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## Mechanics' Liens-Improvements Outside Building--Lien Allowed for the Clearing of Land Unconnected with the Construction of a Building

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MECHANICS' LIENS—IMPROVEMENTS OUTSIDE BUILDING—LIEN ALLOWED FOR THE CLEARING OF LAND UNCONNECTED WITH THE CONSTRUCTION OF A BUILDING—Plaintiff filed a bill of complaint seeking to enforce a mechanic's lien for the clearing of eighty acres of land pursuant to an agreement with the owners. The bill alleged that plaintiff's lien was superior to a mortgage which, though prior in time of execution, had been recorded subsequent to the inception of the clearing contract. Defendant mortgagee demurred on the ground that land clearance did not qualify for a lien under the pertinent mechanic's lien statute which provided that "every . . . person . . . who shall do or perform any work or labor upon . . . *any building or improvement on land* . . . shall have a lien therefor on such building or improvements and on the land on which the same is situated. . . ."<sup>1</sup> The demurrer was overruled.

<sup>1</sup> ALA. CODE tit. 33, § 37 (1940). (Emphasis added.)

On appeal, *held*, affirmed, three judges dissenting. The clearing, grading, or excavating of land is an improvement upon land within the meaning of the mechanic's lien statute. *Mazel v. Bain*, 272 Ala. 640, 133 So. 2d 44 (1961).

Unknown at common law, the mechanic's lien is a statutory device designed to insure the collection by the contractor or subcontractor of the debt owed for the performance of his services. Statutory provisions, varying widely from state to state, define those types of work which qualify for the lien. Typically, these statutes authorize a lien for labor performed upon "any building or structure,"<sup>2</sup> upon "any house . . . or other building,"<sup>3</sup> upon "a house or other building or appurtenances,"<sup>4</sup> or, in language similar to that of the controlling statute in the principal case, upon "any building, improvement or structure."<sup>5</sup>

The general approach to be followed in construing these statutes, including the work-defining provisions, has been a subject of substantial judicial controversy. Because the major purpose of such legislation is to encourage construction by affording protection to the laborer,<sup>6</sup> some decisions have supported a liberal interpretation.<sup>7</sup> On the other hand, since mechanic's lien statutes grant special privileges to particular classes of persons and thus are in derogation of the common law, a strict construction has also been frequently urged.<sup>8</sup> Still other decisions, distinguishing between those statutory provisions which define the right to a lien and those which prescribe the procedure to be followed in perfecting it, insist that the former should be construed narrowly and the latter liberally.<sup>9</sup>

Notwithstanding this overall diversity of attitudes toward statutory construction, decisions rendered prior to the principal case under statutes similar to the Alabama provision were apparently uniform in applying a relatively strict interpretation to the word "improvement." Thus, in *Nanz v. Cumberland Park Co.*,<sup>10</sup> where the plaintiff graded land and planted flowers and shrubs, but erected no structure, the Tennessee court denied

<sup>2</sup> VA. CODE ANN. § 43-3 (1953).

<sup>3</sup> IND. ANN. STAT. § 43-701 (1952).

<sup>4</sup> N.H. REV. STAT. ANN. § 447:2 (1955).

<sup>5</sup> KAN. GEN. STAT. ANN. § 60-1401 (1949); OKLA. STAT. tit. 42, § 141 (1961).

<sup>6</sup> The first mechanic's lien statute in America, Laws of Md. ch. 45, § 10 (1791), was enacted to facilitate the construction of buildings in the proposed capital city of Washington. Cushman, *The Proposed Uniform Mechanic's Lien Law*, 80 U. PA. L. REV. 1083 (1932).

<sup>7</sup> *Nolte v. Smith*, 189 Cal. App. 2d 140, 11 Cal. Rptr. 261 (Dist. Ct. App. 1961); *Buckingham Properties, Inc. v. Anderson & Co.*, 125 So. 2d 756 (Fla. Dist. Ct. App. 1961); *Application of Magowen*, 203 N.Y.S.2d 35 (Sup. Ct. 1960).

<sup>8</sup> *Fowler v. Roxboro Homes, Inc.*, 98 Ga. App. 829, 107 S.E.2d 285 (1959); *Logan Moore Lumber Co. v. Black*, 185 Kan. 644, 347 P.2d 438 (1959).

<sup>9</sup> *Friedman v. Stein*, 4 N.J. 34, 71 A.2d 346 (1950); *Manpower, Inc. v. Phillips*, 173 Ohio St. 45, 179 N.E.2d 922 (1962); *Clement v. Adam Bros.-Paynes Co.*, 113 Va. 547, 75 S.E. 294 (1912).

<sup>10</sup> 103 Tenn. 299, 52 S.W. 999 (1899).

that the labor constituted such an "improvement" as to give rise to a lien. A lien was similarly denied in *Brown v. Wyman*,<sup>11</sup> the Iowa court holding that the mere breaking and plowing of the soil for agricultural purposes did not qualify for a lien. In *Southwestern Elec. Co. v. Hughes*,<sup>12</sup> however, a lien was allowed by the Kansas court for grading necessary under a house construction plan. And in *Green v. Reese*,<sup>13</sup> the Oklahoma court held that the leveling of certain vacant lots to improve them for the future construction of a building was an "improvement" within the meaning of the lien statute.

