The Madison County Coal Company v. Steamboat "Colona" 36 Ma 446 538/6

$94.00 for coal
coal taken back into
Harbor for the
loading of coal

6 Ill 19
Oct. 65
Nov 1860
St. Louis

App Resp

Steamboat Rankin
Knight Madison

The State of Missouri, ss.

The State of Missouri, to the Honorable the Circuit Court of Saint Louis County, **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the St Louis Circuit Court, held in and for the County and State aforesaide

wherein The Madison County Coal Company was the Plaintiff, and the Steam Boat Catana, was the defendant,

in a civil action ——— manifest error hath intervened, to the great damage of said Madison County Coal Company as by its complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the Third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, ~~WILLIAM S. GRANVILLE~~ Andrew W. Mead, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 18th day of October in the year of our Lord one thousand eight hundred and ~~fifty~~ Sixty two

A W Mead

CLERK.

State of Missouri } ss
County of St Louis }

In obedience to the within writ of error, I herewith send you, certified under our seal, a complete transcript of the record and proceedings in the cause of "The Madison County Coal Company vs Steam Boat Colona," as fully as the same remain on record in my office.

Witness my hand and the seal of said Court, hereto affixed, at office in the city of St Louis, this 14th day of October A.D. 1862

Stephen Rice Clerk
By Bernard N. Rice
D. C.

1

State of Missouri
County of St Louis } ss.

Be it remembered, that on the fifth day of November, in the year of our Lord, one thousand eight hundred and sixty, there was filed in the office of the Clerk of the St Louis Circuit Court, a petition, which is in the words and figures, following, to wit:

The Madison County Coal Company Pltff.
vs.
The Steamboat Colona. Deft.

In the St Louis Circuit Court. February Term 1861.

Petition

The plaintiffs state that they are and were at the times hereinafter mentioned, a company duly incorporated by the State of Illinois; that the said steam-boat Colona, was at the times hereinafter mentioned, a vessel used in navigating the waters of this state. Plaintiffs state that they have a demand against the said steam-boat Colona, a boat used in navigating the waters of this state, amounting to ninety four $\frac{22}{100}$ dollars, which demand accrued on account of the master & agent of said boat, for stores and supplies furnished for the use thereof, and for work, and labor done in getting out, equipping & towing said boat, as follows, to wit:

1860. February 21. Steamboat Colona To.

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The Madison Co. Coal Co. Dr.

	To 300 bushels of coal @ 10	$30.00
March 16th "	300 " " " "	$30.00
Nov 2nd "	Towing said Boat & casting on " Lines	$10.00
" 6th "	255 Bushels of Coal @ 9½	$24.22
		$94,22

Plaintiffs further state that the above demand is a running account, and that they have no other demand against said steamboat, which is a lien thereon, and that said demand has accrued within six months last past. Therefore plaintiffs ask judgement for said ninety four 22/100 dollars, together with interest and costs.

S. K. Knight
Att'y for Plff's.

State of Missouri
County of St Louis } ss.

James D. Bruner, Agent for the above plaintiff, being duly sworn on his oath, says that the foregoing petition, and the matters and things therein as stated, he believes to be true.

J. D. Bruner Agt.

Subscribed and sworn to before me this 7th day of November 1860.

S. Rice Clk.

On the filing of said petition, the following bond was given, to wit.

Know all men by these presents, that we James D. Bruner as principal, and Henry C. Leach,

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as security, are indebted to the State of Missouri in the sum of one hundred and eighty nine dollars, for the payment whereof, 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 5th day of November, eighteen hundred and sixty.

Steam Bt. Attachmt Bond

The Condition of the above obligation, is such, that whereas, The Madison County Coal Company, is about to institute a suit in the St Louis Circuit Court, by attachment against the Steamboat Colonel Defendant, for the sum of ninety four dollars, and twenty two cents, Now if the plaintiff shall prosecute his suit with effect, or pay all damages and costs, that may accrue to the boat or vessel, or the owners or officers thereof, by reason of said attachment, or any process or proceeding in said suit, then this obligation to be void, otherwise to remain in full force.

