recovery of "of the possession of real estate".

(The act to take effect from and after its passage.) –

This we say is a plain and palpable repeal, intended to be, of the exclusive jurisdiction of the Land Court, over all matters save one. The well settled maxim of construction applied to statutes and contracts –

"Expresio unius est exclusio alterius", is fully applicable here. If the Legislature intended to leave that Court exclusive jurisdiction over two subjects, why did it not say so? –

The naming of one subject over which its exclusive jurisdiction was left, is by well settled rules of construction, under the facts of this case, equal to the positive enactment, that in all other cases, it is taken away. The object of the 4th section was to take away the exclusive jurisdiction over certain matters held by that Court, and when the act takes away that exclusive

jurisdiction over all matters except the one named in the act, it is difficult to see what right a Court has to infer that the Legislature intended to leave the Courts exclusive jurisdiction over two matters, simply because its jurisdiction over the second matter was named in a special act on that subject, as well as in the act creating and giving to the Court its jurisdiction in all the matters it ever had any over. –

If the exclusive jurisdiction of the Land Court over liens upon land had been given only in the Mechanic lien act, there would have been a little plausibility in the assumption that the Legislature could not have had that matter in contemplation in the repealing act; but as exclusive jurisdiction over that matter is specially given in the very section that gives the Court all its other jurisdiction, and as all Mechanics liens must have been prosecuted before that Court, if no Court had been named in the Mechanics lien act, the argument is deprived even of that plausibility. –

The case relied upon by the Circuit Court in refusing jurisdiction is Ashburn vs Ayer & al 28 Mo p 75 – – There is a broad distinction between that case and this in the start, and then the reasons given by the Court in that case

for the "construction" put upon the Statute do not apply in this.

The Circuit Court of Jackson County is a Court of general jurisdiction, upon which had been confered ~~especial~~ special jurisdiction by the Mechanic Lien Law. — The Kansas Court of Common Pleas for Kaw Township was an "imperium in imperio" and had only concurrent jurisdiction within one township of that County;

The first reason given by the Court in Ashburn vs Ayer for that decision is a strange assumption as to the grounds upon which the case of Gaty & c vs Glasby 11 Mo 138 was decided.—

An examination of that case shows that the decision was put upon the ground, that the lien law of that day, authorized two remedies, one a suit in the ordinary way and the other a scire facias.

The suit in question was a scire facias in the Common Pleas founded on a lien filed in the Circuit Court and the decision was put distinctly upon the ground that the lien was in the nature of a record and that according to well settled rules of law a scire facias founded on a record must be in the same Court where the record was, and the Court distinctly put in the caution that the "question is not "whether a suit in the ordinary way could

"not have been maintained in the Common Pleas", — a Court to which concurrent jurisdiction had been given. —

We say therefore that the case in 11 Mo. is no authority for that in the 28th. —

The other reasons for the decision in the 28th may be very good for that case, but they do not apply here. They are as follows —

"The liens under the act have priority in order of filing in the Clerks office of the Circuit Court."

That is not the case in the law of 1857 applicable to St. Louis County, under which this suit is brought. — No such preofference is given and no provisions made in that respect, and from the time of the establishment of the Land Court in 1855 to the date of the present lien law in 1857 in St. Louis County liens could have been prosecuted, in the Law Commissioners Court to the amount of twohundred dollars and executions issued thereon, and in the Land Court for that sum and over: *

"The Court in which the liens were not "required to be filed would know nothing of them" —

That is not so under this law, because the act requires, (Sec 7th) that the petition shall set forth all the facts necessary to establish the lien and of course one of those facts would be the fact that a lien was filed and the time and

* If any "priority in order of filing" exists — as to liens in St Louis County it exists — by virtue of an unrepealed provision in the General lien law of 1833 —

place, and a record or certified copy of the same, would be and always is a necessary part of the proof.

"The sales would be made at places remote from the record of the lien" &c. –

That would not apply here, as both Courts have jurisdiction over the County and sales are always made at the Court House where the records of all the Courts are Kept. – And further – by the provisions of the act creating the Land Court in this County (Sec. 13) the judgment of no court is a lien on land in this County unless the same is recorded in the office of the Clerk of the Land Court.

Therefore there is but one place to go for all judgments that are liens on land in this County.

