

8816

No. _____

Supreme Court of Illinois

John J. Leshner

vs.

George Mith, Admr.

71641  7

Jacob Lecher, Ralph S. Dady
Ezra Baker and Hiram Bell

vs

Wabash Navigation Company

Wabash Circuit Court
August Term 1852.
In Chancery

The Court now being
sufficiently advised herein, It is finally, considered, ad-
judged and decreed by the Court, that the claims of
complainants for the sum of Two hundred and eighty
eight dollars and thirty eight cents, being amount reported
by the Commissioners heretofore appointed, as the value of
timber cut, and incidental damage to the land in
petition set forth by Samuel and Isaac Culbertson pre-
vious to the 8th day of September 1848. be disallowed.

It is further considered, adjudged and decreed that
the said complainants do recover of and from the
said defendants the sum of One hundred and fifty
five Dollars and sixteen cents being the amount assessed
by said Commissioners as the value of the timber cut and
carried off the said premises by the defendants after the
said 8th day of September A.D. 1848. and also the further
sum of Forty two Dollars and eighty seven cents, being
the amount assessed by the said Commissioners as
damages done to the said lands by the said defendants
after the said 8th day of September A.D. 1848. making
in the whole the sum of One hundred and ninety seven
Dollars and three cents, together with their costs
herein expended."

A True copy

Attest. Hiram Bell Clerk

Whereupon it was understood and agreed by and between the said parties by their attorneys that this cause may be removed into the Supreme Court for hearing before the judges thereof upon writ of error, to be heard and argued at the next Term thereof, if time permit so. The decision in this cause to govern and control the decision of the other causes decided at this Term of the Court between other parties and the said Wabash Navigation Company, involving the same questions. And in order to raise the necessity of a full record of this Court in the premises, the following agreement of facts is submitted to the Supreme Court as the basis of the foregoing decree, now here sought by the Complainants in Error to be in part reversed.

That under the act of the Legislature in force Jan 30th 1847. the Wabash Navigation Company undertook the construction of a dam & Lock on the Wabash River at the place known as the Grand Rapids. That for the purpose of this work they employed an Engineer to supervise the work, and entered into the following contract with certain men, Samuel and Isaac Culbertson, to do the work re,

"Articles of Agreement made and concluded the twenty fourth day of August AD, 1847. by and between Samuel Culbertson & Isaac Culbertson, of Indiana County, Pennsylvania, of the first part, and the Wabash Navigation Company of the second part Witnesses; That for and in consideration of the payment & covenants hereinafter mentioned to be made and performed by the Wabash Navigation Company, the said party of the first part, doth hereby covenant and agree to build, execute and finish and complete in the most substantial permanent and workmanlike

namely a civil Lock and Dam for Steam Boat Navigation on the Wabash River and to do and perform the same to the full satisfaction and acceptance of the Engineers; Said work to be finished as described in the plans & specifications herewith annexed and agreeably to the directions of the Engineers, as from time to time given during its progress, and to be finished and delivered to the said Wabash Navigation Company in complete working order, on or before the first day of November 1848. And in consideration of the faithful performance of the above covenants and agreements the said Wabash Navigation Company agree to pay to the said parties of the first part the following prices viz:

In the Lock & Dam Cuts above the same

1 st Excavation of earth per cubic yard	Twenty five cents
2 ^d " " " " " " " " " "	One Dollar & twenty five "
3 ^d Stone filling per cubic yard	Eighty five "
4 th Embankment " " "	Twenty five "
5 th Timber & cills per ft Lined	Two Cts "
6 th Lining Plank per 1000 ft B ^d Meas.	Twenty five Dollars
7 th " " " " " " " " " "	Eighteen
Doors, plank & small spikes with all fixtures for opening & closing same	Hundred } Dollars }
8 th Piled in foundation per foot Lined	Two Cts.
9 th Plank in foundation per 1000 ft B ^d M.	Twenty two ⁵⁰ / ₁₀₀ Dols.

Dams & Abutments.

1 st Timber in Cills per foot Lined	Two & a half cents
2 ^d Do. Do. Do. of Abutments per ft.	Two Cts "
3 ^d Lined Sheeting per foot Superficial	Two "
4 th Upper sheeting per 1000 feet Board Measure	Twenty two & a half dollars.
5 th Sheet piling per 1000 ft B ^d Meas.	
	Twenty Dollars

6 th Excavation in Abutment per cubic yd	Twenty five cents
7 th Embankment per cubic yard	Twenty five cents
8 th Stone filling " " "	Eighty five "
9. Handling above Dam, per cubic yd	Thirty three "

It is understood and agreed by and between the parties that the foregoing items of work, and the prices thereunto annexed are to cover the whole cost of construction, and it is further understood and agreed that no estimates of payments will be made under any circumstances whatever for the construction of Coffin Dams, or for pumping or hauling water or for any other contingent expense whatever.