Approved November 7th 1860. S. Rice Clk.

A. D. Bruner (Seal)
Henry C. Leach (Seal)

On the 5th day of November 1860, there was issued out of the Clerk's office of said Court, the following Warrant, to wit:

Warrant

County of St Louis SS.

The State of Missouri,

To the Sheriff of St Louis County - Greeting.

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Whereas The Madison County Coal Company have this day filed in the office of the Clerk of the Circuit Court, for the county, aforesaid, their complaint in writing, stating they have a demand against the steam-boat Colona, for the sum of ninety four dollars, and twenty two cents, which accrued against said boat, on account of the master and agents thereof, as in the said complaint, hereto annexed, is set forth in all its particulars, and which said sum of ninety four dollars and twenty two cents, is the sum sworn to in said complaint. These are therefore to authorize you and direct you forthwith to seize the said Steamboat Colona, with her tackel, apparel, furniture, or so much thereof, as will be sufficient to pay said sum of ninety four dollars, and twenty two cents; with all costs, and detain her until discharged by due course of law. And how you shall execute this warrant, make return to our said Court, on the first day of the next term thereof, to be begun and held at the city of St Louis, within and for the county aforesaid, on the first Monday of February next, and have you then and there this writ. Witness Stephen Rice,

E.S.P.

Clerk of our said Court, with the seal thereof hereto affixed at office, in the city of St Louis, this fifth day of November, eighteen hundred and sixty.

Stephen Rice Clerk.

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Sheriff's Return

Indorsed on the back of said Warrant, is the Sheriff's Return, as follows, to wit:
Executed this writ in the county of St Louis, on the 7th day of November 1860, by seizing, and attaching the Steamboat Colona, with her tackel, apparel, furniture &c, which said steamboat was released from said seizure and attachment by bond being given in such case, made and provided; which said bond is herewith returned.

John A. Andrews Shff
Bryan Cross Dp'ty.

Steam Bt. Delivery Bond

Said bond, referred to in said Sheriff's Return, is as follows, to wit:
Know all men by these presents, That we James W. Jefferies, owner of the Steamboat Colona, as principal, and Otis West, as security are held and firmly bound unto the Madison County Coal Company, in the sum of one hundred, and eighty nine dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this 7th day of November, eighteen hundred and sixty.
The condition of the above obligation is such, That whereas the said Madison County Coal Company, has sued out of the office of the Clerk of the St Louis Circuit Court, a warrant against the Steamboat Colona, returnable to the next February Term of said Court, being a demand for

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the sum of ninety four dollars and twenty two cents Now if the said A. A. Forse shall satisfy the amount which shall be adjudged to be owing and due to the said plaintiff in the determination of said suit, together with all costs accruing, then this obligation to be void, otherwise to remain in full force.

Approved Nov. 7th 1860 — S. M. Jefferies (Seal) — Otis West (Seal)

S. M. Breckinridge
Judge

On the ninth day of February 1861, there was filed in said cause, a demurrer to the petition, which said demurrer is as follows to wit:

Demurrer

The defendant by its counsel, comes and demurs to the plaintiffs petition, because it does not state facts, sufficient to constitute a cause of action, in this Because said petition does not aver that the pretended stores, and supplies, were furnished within the State of Missouri

Because the petition does not state that plaintiff had or has a lien on said vessel for said supplies, nor does it appear that the said supplies constitute a lien on said defendants.

John K. Ramsin for Defts.

