

12164

No. _____

Supreme Court of Illinois

Merriman, et al

vs.

Canal Boat "Colonial Butts"

71641  7

Amos L. Merriman
of Chauncey Wood
Canal Boat Col. Butts

Manning Merriman for pfs

This was an action commenced under Chap 10. Rev. Stat. "Attachments of Boats and Vessels" for services rendered ^{in towing} the Canal Boat "Col Butts" on the Illinois River, and the only question for the consideration of the Court is whether such services are within the meaning of this chapter.

After having provided in the first section for a lien in favor of those contracting with the officers of the boat, "on account of all work done, supplies or materials furnished by mechanics tradesmen and others, for on account of or towards the building repairing fitting furnishing or equipping such boats and vessels their engines machinery sails rigging tackle apparel and furniture", this Chapter provides in the fourth section "All engineers pilots mariners boatmen and others employed in any capacity in or about the service of any such ~~of any such~~ boat or vessel who may be entitled to arrearages of wages, in consequence of such service may proceed to collect such wages under the provisions of this Chapter and shall be entitled to all the benefits hereof."

In this case the services are rendered by the owner of a Steamboat, and in rendering those services he uses his steamboat - But the Canal boat is indebted to him for wages for services rendered in and about the boat.

A fair construction of the act makes it include all those who render services for the boat - as in loading or unloading. But in loading, if one person take the entire contract, and employ persons under him the lien will be in favor of the person contracting, and not in favor of laborers under him. But suppose the boat to be freighted is at some distance from shore, and he has to employ boats or a steamboat, for the purpose of loading the boat under his contract - does he not equally have a lien for the value of all these services?

In this case, if the plaintiff had contracted to take the boat to La Salle, and had gone on board the Canal boat with his hands and propelled the Canal boat by poles and oars to La Salle, there would be no question but that he would have this remedy against the Canal boat: (Vid 20 Wm 181) as the subcontractors (workmen) would have none. But how is the right and justice of the case changed when the plaintiff used his

Steamboat, with the same workmen under him instead of using poles and oars?

The statute is in favor of services, and not in favor of any particular manner of rendering those services.

Similar statutes have received constructions similar to that contended for on the part of the plaintiff here.

In Iowa the use of a barge is supplies within the meaning of an act similar in its language to the first section of the 10th Chapter. *Steamboat Kentucky v. Brooks & Greene* 398. And the principle of these laws is properly deduced in this decision - the protection of our citizens giving credit to those boats.

So also in *Gleim v. Steamboat Belmont* 11 *Missouri* 112 the hire of a barge to a steamboat will be a lien upon a Steamboat.

These cases stand upon the same reason and principle: And altho' it is true that this statute introduces a new remedy, yet the object and effect of the Statute being so just and beneficial, it is not to be strictly construed. The beneficial objects of the statute are not to be curtailed by adhering to its letter instead of its spirit.

And so, similar statutes have received liberal constructions

in favor of securing the benefits of the statute to those claiming rights under such statute; especially in the west where boats navigate the same rivers through different States.

The word "owner" is construed to mean the person making the contract 11 Barb. Sup. Ct. Reps 9. A contract with another officer with consent of the master is good. 14 Mo. R. 532. It is immaterial at whose instance the work is done, if the person have control of the boat. 18 Ohio 187.

In the case of the Steamboat Uncle Toby, decided at last term of this Court, the Court clearly give the lien in favor of those furnishing supplies to the boat while running, and yet a strict construction of the first section would confine such lien to work and labor done and materials furnished on the boat and for the purpose of building or repairing such boat.

It is even for the benefit of the boats, who very frequently must have credit, that those rendering services like those in this case, should have the lien. If canal boats when stuck on bars as frequently occurs, cannot have credit to procure a steamboat to

draw them off, because the steamboat cannot have a lien for such services it will be an injury to the boat and its owners.

Even in such a case, if a man waded in the water and shored the boat off he would have a lien - if he attached his horses and hauled it off he would have a lien - if he attaches his steamboat and hauls it off he shall not! Such is the argument on the part of the defendant, and it is absurd. But there is no difference between hauling a boat off a sand bar, and towing it from Peoria to LaSalle in principle.

A. S. Merriam
et al.

Canal Boat Col. Butts

Manning & Merriam
for peps

Argument.