On or about the first of each month during the progress of the work, the Engineer will be required to make an estimate of the relative value of all the work done and materials furnished, and deliver in a safe situation, and on his certificate of the Amount being presented to the board five sixths of the amount of said estimate will be paid over to the said party of the first part, and when all the work embraced in this contract, is completed agreeably to the specifications and in accordance with the directions and to the satisfaction and acceptance of the Engineer there shall be a final estimate made of all the work done agreeably to the terms of this agreement and the balance appearing due shall be fully paid to the said parties of the first part.

It is further agreed by and between the parties to these presents that the contractors shall not transfer or sublet this contract or any part thereof (excepting only for the delivery of materials) without the consent of the parties of the second part; but one or both

of them will at all times give personal attendance to the work. Nor shall the contractors employ any person or persons who commit any injury or insult to the persons or property of citizens or travellers. And the said party of the first part further agrees, not to keep or suffer to be kept, around any ancient spirits in any house or tenements built or occupied by him or by workmen, or boarding-house keepers under him, and to discharge all persons from his employment who are guilty of a breach of this regulation. It is further understood and agreed, that the work embraced in this contract shall be commenced within thirty days and prosecuted with a force adequate to its completion within the time specified, and if at any time the said party of the first part shall refuse or neglect to push on the work in a manner that will warrant its completion within the time specified or to do the same in a workmanlike manner and agreeably to contract, the engineer may at his discretion declare this contract forfeited, which declaration and forfeiture shall exonerate the Mahab's Navigation Company from all obligations and liabilities arising from this contract, and the one sixth percentage on the work then done shall be forfeited to the said party of the second part. And it is lastly mutually agreed by and between the parties to these presents that the final account and decision of the Engineer, in all matters relative to this contract, shall be final and conclusive and without further account or appeal by either.

In testimony whereof the said Samuel Culbertson, and Isaac Culbertson, have hereunto set

their hands and seals, And the said Wabash Navigation Company by Abner J. Ellis the President thereof agreeably to the resolutions of the Board of Directors has herewith set the Seal of said Company & subscribed his name & quality at Vincennes, August 24th 1847.

Wabash
Navigation
L S

Samuel Culbertson
Isaac Culbertson
per same

Seal
Seal

Abner J. Ellis
Wabash Nav. Comp^y

That in carrying on said work, said Culbertsons entered upon the lands of the Complainants adjacent to said work, and took therefrom timber suitable and necessary for the work. That Complainants did not object to their so doing. - That sometime about the 15th day of May AD 1848. other parties than the Complainants objected to Culbertson taking materials off their lands, whereupon said Navigation Company passed the following preamble and resolution, which were duly entered on the minutes of their proceedings - viz:

"At a meeting of the Board of Directors of the Wabash Navigation Company on the 15th May 1848 the following Preamble and Resolutions were adopted

Whereas Samuel & Isaac Culbertson on the 23rd day of August 1847. entered into the employment of the Wabash Navigation Company for the construction of a Lock & Dam at the Great Rapids of the Wabash River and other - contemplated by the Charter of said Company - Now to avoid error explicit the powers with which they were vested by said Company

Resolved That the said Samuel and Isaac Culbertson are hereby invested with full power as granted in the Charter of said Company, for the purposes aforesaid to enter upon the Wabash River at all points within the purview of their engagements with said Company, by themselves and others in their employ and on the lands on either side, and to hold and use the same so far as is necessary to comply with their engagements with said Company, and to use the timber, rock, gravel or earth which may be found thereon, in the construction of the works undertaken by said Culbertsons for said Company. - Provided in all cases the said Samuel & I. Culbertson shall at all times and in every case of the exercise of said power, be fully bound to indemnify the said Company for any damages that may be assessed against said Company for ~~any damages~~ ^{the exercise of} thereof.

John Ross Sedy

Under this permit Culbertsons continued to act as they always had done, until discharged from the work by the Company, about the 8th September 1848.

It is agreed that the Company paid some estimate to Culbertsons under the Contract and that Samuel Culbertson the survivor, has received a judgment against them for the balance due him. The Complainants have presented their petition for the value of their timber, damages &c, taken from their lands by Culbertson as also by the Company after entering upon the construction of the work themselves.

Whereupon the Circuit Court rendered the decree heretofore set out herein. The question presented to the judges of the Supreme Court under this agreement is -

Are the Complainants entitled to recover from the
Wabash Navigation Company, the value of timber
taken from their lands, and the damages incident-
ally done thereto by the Cutters under the
provisions of the 11th Section of the Act referred to
entitled "An Act to incorporate the Wabash
Navigation Company", or will they
be driven to a suit against the said Cutters
for Trespass &c. And consequently whether the
said decree is correct, or should be reversed & a
decree entered by the Circuit Court for all the timber
taken, and damages done to said lands in the
construction of the said work, without reference
to the persons by whom said timber was removed
or said damages done &c? —

Constable for Plaintiffs in
Error &c.

A. Titchell for Defs &c

Supreme Court
1st Div. Nov. 2nd 1832

Jacob Lesher & others
Plaintiffs in Error &c

vs.

Wabash & W. Company
my Defs &c.

Error to Wabash
Agreed Case &c.