On the 2nd day of February 1861 an amended petition, was filed in said cause, which amended petition, is as follows, to wit:

Amended Petition

The plaintiff for amended petition, state that they are and were at the times hereinafter mentioned,

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a company duly incorporated by the State of Illinois, that the said steam-boat Colona, was at the times hereinafter mentioned, a vessel used in navigating the waters of the State of Missouri. Plaintiffs state that they have a demand against said steamboat Colona, a boat used in navigating the waters of this state, amounting to ninety four $\frac{22}{100}$ dollars, which demand accrued on account of the master and agent of said boat, for stores and supplies furnished for the use thereof, and for work & labor done in equipping and towing said boat as follows, to wit: S.B. Colona to Plffs. Dr.

1860 Febi 21	To 300 Bushels of Coal @ 10.	30.00
" March 16th	" 300 " " " "	30.00
" Nov 2	" Towing said Boat & casting in lines	10.00
" " 6th	" 235 Bushels of Coal @ 9½	24.22
		$94.22

That said stores and supplies were furnished in the State of Missouri to said Boat, that the above demand is a running account, and that plaintiffs have no other demand against said boat, which is a lien thereon, and that said demand is a lien thereon, and accrued within six months prior to the institution of this suit.

Therefore plaintiffs ask judgement for said ninety four $\frac{22}{100}$ dollars, together with interest and costs.

I. K. Knight
Atty for Plffs.

State of Missouri
County of St Louis } ss. James D. Drumer, Agent of

the above plaintiff, being duly sworn on his oath, says that the foregoing petition, and the matters and things therein as stated he believes to be true

Subscribed & sworn to, J. D. Drumer
before me this 21st day of February 1861.

(L.S.) Witness my hand & seal

S. Pritchard
Notary Public
St Louis County, Mo.

On the 27th day of March 1861, an Answer was filed in this cause; which said answer is as follows, to wit:

Answer

The defendant answering to the plaintiffs amended petition, denies that plaintiff at the institution of this suit, had a lien on the defendant for the 900 bushels of coal, alleged in said petition to have been furnished to defendant, on the 21st day of February 1860, or for the 900 bushels of coal alleged, to have been furnished defendant on the 16th March, and denies that any of said Coal was furnished to the defendant, within six months prior to the institution of this suit.

Defendant denies that the plaintiffs has, or at the institution of this suit had a lien on defendant, for towing defendant, and casting in lines, on the 2nd day of November 1860, and denies that plaintiffs are entitled to recover therefor in this action.

Defendants admit that plaintiff did on the 6th day of November 1860, furnish the 255 Bushels of Coal

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of coal to defendant, at St Louis Missouri of the value of $ 24.22, that that sum of $24.22, and no more was a lien on the defendant, at the institution of this suit, and that the defendant legally tendered that sum, to wit: $24.22, to the plaintiff, prior to the commencement of this suit, and that defendant has always been ready, and now is ready and willing to pay said sum to plaintiff. Defendant therefore asks that the plaintiff be requested to pay all the costs of this suit, and for such relief, as the defendant is entitled to in the premises.

John A. Rankin
Attorney for Deft

State of Missouri
County of St Louis } ss.

John A. Rankin, the attorney of the defendant makes oath and says that he believes the matters and things stated in the foregoing answer, to be true, and that he obtained his information from one of the owners of said vessel, and one Purser Agent of the vessel.

Subscribed and sworn to, before me, this 27th day of November 1861. } John A. Rankin.
S. Rice Clk.

And afterwards, to wit, at the February Term of said Court, on the 27th day of May 1861, further proceedings were had in this cause, as follows, to wit:

The Madison County Coal Company
vs.
The Steamboat Colona } Petition

Now come the parties by their respective attorneys, and waiving a Jury, submit this cause to the Court, and the court having duly heard and considered the same doth find therefrom that the defendant is indebted to the plaintiff in the sum of twenty four dollars and twenty two cents. It is therefore considered by the court, that the plaintiff recover of James W. Jefferies, the principal, and Otis West, the security on the bond, given for the release of the defendant the debt aforesaid as found, and also its costs herein expended, and have execution therefor. Plaintiff files a motion for a new trial, and the court having duly heard and considered the same doth order that the said motion for a new trial be, and is overruled. Bill of Exceptions filed.