Whatever force there is in the reasoning that, "the act organizing the Kansas Court of "Common Pleas, in expresly conferring on that "Court jurisdiction in actions against boats "and vessels, may have intended to exclude "jurisdiction in other cases of lien", – applies with much greater power to the construction of the statute upon which we rely as taking away the exclusive jurisdiction of the Land Court in all cases save the one excepted in the act itself. –

"Upon the whole" then as the

opinion says, we say it is clear that the statute intended to take away the exclusive jurisdiction of the Land Court in all cases but one and confer a concurrent one upon the Circuit and Common Pleas Courts, and that there is no reason, from inconvenience, why this intention should not be carried out and that this construction is the only one that will comply with the established rules of construction, the intention of the Legislature, and the intention of the community who wished this exclusive jurisdiction taken away, and who supposed the act did accomplish what they wanted and was so plainly expressed on its face.

The matter is of serious import to the Plaintiff and to others whose suits are waiting and depend upon the decision of the question in this case.

D. T. Jewett
Atty for appellant

The case of Hammond & al. v. Barnum 13 Mo 328. cited by counsel for Deft did not come under my notice till after this brief was written & it also seems to have escaped the attention of the bench when making up the opinion referred to in the 28 Mo. But all the case in the 13th does is to relieve the opinion in the 28th from the absurdity of

County of St. Louis were brought in the Land Court and not in the Circuit Court, as is provided in general Mechanics lien law, applicable to the whole state. –

When the special Mechanic lien law was passed February 14th 1857, applicable to St. Louis County only, the sixth section of that provides that, "the St. Louis Land Court and the Law Commissioners Court of said County shall have concurrent original jurisdiction to hear and determine all suits and actions under this act, when the amount claimed shall not exceed one hundred and fifty dollars, and whenever the amount claimed exceeds one hundred and fifty dollars, then the St. Louis Land Court shall have exclusive original jurisdiction; and whenever the action shall be brought in the Law Commissioners Court and judgment shall be rendered therein, a transcript of such judgment shall be filed in the Clerks office of the Land Court, and execution in like manner as if judgment had been rendered in the Land Court". –

The Mechanics lien law of December 11th 1855 – Sec 28 –, also confers upon the Land Court of St. Louis County, the same duties and rights that in other Counties, are confered upon the Circuit County – except that it

provides that suits for enforcing liens for amounts less than two hundred dollars may be begun and prosecuted in the Law Commissioners Court, and does not provide that the judgments of the Law Commissioners Court shall be certified to the Land Court, for executions. -

The general lien law of 1855 and the special one of 1857 both provide that the pleading, practice, process and other proceedings in cases arising under this act shall be the same as in ordinary civil actions and civil proceedings, except as therein otherwise provided and that the petition shall alledge the facts necessary to secure a lien under those acts. -

We therefore say that the St Louis Land Court was not a Court of general jurisdiction, upon which had been confered - special jurisdiction over some one or more specified subjects by a particular act, but that it was a special Court of limited and generally exclusive jurisdiction; - That it was created for a special purpose and that its special and exclusive jurisdiction was given it by the very act creating it; and that the Mechanic Lien Laws, did not, as special laws, confer that jurisdiction, which it had or has

being passed upon the one in the 5th Mo.

The broad distinction between the cases in the 13 & 25 Mo & the one at bar is, ~~that in those~~ cases the court decide that an act creating a ~~another~~ court of general jurisdiction, within the territory of another court of general jurisdiction, does not divide a special jurisdiction that had been given to the old court.

In the case at bar a repealing statute takes from a court of limited and special jurisdiction, its exclusive jurisdiction over all the matters of which it had jurisdiction except one named in the repealing law.

Entirely different rules of construction apply to the two cases, was all the jurisdiction the land court ever had, was given it in the act creating it, the repealing act plainly applies to all its jurisdiction save over the one matter specified in the repealing act

D J Jewett for appt

Supreme Court
March Term 1863
No. ~~216~~ 80

F. Fitzgerald
pltff. appt.
vs
B. Johns & others

Brief
for Plaintiff. appt.

Filed March 27. 1863
A. W. Mead
Clk

James Fitzgerald plaintiff appellant
vs
Brannock Jones and George Maguire
defendants and Respondents -

In the Supreme Court of the State of Missouri at St Louis -

Respondent's Statement.