Filed 19th Nov. 1832

J. D. Preston clk

Prepared

Constable, atty

State of Illinois, 1st Grand Div. 2^d.
Supreme Court, November
Error to Wabash: Term A.D. 1852 -
John Jacob Lasher, Plaintiff in Error.

vs.
George Smith, Administrator of
Adelia Fox, Defendant in Error.

This was a suit brought before
Henry Steed Esq. a Justice of the Peace in
the county of Wabash, in this State, by the
Plaintiff in Error, who is a physician, to
recover the amount of his medical bill for
services rendered the intestate in her last
illness. Judgment was rendered by the justice
against the Plaintiff upon an agreed case
from which an appeal was taken to the Wa-
bash Circuit Court. Then the case was again
heard upon such agreed state of facts, as set
forth in the record, and the judgment of the Jus-
tice of the Peace affirmed, and this writ of
error is presented now here to reverse the
Judgment of affirmance of the Wabash Circuit Court.

The simple question presented for
the decision of this Court now here is,

Does "Act XXXVII." in the Ap-
pendix to the Revised Statutes of 1845, go-
vern the disposition of the personal estate of a
woman, dying, being the head of a family &c.?

That it does not, See. Appendix Rev. Statutes, 1845.
Act Number XXXVII.

1st Grand Div. Sup. Court
State of Illinois &c.

John Jacob Lesker.
vs.

George Smith, Plaintiff
vs. Adelia Fox, &c.

Geo. A. M. & Co.

Attacks of Order by
Plaintiff in Error.

8816

Constable, Attorney

Leshur
u
Martha

R. S. 597-§ 76 Is a woman a man

R. 552 § 76 provision for applying provision

suppose a woman dies who
has never been married
leaving a family of children

It is contended that the widow
having once rec^d a part of the
deceased husband's estate
under the law & thus taken it from
the creditors, allowing her chil-
dren to take again is allowing
the family to withdraw property
from the creditors & allowing
two portions from the creditors.
This is not so, for the creditors
of the husband can in no event receive
any benefit from the widow's estate.
But if it were otherwise the same mischief
would occur when a man dies leaving no
widow but more children.

1 Story 25-5-
2 Scam 224

As to the construction
of these statutes

Laws of 47

~~Martha & Martha~~

Suppose the husband & wife both
die the same day but the wife last.

Leahur

Martha

McCombs Estate

J. J. Lusher
is } Error to Nabors.
of Mills Adm. v. S.

The Court below construed the 4th sec of act N^o XXXVII. of Appendix, R.C. p 597. to allow to the children of Mrs Fox, the same property upon her death, as would have been allowed them by it, in case of the death of their Father leaving no widow.

The Plff. insists that this construction is wrong, and that the death of the Mother is not within the meaning or object of the foregoing section.

The Defendant insists that the proper construction includes the mother, & widow ~~dying~~ ~~at the~~ being the head of a family and house holder, at the time of her death, as well as of the father.

In support of this construction The Dft maintains ~~that~~
1st That the spirit object and intention of the statute is to protect families of orphan children, so that they may not be left destitute upon the death of parents.

2^d That the act of Feb 11th 1847. p 168, & the statute of Mills, and the unrevoked sections of N^o 37 in appendix all taken together show that ~~the~~ families of orphan children, are as much within the object and intention of the Legislature, as are the widows and Mothers,

3^d Sec 76, in the Statute of Mills, (R.C. p 552) expressly provides, that when a male party is named, females shall be included, whenever

it can with propriety be applied.

The following cases are referred to, ~~and~~
showing that the rules of construction upon
statutes like these, support the grounds above
taken for Dept.

"The Court looks to ~~the~~ all the objects, and the entire
intent of the Legislature, & all statutes on the same
subject matter are to be interpreted together"

1 Story R. p 255.

2 Scam. p 224. Mason vs Finch,

As to allowances to widow & family see
Sumner & Marshall p 520, McNulty vs Lewis

A. Hitchell for Dept

A. J. Leake

George Wickham

Error to Mahan

Chief of Dept.

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of the County of

Franklin

GREETING:

We command you that of the goods and chattels, lands and tenements of

James D.

Leary

you cause to be made the sum of

Dollars and

Cents damages, and

the sum of

twelve

Dollars and

forty

Cents

costs in the said Supreme Court, which

James Dallins

lately recovered against

him

before the Justices of our said Supreme Court, as appears

to us of record, and make return hereof in ninety days.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of the

Supreme Court, and the seal thereof at Mount

Vernon, this *30th* day

of *April* in the

year of our Lord, one thousand eight hundred

and *fifty two*

Quincy D. Preston

~~Q. D. PRESTON~~, Clerk of the Supreme Court.

Supreme Court

Isaac Sullivan

for use of

James D. Carr

v

James Ballin

vs

\$ 12 40

Come to hand on the 30th
day of April 1832 at

Sackock Bell,

Thos. W. W. W. W.

Shrop 30

The Assessed this 9th day of July 1832

for Property for use of the
the Assessed as within Committed

Returning

Shrop 30