

New Jersey Court of Errors and Appeals.

ISRAEL CODINGTON, JOHN HERBERT,
and LEVI HETFIELD, Junior, partners in
trade, under the name, style, and firm of
CODINGTON, HERBERT & COMPANY,
Plaintiffs in Error,
vs.
NATHAN J. BEEBE, Builder, and the HUD-
SON COUNTY DRY DOCK AND WET
DOCK COMPANY,
Defendants in Error.

Writ of Error to
Hudson Circuit
Court.

STEPHEN B. RANSOM, *Att'y of Plaintiffs in Error.*
ISAAC W. SCUDDER, *Att'y of Defendants in Error.*

This is an action of trespass on the case brought by 10
the plaintiffs in error against the defendants in error
in the Circuit Court of the county of Hudson. The
action was commenced by summons, returnable May
11th, 1860.

The following is the record of the Circuit Court of
the county of Hudson, viz :

NATHAN J. BEEBE and THE HUDSON
COUNTY DRY DOCK AND WET DOCK
COMPANY,

Defendants,

adsm.

ISRAEL CODINGTON, JOHN HERBERT,
and LEVI HETFIELD, Junior,

Plaintiffs.

Judgment for De-
fendant on Demurrer.

In case under Lien
Law.

Judgment entered
August 21st, 1861.

Costs, \$20.69.

RANSOM & BROWN, *Attorneys of Plaintiffs.*

10 J. W. SCUDDER, *Attorney of Defendants.*

Hudson County Circuit Court of the seventh day of
May, as yet of the term of May, in the year of our Lord
one thousand eight hundred and sixty.

HUDSON COUNTY, *ss.:*

Nathan J. Beebe, builder, and the Hudson County
Dry Dock and Wet Dock Company, a company duly
incorporated by an act of the Legislature of the State
of New Jersey, owner of the building and premises
hereinafter described, were summoned to answer Israel
20 Codington, John Herbert, and Levi Hetfield, Junior,
partners in trade under the name, style, and firm of
Codington, Herbert and Company, of a plea of trespass
on the case upon promises, the said Nathan J. Beebe
having been summoned by the service by the sheriff of
the county of Hudson of a copy of the summons issued
in this case upon the said Nathan J. Beebe, according to
law; and the said defendant, the Hudson County Dry
Dock and Wet Dock Company, having been summoned
by the said sheriff serving a copy of the said summons
30 upon Benjamin F. Woolsey, the President of the said
company, more than six days before the return day
named therein. And thereupon the said plaintiffs by
Ransom and Brown, their attorneys, complain, for that

whereas the said defendant, Nathan J. Beebe, heretofore,
 to wit, on the fifteenth day of July, in the year of our
 Lord one thousand eight hundred and fifty-nine, at Jer-
 sey City, that is to say, at North Bergen, in the county
 of Hudson, and within the jurisdiction of this court, was
 indebted to the said plaintiff in the sum of twenty
 thousand dollars for the price and value of lumber and
 timber, goods, wares, and merchandize, before that time
 bargained, sold, and delivered by the said plaintiffs to
 the said defendant, Nathan J. Beebe, at his request ; 10
 and in the further sum of twenty thousand dollars for
 the price and value of work and labor before that time
 done and performed, and materials for the same provided
 by the plaintiffs for the said defendant Nathan J. Beebe,
 at his request ; and in the further sum of twenty thou-
 sand dollars for so much money before that time lent
 and advanced by the plaintiffs to the said defendant,
 Nathan J. Beebe, at his request ; and in the further
 sum of twenty thousand dollars, for so much money
 before then paid by the said plaintiffs to and for the 20
 use of the said defendant, Nathan J. Beebe, at his re-
 quest ; and in the further sum of twenty thousand dol-
 lars, for so much money then and there had and received
 by the said defendant, Nathan J. Beebe, to and for the
 use of the said plaintiffs ; and in the further sum of
 twenty thousand dollars, for so much money found to
 be due from the said defendant, Nathan J. Beebe, to the
 said plaintiffs on an account then and there stated be-
 tween them ; and in the further sum of twenty thousand
 dollars, for interest due from the said defendant, Nathan 30
 J. Beebe, to the said plaintiffs, for the said plaintiffs
 having forborn to the said defendant, Nathan J. Beebe,
 moneys due from the said Nathan J. Beebe to the said
 plaintiffs at his, the said Nathan J. Beebe's request, for
 a long time then elapsed. And, whereas, the said de-
 fendant, Nathan J. Beebe, afterwards, to wit, on the
 day and year aforesaid, at Jersey City aforesaid, that