This is a suit brought in the St Louis Circuit Court upon a lien filed in the office of the Clerk of the St Louis Land Court. Upon trial the Court gave judgment against both defendants, although Brannock Jones was the contractor and George Maguire only the owner of the property. Defendants same day moved in arrest of judgment and to dismiss ~~appeal~~ suit because the Circuit Court had no jurisdiction to enforce Mechanics Liens. The Court sustained the Motion and thereupon plaintiff brings the cause here by appeal

Wm K. P. Jaresche
Atty of respondents.

Respondent's Brief

The Land Court has exclusive jurisdiction in all cases wherein the amount claimed exceeds one hundred and fifty Dollars.

Sec 6 = (St Louis County) Mechanics' Lien
Less^n Arts of 1856 - 7 p 669.

The 4^th Sec^n - of An Act to change the times of holding the

Circuit and Common Pleas Courts of St Louis County = approved [illegible] Feby 59 Less^r Arts of 59 p 457 does not affect this specialty of the jurisdiction of the Land Court.

Gaty gals vs Brown gals XI Mo p 141.
Hammond gals vs Barnum XII Mo p 329.
Ashburn vs Ayres 28 Mo p 76.

Hen. R. P. Garesché
Atty of Respondents

~~That~~ motion in arrest for want of jurisdiction see Washington vs Dupêne XII Mo p 572 =

The question presented is this: Does the act Approved Feby. 18th 1859, repeal Sec. 6 - of Mechanics Lien act of St. Louis county, Approved Feby 14th 1857, & confer jurisdiction in lien cases, upon circuit court.?

Clearly not, upon the following principles or rules governing the construction of statutes.? where the intention of the Legislature is not apparent to that purpose, the general words of another and later statute will not repeal the particular provisions of a former one. 4 - Dwarris on Statutes. p. 514 4. T. R. p. 24. Williams v. Pritchard

An affirmative statute is a repeal of a precedent affirmative statute only when it is clearly & indisputably contradictory to the former act in the very matter, and the repugnancy such that the two acts cannot be reconciled — The courts lean

strongly against repealing positive provisions of a former statute by construction; there is no repeal by implication — Regina vs. Inhabitants of St. Edmunds. 2 Q.B. 84 = 2nd Adol. & Ellis = N.S.

A general statute does not abrogate a former particular one.

There should be some notice taken of former act so as to show an intention to repeal it: Law is in favor of repealing as little as possible:

Though two statutes are seemingly repugnant, yet if there be no non obstante clause in latter, they shall be so construed that the first shall not be repealed by construction.

15. East 377.

Edw. T. Davis
of Counsel for Respondent

80 Mar S 63

Fitzgerald
vs
Jones & Maguire

Respondent's Brief
~~Statement~~

Filed March 27, 1863
A M Wood
Clk

Fitzgerald
vs
Jones & Maguire

This was a suit brought in the St Louis Circuit Court for the enforcement of a mechanics lien.- Judgment having been rendered for the ~~defen~~ plaintiff, on the motion of the defendants the judgment was arrested and the cause was dismissed; whereupon the pleff appealed.

The single question presented by the record is whether the Circuit Court had jurisdiction of the subject of the action; the plaintiff insisting that that Court had concurrent jurisdiction, while on the other hand the defendants contend that the exclusive jurisdiction was in the Land Court. The question brings under consideration several acts of legislation local to St Louis County -

1st The act creating the St Louis Land Court, approved Dec: 12th 1855. (R. L. 1855. p 1592)
This act in express terms conferred on the Land Court exclusive original jurisdiction in suits to enforce mechanics liens and provided that such liens should be filed with the Clerk of that Court instead of the Clerk of the Circuit Court as under the general lien law -

2nd. The mechanics lien law applicable to St Louis County only, approved 14th Feby: 1857 – This act modifies the organic law of the Land Court in so far as to give to the Law Commissioners Court concurrent jurisdiction with the former Court in mechanic lien cases where the amount claimed did not exceed one hundred and fifty dollars. –

3rd. The act of 18th Feby 1859 entitled "An act to change the time of holding the Circuit and Common pleas Courts of St Louis County, and to enlarge the jurisdiction thereof." The first three sections of the act concern the time of holding the Circuit and Common pleas Courts and the return of process, and the fourth and last section provides that "The St Louis Circuit and Common pleas Courts shall have concurrent jurisdiction with the St Louis Land Court in all suits and actions except those for the direct recovery of the possession of real estate."