Bill of Exceptions

Said Bill of Exceptions, is as follows, to wit:

Be it remembered, that on this 27th day of May A61, this cause came on for trial, and the court tried the same without a jury, on the pleadings and affidavit of James D. Bruner. On the trial thereof, plff's asked the following instructions

See pages A & B immediately following this page marked *

Pl'f's Instructions

Plaintiffs ask the court to declare the law to be. That under the pleadings and proofs in this case the plaintiffs had at the institution of this suit a lien on the St Bt Colona for the sum of $94 22/100, and is entitled to recover said sum together with their costs. Which the court refused, to which the plaintiffs then and there duly excepted. ~~The Deft then asked the following~~

~~The affidavit of James D. Bruner referred to in~~
~~said Bill of Exceptions is as follows to wit:~~

Affidavit of J. D. Bruner.

* James D. Bruner, of lawful age, being duly sworn on his oath, says that he is the agent of plaintiffs in above suit, and was such agent at the times hereinafter mentioned. That on or about the 21st day of February 1860, the master of the defendant purchased for the use of said defendant 300 bushels of Coal of the plaintiff, the market value of which at said time was ten cents per bushel; that on the 16th March 1860, the said master purchased for the same purpose, 300 bushels of Coal from plaintiffs, the market value of which was ten cents per bushel; that on or about the 2nd day of November 1860, said master of said steam boat Colona, employed at St Louis County the plaintiffs to tow the said steamboat, and the said plaintiffs by their towboat called the Stephen Bayard, did tow the said defendant from the head of Rock Island, on the Illinois shore, to the wharf at the port of St Louis, and also took in the lines of said steam-boat on the Illinois shore, the contract price for said service was ten dollars, and said service was reasonably worth that price; that on or about the 6th day of November 1860, the master of said steam-boat Colona purchased of the plaintiff 255 bushels of Coal for the use of said defendant, the market value of which was at the time 9½ cents per bushel; that sometime in July or August 1860,

A

B.

while the lien for said coal, was valid against said boat, this deponent presented a bill to Matt==hews the master of said boat and demanded payment; that said master replied that said said steam-boat would require more coal, and to let the account run, and the said steam boat would pay the whole bill, when he raised some money from the freights of his last trip From some time in August until the 2nd day of November 1860, said Steam Boat Colona laid up on the Illinois Shore near the head of Bloody Island, and was not during said time in the state of Missouri; that this deponent presented the plaintiffs bill for $94 22/100, to the master of said boat, who was at the time acting also as clerk of said Boat, on or about the 6th or 7th day of Nov=ember 1860: that said owner replied that he could not then pay the bill for want of money, that it should be paid on the return trip of said boat, that said bill has not been paid, and is still wholly due plaintiffs; that neither the master, owner or agent of said steam-boat Colona ever tendered to this deponent as the agent of plaintiffs any sum whatever on account of said bill of plaintiffs, and to the best knowledge & belief of this deponent there never was any tender made of any sum whatever to plaintiffs or their agents on a/c of said bill or any part thereof, that said bill was regard=ed by this deponent as plaintiffs agent, as a running a/c against defendant.

Sworn to & subscribed before me May 8th 1861
S. Rice clk

A. D. Burnell

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Defend'ts Instructions

The defendants then offered the following instructions, to wit:

The defendant asks the Court sitting as a jury, to declare the law to be, that the charge made by the plaintiffs for towage is not a lien on the defendant's under the Statute of Missouri, concerning "Boats and Vessels".

The "lapse of time", to wit: six months between the furnishing of the items, divests the vessel of the lien conferred in favor of the plaintiff, for the value of the coal furnished on the 16th March 1860, and prior to this date. Which the Court gave. To which the plaintiff then and there duly excepted, the Court then gave judgement for $24 22/100, to which plaintiff then and there excepted. And afterwards in due time Pltffs filed a motion for a new trial

Now at this day the pltffs, come and move the court, to set aside the judgement, & grant them a new trial in this case, for the following reasons.