By holding that the clearing of an extensive rural tract of land, unconnected with the construction of a building or other structure, falls within the scope of the word "improvement," the majority in the principal case clearly departed from the pattern of these decisions and ostensibly stretched statutory interpretation to the limits of liberality.<sup>14</sup> Yet the result follows the recent trend toward statutorily extending the remedy of the mechanic's lien to work which was previously unprotected. An increasing number of state statutes now define "improvement" to include excavation, grading, and filling of land.<sup>15</sup> Other statutes place grading in the general list of activities for which a lien is available.<sup>16</sup> Still others contain a separate provision authorizing a "grader's" lien.<sup>17</sup>

The developing extensions of the mechanic's lien remedy seem desirable.<sup>18</sup> Early lien statutes were narrow in scope, encompassing primarily the erection of buildings in urban areas. Subsequent to their enactment, a gradual process of legislative and judicial expansion to embrace larger segments of the construction industry and to cope with previously un-

<sup>11</sup> 56 Iowa 452, 9 N.W. 344 (1881).

<sup>12</sup> 139 Kan. 89, 30 P.2d 114 (1934).

<sup>13</sup> 261 P.2d 596 (Okla. 1953).

<sup>14</sup> The dissent argued: "[W]e do not think that the statute gives a lien for work on land in the absence of an improvement or building thereon. The statute gives a lien 'on such building or improvements and on the land on which the same is situated.' If the graded land is the improvement, then there is a lien on the graded land on the land. In other words, there is a lien on land on land." Principal case at 644, 133 So. 2d at 48. (Emphasis added.) Cf. *Foster v. Tierney*, 91 Iowa 253, 59 N.W. 56 (1884), where, interpreting a similar statute, the court said that the lien was for labor upon a building, erection or improvement upon land, not merely for labor upon land.

<sup>15</sup> CAL. CIV. PROC. CODE § 1182; HAWAII REV. LAWS § 193-40 (1955); TENN. CODE ANN. § 64-1101 (1955); TEX. REV. CIV. STAT. art. 5452 (Supp. 1961).

<sup>16</sup> IDAHO CODE ANN. § 45-501 (Supp. 1961); ILL. REV. STAT. ch. 82, § 1 (1961); IOWA CODE § 572.2 (1958).

<sup>17</sup> ALASKA COMP. LAWS ANN. § 26-1-8 (Supp. 1959); WASH. REV. CODE § 60.04.040 (Supp. 1961).

<sup>18</sup> A proposed Uniform Mechanic's Lien Law, originally drafted in 1932, but withdrawn in 1943, defined "improve" to mean, in part, to "excavate any land" or to perform any labor "in grading, seeding, sodding or planting. . . ." "Improvement" was deemed to include "any building, structure, erection, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made or done on land for its permanent benefit." UNIFORM MECHANIC'S LIEN LAW § 1 (1932).

foreseen problems has generally ensued.<sup>19</sup> The historical resistance to mechanics' liens for clearing and grading stems in part from the ancient common law reluctance to encumber real property.<sup>20</sup> This heritage has emerged most strongly in the pronounced resistance of some courts to granting liens for clearing rural tracts for purely agricultural purposes. It has been argued that farmers and owners of farmland should be protected from clearing liens because agriculture constitutes "the very fundamental of all industrial and material prosperity."<sup>21</sup> Yet neither land nor agriculture comprises the chief source of wealth in today's commercial economy. In view of this transformation, a failure to make mechanics' liens available for clearing, grading, and excavating, irrespective of whether connected with construction, would appear to be without supporting policy. In the absence of such policy, no reason exists for denying the protection of a lien to those who make improvements to land itself.

*Byron Bronston, S.Ed.*

<sup>19</sup> Mechanics' liens "derive from statutes drafted in an age when the typical construction project was completed by the craftsmen of a single employer. Today, courts must apply these statutes to a radically altered industry. While some minor construction work is still performed by contractors who hire their own laborers and personally obtain the necessary materials, virtually all important building is now carried on by general contractors who utilize subcontractors to do a substantial part of the work." Comment, 68 YALE L.J. 138 (1958).

<sup>20</sup> "Mechanics' liens on buildings and land . . . had no place in the common law, which, from its feudal character, was reluctant to subject realty to the payment of any claims other than feudal. They were introduced into the law by positive statute in this country. These statutes were naturally at first deemed by the courts to be in derogation of the common law, and hence to be construed narrowly and strictly. They have now, however, become an integral part of our law, and their justice and beneficence have become apparent. They now form recognized principles of remedial justice, and should receive broad and liberal construction." *Durling v. Gould*, 83 Me. 134, 137, 21 Atl. 833 (1890).

<sup>21</sup> *Young v. Shriver*, 56 Cal. App. 653, 657, 206 Pac. 99, 101 (Dist. Ct. App. 1922). A suggested corollary to this argument is that, if liens should be granted for the clearing of agricultural land, it would be impossible to differentiate and, therefore, to deny claims to liens for cultivating, fertilizing, and harvesting crops. *Nanz v. Cumberland Gap Park Co.*, 103 Tenn. 299, 52 S.W. 999 (1899). Yet a distinction is apparent—clearing and grading prepare land for a desired use, whether it is as a building site or for raising crops. In contrast, cultivation is comparable to the services performed by a maintenance employee once a factory is completed.