Amos Lee Mooniman }
 Chowney & Wood } Points & Authorities
 vs } relied upon by
 Conell Boat Col Buts } E. N. Powell for
 the defendant

1. The 1st Section of the act of Attachment of Boats & Vessels Revised Stat 1845 page 71 gives a lien to all Boats built repaired or equipped or running upon any of the navigable waters of within the jurisdiction of the State for all debts contracted by the owner or owners masters supercargoes or assignees thereof on account of all work done Supplies or materials furnished by mechanics tradesman and others for or on account of or towards the building repairing fitting furnishing or equipping such Boats & Vessels.

The 4th § of the same act extends the lien in favor of Pilots and others employed in any capacity in or about the service of the Boat who may be entitled to arrangements of wages.

The question presented in this record is whether a Conell Boat is liable to be attached under this act and made liable for the value of towing her by a Steam Boat.

The case of Johnson vs The Steam Boat Souderskey & Wend § 10 gives a construction to a New York Statute similar in its provisions to ours which it seems to me settles this case. In this case it was decided that a person who had furnished large quantities of wood for the Steam Boat that he had purchased a

a barrel of flour for him and that he paid \$75 dollars to release her from an execution.

It was held under this act that the Steam Boat was not liable to be attached. The court say "The object of the act was to give a preference to a particular class of debts incurred in the building and equipping of vessels and not to give a general lien for all advances made for the benefit of the owner in respect to the vessel."

The scope of this decision is that nothing can be allowed to be a lien upon a vessel that does not come within the letter and spirit of the act.

In the case of Crooke et al vs Slack et al 20 Wend 177 The court decides under another Statute that a person furnishing wood would have a lien.

In the case of Hubbel vs Simmons 20 Wend 181 that an attachment does not lie under the New York act against a vessel at the suit of a Sub contractor for work and materials furnished.

In the case of Blaup vs Steam Boat Robert Campbell 10 Missour 266 The court decides that an action cannot be maintained for damages sustained by a hand in being forced ashore by the Master in breach of a contract of hiring.

In the case of Ryan et al vs The Steam Boat Pride of the West 12 Missour 371 The court decide that money loaned to

master of a Boat to pay the debts of the Boat
that the Boat is not liable to be attached

In the case of the Steam Boat
P N White & English Arkansas R 1, 11
The court decides ~~the same thing as in~~
~~the case in 12~~ that money loaned to the
Boat for the purpose of paying the wages
due the boatmen does not subject the Boat to
attachment under a similar act to ours

The case decided at the last
Autumn term of this court decides that
against the Steam Boat Uncle Toby
decides that a boat is not liable to
be attached for coal furnished the Boat
not to be used in running the vessel

All of these cases go upon the
principle that in order to make the Boat
liable to attachment the thing done or
the article furnished must come clearly
within some one of the provisions of the
Statute

Now the question here is does the
towing of a Boat come within the first
or fourth Section of the Statute Clearly not.
Does it come as near within the letter or
spirit of the Statute as did the loaning of
the money to pay the debts of the Boat or
the demands due the hands of the Boat as
in the cases reported in 12 Mississippi and 5
English

This Statute being in derogation of the common law is to be construed strictly. In *Pore vs Neal* 2 Sid⁶³ The plain principle is laid down "that a Statute which gives a new remedy ought not to receive a liberal construction."

In 10 Rep 75 & Strange 258 the principle is laid down that a "Statute creating a new jurisdiction ought to be construed strictly."

In *Livornis* on Stat. 756 it is said "When the meaning of the a Statute is doubtful the consequences are to be considered in the construction for the courts will not construe acts of Parliament so as to admit of any absurd consequences"

Now according to my humble apprehension the towing of a Canall Boat by a Steam Boat does not give a Lien upon the Canall Boat so as to authorize proceedings by attachment under the act. And consequently the court below did not err in finding for the defendant.