Motion for a New Trial

1st Because the Court erred in refusing the instructions asked by pltff, and giving the instructions asked by deft.

2° Because the verdict is contrary to the law, and the evidence.

S. H. Knight Atty for Pltffs

which the court overruled, to which the pltffs then and there duly excepted, and pray the court, to sign this, their bill of Exceptions

S. M. Breckinridge

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State of Missouri
County of St Louis } ss.

I, Stephen Rice, Clerk of the Circuit Court, within and for the County aforesaid, do hereby certify the foregoing, to be a true and complete transcript of the record and proceedings in the cause of "The Madison County Coal Company against The Steam Boat Colona" as fully as the same remain of record in my office

In witness whereof, I have hereto set my hand, and affix the seal of the Circuit Court, at office in the City of St Louis, this 3rd day of May A.D. 1862

Stephen Rice
Clerk.

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Oct T. 1862
No 63 (19)

The Madison County Coal Company
Pltff. ~~Deft~~ in Error

vs.

Steam Boat Colona
Deft ~~Pltff~~ in Error

Writ of Error from the Circuit Court

Filed October 18, 1862
A.W. Mead
Clk

$10 paid by J. K. Knight
Knight for
~~Pltff~~ ~~Deft~~ in Error

Parkinson for
~~Pltff~~ ~~Deft~~ in Error

$1.25/100 paid by C.P. Sea

1862 Nov 12. Apt of Errors filed
1862 Dec 12. Reply filed
1863 Jan 20 Cause submitted

The Madison County Coal Company Pltff in Error
vs
Steamboat Colonia Deft in Error

IN SUPREME COURT,
TERM, 1862

AND now come the said Plaintiff in Error 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 Plaintiff in Error assign 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~~

1 ~~3.~~ That the Court gave ~~to the Jury~~ improper and illegal instructions. asked by Deft

2 ~~4.~~ That the Court refused to give ~~to the Jury~~ proper and legal instructions offered by the Pltff

3 ~~5.~~ That the verdict was against the evidence.

4 ~~6.~~ That the verdict was against law.

5 ~~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.~~

6 ~~9.~~ That the judgment was rendered in favor of the Pltff for a less sum than it should have been rendered for ~~the~~

7 10. That said Court overruled the motion for a new trial, made by Pltff

J. K Knight Atty
for Pltff in Error

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

The Madison Co
Coal Co
Pltff in Error
vs
Shutt - Colona
Deft in Error

Assignment of
Errors

Filed Nov 12. 1862
A. M. Pond
Clk

Knapp for Pltff in Error

The "Madison County Coal Company" — Appellant
vs —
"St Bt Colona" Appellee

In the Supreme Court — State of Illinois

This suit was instituted under the act concerning boats & vessels — on the following account.

"1860. February 21st Smbt. Colona. To Madison County Coal Co. Dr

"		To 300 bushels of Coal @ 10	$30.00
"	March 16th	" 300 " " " "	" 30.00
"	Nov 2nd	" Towing said Boat & taking in lines	" 10.00
"	" 6th	" 255 Bushels of Coal @ 9½	" 24.22
			$94.22

The plaintiff in his petition claimed that his demand accrued within six months prior to the institution of the suit —

That the whole demand was a lien on the defendant ~~[illegible]~~

The defendant denied that the plaintiff's whole demand accrued within said six months, and denied that plaintiff had any lien on defendant at the commencement of the suit either for the first two items in the account or for the towing &c of the defendant —

But admitted a lien for the 255 bushels of coal furnished ~~furnished~~ on the 6th day of ~~March~~ November 1860 — See —

