

MASSACHUSETTS SUPREME JUDICIAL COURT

Worthley v. Emerson

116 Mass. 374 (1874) · Decided December 31, 1874

SUMMARY

The court held that payments made without an agreed appropriation applied to the earlier items of the account, including charges for hitch-posts and fence stone, thereby precluding the respondents from contesting whether those items were lienable. It further held that materials furnished under an entire oral contract for constructing a block of dwelling-houses on one lot supported a lien on the whole estate.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Endicott, J.
JURISDICTION	Massachusetts
DECIDED	December 31, 1874
DISPOSITION	other
PROCEDURAL POSTURE	Petition to enforce a statutory lien for labor and materials; the matter was referred, and the respondents filed exceptions to the referee's award.
STANDARD OF REVIEW	Review of exceptions to the referee's award.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Worthley v. Emerson

TOPICS

- mechanics liens
- construction law
- contracts
- real estate
- remedies

PRACTICE AREAS

- construction law
- mechanics liens
- contracts
- real estate
- remedies

QUESTIONS PRESENTED

1. Whether payments made without an appropriation by the parties must be applied to the earlier items of the account, thereby satisfying the charges for the hitch-posts and fence stone.

2. Whether materials furnished under an entire contract for the construction of a block of five houses situated on one lot support a lien on the whole estate.

HOLDINGS

1. When payments are made on an account current without an appropriation by either party, the law applies them to the earlier items of the account.
2. Materials furnished under an entire contract for the construction of a block of dwelling-houses situated on one lot support a lien upon the whole estate for the value of the materials furnished.

KEY QUOTATIONS

“No appropriation of these payments was made by the parties; the law therefore applies them to the earlier items of the account.” (375)

“It was an entire contract, and a lien attaches upon the whole estate for the value of the materials so furnished.” (375)

“Exceptions overruled.” (375)

FACTUAL BACKGROUND

The petitioner furnished stone and other materials under an oral, entire contract to provide the materials necessary for the erection and completion of a block of five dwelling-houses situated on one lot owned by the respondents. The account included charges for hitch-posts and fence stone in front of the block. Before the lien certificate was filed, the respondents made payments totaling \$1,375 without appropriating the payments to particular account items.

PROCEDURAL HISTORY

Worthley sought to enforce a lien for materials furnished in constructing a block of five dwelling-houses on one lot. The matter was submitted to a referee, whose award included the relevant account items. The respondents contended that certain items were not lienable and that the materials furnished for the five houses could not support a lien on the whole estate. The Supreme Judicial Court overruled the exceptions.

DISPOSITION

other

CASES CITED

- Crompton v. Pratt, 105 Mass. 255
- The A. R. Dunlap, 1 Lowell, 350, 361
- Wall v. Robinson, 115 Mass. 429

OPINION

ENDICOTT, J.

Endicott, J. The respondents contend that the petitioner is not entitled to a lien for the hitch-posts and fence stone in front of the block, because they are no part of the building or structure; the posts being ten feet from the land on a public street, and the fence being no part of a building.

The referee, after reciting their position and connection with the building, finds that they are both “integral parts of the said block of dwelling-houses.” But it is not necessary to consider the question here raised, as upon other grounds the objection is not open to the respondents. It appears from the accounts annexed to the award of the referee that the respondents, at different times before the filing of the certificate, paid to the petitioner the sum of \$1375.

No appropriation of these payments was made by the parties; the law *375therefore applies them to the earlier items of the account. *Crompton v. Pratt*, 105 Mass. 255. The charges for the posts and fence stone are among the first thirteen items of the account, which amount in the aggregate to \$655, and are therefore paid; and whether a lien on the building would attach therefor cannot be raised by the respondents.

The *A. R. Dunlap*, 1 Lowell, 350, 361. The respondents also contend that the petitioner cannot enforce a lien for materials used in the construction of five houses, treating the whole as one structure. The case finds that the materials were furnished under an oral contract to provide the stone necessary for the erection and completion of a block of dwelling-houses, situated on one lot, belonging to the respondents.

It was an entire contract, and a lien attaches upon the whole estate for the value of the materials so furnished. *Wall v. Robinson*, 115 Mass. 429. Exceptions overruled.