A L McMillan et al
vs

Canal Boat Col Bull

Points & Authorities
Submitted by

E. A. Powell
for deft

20 March 177. 181 Boat attachment - new Statute

5 do " 510. Boat " - old "

11 Barb. S. C. R. 9 owner & Contractor - correlative in Mech. kin

11 Mo R 112 Barge hired in part of equipment

12 do " 371 Money loaned generally no lien - specially for
stores or supplies may be a lien see Statute 1804

14 do " 532 A log for repairs & expenses may be retained
without losing lien

16 do " 266 May dismiss hands for breach of contract of hiring
and he can recover no damages

18 Ohio " 187

5 Eng Ark " 411 Money loaned to pay off lien of hands
does not subrogate the lender to the lien
(dictum in 12 Mo 371 to contrary)

1 Greenow " 398 Barge hired for navigating is outfit & equipment
for carrying outtake - not confined to building

Steamer made Feb 14 Ills attachment does not
lie for coal furnished to boat
tho, not for running it

2 Sid R 63 Statute which gives a new remedy
ought not to receive a liberal construction

10 Rep 75 } Statute creating a new jurisdiction
Thompson 258 } ought not to be construed strictly

62/6 Blackf R 148. Labour not subject to lien, unless by contract
with "owner or master" &c

15 Ohio R 585 (same case)

16 " " 2765

Proceedings in the Circuit Court in and for the County of Peoria
in the State of Illinois at a term thereof begun and held
at the Court-House in Peoria on the third Monday in the
month of November in the year of our Lord one thousand
eight hundred and fifty three, it being the twenty first
day of said month - Present the Honorable Gustav Peters,
Judge of the Sixteenth Judicial Circuit in the State of Illinois,
to wit,

Wednesday, November 23rd A.D. 1853

Amos L. Merriman &
Chauncey C. Woods, administrators
of Luke Woods, deceased

vs attachment - appeal from J. P.
Canal Boat Col. Butts

This day came the plaintiffs by their
attorneys and the defendant by Grove & Mc Coy attorneys, and
agree, that all matters both of law and fact arising in this
cause shall be tried by the court without the intervention
of a jury, and the evidence having been heard the court took
time to consider -

Monday, December 12th A.D. 1853

This day came the parties by their respective attorneys and the
court being fully advised in the premises do find for the defendant -
Therefore it is considered, that the said boat be released from the

attachment herein and that the defendant have and recover of the plaintiffs the costs and charges of the defense in this behalf expended to be paid in due course of administration on the estate of said Luke Woods deceased.

And afterwards, to wit, on the fifteenth day of December A.D. 185-3, at the same term of said court, there was filed in said cause the Plaintiffs Bid of Exceptions in the words and figures following, to wit,

"A. L. Merriman et als,

vs

Canal Boat Col. Butts

} appeal

Be it remembered, that on the trial of this cause the plaintiffs to maintain the action on their part called David A. Boutch as a witness, who testified that in November 185-1 he was the Captain of Steamboat Gov. Briggs, and was running her on the Illinois, between Peoria and LaSalle; that she belonged to Luke Woods the plaintiffs intestate, and he was running her for said intestate; That about the said month of November, he towed the Canal Boat Col. Butts from Peoria to LaSalle, that there was no price agreed upon for the towing but the usual, and that the fair and reasonable price therefor was forty dollars; that before he started up the river with said Canal and Steam Boat, the owner of the Canal Boat and his son

asked witness how much he should charge for towing up
the Canal Boat and he answered forty dollars, to which they
made no reply, that he towed it up at the request of
the owner = that he then attached her to the Gov. Briggs
and towed her safely to LaSalle - This was all the evidence;
the Court being of the opinion, that was not a case within the
provision of the statute authorizing attachments against boats,
vessels &c. for services &c. rendered for such boats &c. found for the
defendant. It appeared that the objection, that an attachment
would not lie in such case was made and insisted upon on
the trial before the justice of the peace. To the decision of
the court in thus finding against the plaintiffs, the said Plffs
excepted and prayed that this their Bill of Exceptions may be
allowed and signed and sealed by the judge and made part
of the record in this cause, which is done.

Orslow Peters 

State of Illinois
Peoria County } I, Jacob Gale, clerk of the Circuit Court
in and for the County of Peoria in the State of Illinois do hereby certify
that the foregoing is a correct transcript from the record and
proceedings in the said Court in a certain cause therein of Amos
L. Merriman and Channay B. Woods administrators of Luke Woods
deceased ~~are~~ plaintiffs against the Canal Boat Col. Butts is defendant

In witness whereof I hereto set my hand and affix the
seal of said Court at Peoria this ninth day of June
A.D. 1884 - Jacob Gale, clerk.

St. Legerianae Wal.

General Boott Col. Butts

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