Section 42 of said act (Revised Statutes 1855) page 318

"All suits upon liens in any other than the first class above enumerated, shall be commenced within twelve months ~~twelve months~~ after the true date of the last item in the account upon which the action is founded, except in the County of Jo Daviess, in which they shall be commenced within six months;" and any failure to commence suit as in this or the last preceding section required, shall discharge the boat or vessel from the lien

of the demand claimed"

A period of over eight months elapsed between the items furnished on the 16th day of March & the towing done on the 2nd November 1860 -

The demand accrued & the suit was brought within the County of St Louis - Clearly the cause of action on the ~~two~~ first two items was barred by the limitation of the Statute -

The case of Carson & Brooks vs Strutt "Daniel Hillman" 16th Mo page 256 - is not applicable here - because the account for demand sued on in this case is not an open running account - From the face of the account it would seem ~~appears~~ that separate contracts were made in reference to each furnishing because different prices were charged for the several items -

See The "Mary Blanc" vs Beebee 12th Mo - 477 page -

In regard to the claim for towing it is sufficient to say:

That such demands are not specified or enumerated in the Statute - & it cannot be made out a constructive subsidy

Respy
Strutt Coleman

No 102 C

In Supreme Court,
State of Mississippi

The Madison County
Cotton Compny" appellant.

vs

The St. St. "Colona"
appellee

Appellees Brief

Rankin for appellee

Filed Nov. 12th 1864

W. W. Mead
Clk

State of Missouri County of St Louis ss

The Madison County Coal Company Pltffs in Er vs The Steamboat Colona Deft in Er.	In Supreme Court Error from St Louis Circuit Court

Brief of Pltffs in Error

Statement

This is a suit in the usual form for the recovery of $94.$ $\frac{22}{100}$ for Stores supplies labor &c furnished to Deft as a boat used in navigating the waters of this State & was instituted under the Boat & Vessel act R S p 303 et seq. (See Amended petition Record p 6 & 7)

There was no dispute at the trial as to the facts of the case. The only question raised either by the Pleadings or on trial was as to the amount the Pltffs were entitled to recover (See Answer p 8)

The cause of action was based on the following a/c

Steamb Colona

		To The Madison Co. Coal Co	Dr
1860	Feby 21.	To 300 bushels of Coal @ 10	30.00
"	March 16	" " " " "	30.00
"	Nov 2	" Towing flat boat & taking in lines	10.00

1860 Nov 6 To 255. bushels of Coal @ 9½ 24.22
Total $ 94.22

On the trial after the pleadings & proofs were read the Deft moved the Court for the following Instructions to wit

"That the Charge made by Pltffs for towage is not a lien on the Deft under the Statute of Missouri concerning boats & vessels"

"That the lapse of time to wit six months between the furnishing of the items divest the vessel of the lien confered in favor of the Pltffs for the value of the coal furnished on the 16th day of March 1860 & prior to this date"

The Court gave the above instructions of Deft to which Pltffs saved their exceptions "The Pltffs moved a general instruction That under the pleadings & proofs they were entitled to recover" which the Court refused & to which Pltffs saved their exceptions.

The Court then gave judgt for $24.22/100 (the amt. of the last item in the acct) to which Pltffs saved their exceptions & made a motion for a new trial. which being overruled they saved their exceptions & bring the case here on Writ of Error

Points and Authorities

First The Court below erred in giving Deft. 1st Instruction. The item for "towing said boat" is clearly within the second clause of the 1st section of the act. This clause gives a lien for "labor done" by "bargemen & others in building repairing getting out furnishing ~~repairing~~ or equipping the same" But if there be any doubt of it being embraced in this clause then certainly can be none that it is so embraced in the 4th clause of said section

This 4th Clause gives a lien "for all demands accruing from the non-performance of any contract touching the transportation of persons or property" This contract was with the Master towner for towing the Boat. The Boat was to pay Plffs ten Dollars for towing said boat from the head of Bloody Island to the Wharf at St Louis (See Testimony of Jas. D Bruner p 10 et seq) The Boat failed to pay this stipulated price & hence was guilty of nonperformance of the contract touching the transportation of said property. x