This last statute would seem to establish the authority of the Circuit Court to entertain the action beyond cavil, but notwithstanding this, defendants still contend for the exclusive jurisdiction of the Land Court, and in support of their position avouch Gaty, McCune & Gladby vs Brown et al 11 Mo. R. 138, and Ashburn vs Ayers 28th ib. 75.

The statutes on which these cases turned were both acts creating Courts of Common Pleas, one the St Louis Common Pleas - the other, the Kansas City Common Pleas, and each gave to the Court it established concurrent jurisdiction with the Circuit Court in all civil actions within defined territorial limits; but in neither was jurisdiction in suits to enforce mechanic's liens specifically named; and it was argued that although these Common Pleas Courts were thus in general terms clothed with concurrent jurisdiction with the Circuit Court, yet as the jurisdiction for the enforcement of mechanics' liens was by a special act specially conferred upon the circuit court, it was not fair to presume that at the time of the passage of the organic act this special subject of jurisdiction was in the mind of the legislature, and therefore not embraced in the enactments. The Court seems in each case to have been deterred from adopting the construction which would most naturally and easily have resulted from the language of the act it was considering, by reason of the inconvenience such construction would produce in requiring the lien to be filed in one court and the suit for its enforcement to be brought in another. In cases of doubtful construction it may be very proper to consider the inconveniences which may result from ——

a given construction as a help in ascertaining the intention of the legislature, but where the meaning of the law maker is clearly expressed courts are warranted in no such indulgence.

We have seen that jurisdiction of mechanic's liens was not conferred in specific terms on the St Louis Common Pleas and Kansas City Common Pleas by the acts by which they were organized. The opposite however is true of the act organizing the St Louis Land Court; and with this law before its eyes it would be unjust to the legislature to suppose it had not in mind, and did not intend by the act of 1859 to give the Circuit Court concurrent jurisdiction as well in lien cases as in any other of the subjects of the exclusive jurisdiction of the Land Court not expressly excepted in the act. And thus by reason of this peculiarity of the organic law of the Land Court we are enabled to pronounce in favor of the concurrent jurisdiction of the Circuit Court without questioning the authority of Gaty & Brown and Ashburn & Ayres.- The Circuit Court erred in dismissing the action and for this reason its judgment is reversed & the cause remanded - The other judges concur

John D. S. Dryden

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Fitzgerald
vs
Jones & Maguire

Opinion of Court by
Dryden

Filed May 7. 1863
A.W. Mead
Clerk

Reversed & Remanded

[21]

Fitzgerald appellant — In the Supreme Court of the State of Missouri at St Louis.
vs
Maguire et als respondents

Respondents by Mr K. P. Jaeschke their Attorney move the Court for a rehearing of the cause and for the affirmance of the judgment of the St Louis Circuit Court:

Because the decision of this Court overrules that of Hammond of Judd vs Barnum XIII Mo p 329 and yet takes no notice of it —

2nd Because the judgment against Maguire was general and was therefore properly arrested.

Mr K. P. Jaeschke
Atty respondents

Argument —

The case of Judd vs Hammond vs Barnum expressly decides that a Mechanic's Lien suit must be prosecuted in that Court, in the office of ~~which~~ the Clerk of which the lien is to be filed. That no words however liberal, ~~will divest~~ short of an express provision would divest the exclusiveness of the jurisdiction of the Court ~~w~~, in the office of the Clerk of which the lien is filed. Hence however concurrent the jurisdiction of the Common Pleas and Circuit Court, yet one would not have cognisance of an action to revive the judgment of the other, and the filing of the lien ~~any~~ because required by Law to be in a particular office is ~~fl~~ regarded as a similar ~~[illegible]~~, giving exclusive jurisdiction to the particular Court. Again how is the judg —

ment to be enforced, if ~~the~~ the doctrine as now laid down in this Case by this Court be enforced? —
Sec 6 - of the Mechanic's Lien particularly provides for cases brought in the Law Com^rs - Court, but does not for a case like this. —
Upon the second point, the petition is clear in the statement that Maguire was no party to the contract, was a party to the suit, only as owner of the land, on what principle can a general judgment be rendered against him, this Court has at this very Term decided such a judgment must be reversed. Why then reverse the Circuit Court for arresting its own illegal judgment.

Thos. C. P. Jausche
Atty of Respondents

Petitioner
Jones & Maguire
Mo & Argument
by respondents
for a rehearing
Overruled
Filed May 26th 1863
A. M. Mead
Clerk