If there could be any doubt that this item is embraced in the above language then it is proper to have recourse to ~~have recourse~~ to the admiralty law

x the "contract" must be reciprocal in any case but the statute is so broad as to construe itself. It includes "all demands" accruing from the non-performance of any contract touching the transportation of persons or property.

to supply a palpable omission

Smith vs Stubb Raritan 10 Mo 527

* Shipley vs David Tatum 33 Mo 461

Towage is allowed in admiralty on the same ground of salvage or wharfage

Emerson vs Back Pandora Newb R p 434

1 Conklins Adm p 28 & note

Our statute includes wharfage or anchorage why is not "towage" as necessary and as much a marine contract as that of wharfage or anchorage? (see Newb R p 434 supra) I think there can be no doubt that the lien attached as to said items.

* The Supreme Court held in Young vs Black 30 Mo p 578 that neglect to perform have a common law lien in the absence of any statutes for their services 30 Mo 578

Second The other Instruction of Deft was also erroneous. The a/c sued on was a running account so alleged to be in the Petition & this is not denied in the Answer. The Witness Bruner also testified "that sometime in July or August 1860 (while the lien attached) he presented the Bill to the Master (who was also owner) of the Boat & demanded payment. that said Master replied that said Steamboat would require more coal & to let the account run & the Steamboat would pay the whole Bill when he collected the freights of

the last trip". Matthews who acted as Master & Clerk was also part owner. And in his capacity of owner could bind the Boat by his admissions

Phelps vs Stubt Eureka 14 Mo. 532
~~Cayman et al vs Stubt Dagh. Hilliam 16 Mo R 256~~

His contract to let the account run & for more coal" was beneficial to the Boat & the subsequent delivery of the Coal would relate back to the time of the contract. The general doctrine of relation is that when two or more acts concur to create an estate the subsequent acts relate back to the ~~first~~ original act

18 Vin. Abr (title relation) p 290. et seq (§ 8.)
1 Johns Cases 81. Jackson vs Ramsey 3 Cow R 75

The difference between a running account & one that does not run is that in the latter ~~case~~ each item (or those contracted for & delivered at one time) is a separate cause of action by itself. The minds of the parties are presumed only to have concurred as to the single transaction & the same becomes an account stated as between the parties. In such case the account bears interest 2 Story Contracts § 1026

On the contrary an open or running account bears no interest for the reason that the amount remains unliquidated Holliday vs Marshall 7 Johns R 210

Our Supreme Court at an early day decided that an open running a/c against a Steamboat continues to be a lien from the date of the last item

(Carson et al vs Hellman 16 Mo 256

This decision is conclusive of the one at Bar. but I will refer to some others to show the tendency of the Courts to follow the equitable rules of the admiralty in interpreting the Statute

~~Hence~~ the master of a boat can bind the boat for future transportation.

(Taylor vs Stutt Robt Campbell 20 Mo 254

And he may do this even by Telegraphic despatch

Same

But he cannot bind the boat by drawing bills of Exchange. (Clark vs Humphreys 25 Mo 99

The above are precisely the rules of admiralty in like cases

(Pratt vs Reed 19 How (SC) p 359

to here

Why then not follow the admiralty rules as to the Staleness of claims when there is any doubt of the construction of the Statute By that law on the western waters. lapse of time does not alone make a claim stale but it depends on reasonable delligence, but will not extend the existence of the lien beyond one year except under spe

=cial circumstances

Stillman vs Stubb Buck Eye State

Newb Adm R 111

Third The Supreme Court at an early day gave a similar construction to the statute confering Mechanic liens 9 Mo. 558

On a special contract the lien begins with the delivery of the 1st article & continues six months after the delivery of the last article. the day upon which the last delivery is made is not to be counted but the 6 months is to begin to run from and after that date 12 Mo 477.

How much more then should this rule of construction obtain in a case of open running a/c. When the a/c once begins running it continues to run until one or the other parties take steps to liquidate it. Until that is done the indebtedness is uncertain & no cause ~~of action~~ of action on the whole account arises 16 Mo. 256

The Court below clearly erred in not giving judgt for the amt. claimed to wit $94.$\frac{22}{100}$ instead of only allowing the last item for $24.$\frac{22}{100}$

J. K. Knight atty

for Pltffs in Error

146

C

The Madison Co Coal
Company Pltffs in Error
vs
Stubbs Colona
Deft in Error

Brief of Pltffs in Error

Filed June 12. 1885
A. M. Allen
Clk

Knight for P. E.

The Madison Coal Company
Plf in Error.
v.
St. M. Colona
Deft in Er.

In the Supreme Court
Oct. T. 1865.

Opinion of the Court.

This was a suit under the act concerning Boats and Vessels (Rev. Stat. 1855 p. 303, § 1) upon the following account:

"St. M. Colona Dr. To the Madison Coal Company.

1860, Feb. 21,	To 300 bush. of coal @ 10	$30.00
" March 16,	To " " " "	30.00
" Nov. 2,	" Towing saw boat & taking in lines	10.00
" " 6	" 300 bush. of coal @ 9½c.	24.22
		$94.22"

The answer admitted the last item, but denied that there was any lien on the boat for the other items; and upon the trial, the court instructing the jury to that effect, judgment was rendered for the plaintiff for the last item only.

The statute provides that the suit shall be commenced within six months "after the true date of the last item of the account upon which the action is founded" (Ibid. § 42), and it has been held by this court in several

ing the river. They are not necessarily to be confined to building or repairing. A boat may be laid up for a season, and then brought out again. "Bringing out a boat" is a common phrase among boatmen; it is usually applied to the building of a new boat; ~~and~~ it may also be understood as applying to a boat newly repaired, or newly brought out when merely laid up for a season; and the phrase <u>getting out</u> a boat may be taken in a similar sense. This boat appears to have been laid up, or moored, at Hogg Island; by lines fastening her to the shore, and the plaintiff was employed to take in the lines and tow her across the river to the wharf at St. Louis. This may as well be said to be a service in <u>getting out</u> the boat as if she had been laid up for repairs. It seems to have been necessary in order to place the vessel in a situation to commence her voyage. Giving the words their ordinary signification, they may fairly be interpreted to include this item. ~~This not~~ We could not be understood as holding that there can be a lien under this act merely for the towing of a boat as such. The ground of the lien is the work and labor done by a bargeman or other person in getting out the boat and placing her in a position to begin her voyage again; and in such case, there would be none the less a lien because a part

of the service consisted in a towing of the boat. Upon the evidence in this case, we think the particular service came within the terms and intent of the act. It follows that the instructions given for the defendant were erroneous. The judgment is reversed, and the cause remanded.

Judge Wagner concurs. Judge Sherlace absent.

N. Holmes.

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The Madison Coal Company
Plff in Err.
v.
St. St. Colona
Deft in Err.

Opinion.

Reversed & remanded.

Filed Nov 30. 1855
J. A. Wells
Clerk

Holmes.

The Madison County Coal Company
Plff in Error

vs

The State Colonna
Deft in Error

In Supreme Court

No 146. March Term 1864

It is hereby agreed by the counsel for the Respective parties that after the words James A Bruner on the 10th page of the Record in this case, that the affidavit of said James A Bruner immediately following said 10th page should be inserted, & that then the balance of the 10th page & the 11th page should follow consecutively —

May 19th 1864

J. K Knight for
Plff in Error

Jno H. Rankin for
Deft in error

The Madison Co
Coal. Company
Pltff in Error
vs
Stuart Colona
Deft in Error

Agreement as to Recd