is to say, at North Bergen aforesaid, in consideration of the premises, respectfully, then and there promised to pay the said several moneys respectively to the plaintiffs on request. Yet the said defendant, Nathan J. Beebe, has disregarded his promises and has not paid any of the said moneys or any part thereof, although often requested so to do, to the damage of the said plaintiffs of twenty thousand dollars; and therefore they bring their suit, &c.

- 10 And the said plaintiffs aver that the said debt mentioned in this declaration as due from the said defendant, Nathan J. Beebe, to the said plaintiffs is, by virtue of the provisions of the act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, eighteen hundred and fifty-three, and the supplements thereto, a lien upon all that certain building and fixture for manufacturing purposes and the fixed machinery and
- 20 gearing attached to and connected therewith, and making a part thereof, known by the name of a Floating Dock, being constructed in five sections connected and fastened together, making a building one hundred and seventy-five feet long by eighty feet wide and being thirty feet and four inches in extreme height, having an opening and a deck on which to float vessels, extending through all the said sections, which opening is in height from the said deck, twenty-one feet and six inches, and in the width at the top, sixty-nine feet, and at the bot-
- 30 tom, sixty-six feet and four inches, and the floor of the said dock being eight feet and ten inches above the bottom of the said building, and is sixty-six feet and four inches wide, and extends the whole length of the said building, together with a boiler and steam engine fixed in and to the said building, and making part thereof, and an engine house attached to and making a part

of said building, and used for pumping water out of the
 said building; and also upon the estate of the Hudson
 County Dry Dock and Wet Dock Company, the owner
 of the said building in the land whereon the said build-
 ing stands, and to which it is attached, including the
 estate of the said the Hudson County Dry Dock and
 Wet Dock Company in the lot whereon the said build-
 ing is erected and to which it is attached, which estate
 is an estate for years which will terminate on the first
 day of November, in the year of our Lord one thousand 10
 eight hundred and sixty-nine; subject to the payment
 of a yearly rent until the first day of November, A. D.,
 eighteen hundred and sixty-four, of three thousand dol-
 lars, and for the remainder of the said term to a yearly
 rent of three thousand five hundred dollars, which lot of
 land is situate in the city of Jersey City, in the county
 of Hudson, and state of New Jersey, and is bounded,
 abutted, and described as follows, viz: Beginning on
 the easterly line of Green street at the distance of
 eighty feet north from the northerly line of Harsimus 20
 or South Eighth street and running thence northerly
 along the easterly line of Green street one hundred and
 fifty feet to the middle of South Seventh or Southmayd
 street, thence easterly along the middle of South Sev-
 enth or Southmayd street four hundred feet to the
 westerly line of Hudson street, thence southerly along
 the westerly line of Hudson street one hundred and fifty
 feet to a point distant eighty feet north of the northerly
 line of Harsimus street, thence westerly parallel with
 Harsimus street and distant eighty feet therefrom, four 30
 hundred feet to the place of beginning, together with
 the exclusive right to use the land under water, east-
 wardly in front of the said above mentioned tract for the
 purpose of a wet dock or basin, and eastwardly in front
 of Southmayd or South Seventh street, and up to and
 along the wharf or pier there standing for the same pur-
 pose, together with the land and land under water upon

which the said wharf or pier now stands, of which said building and fixture for manufacturing purposes, fixed machinery and gearing, and estate for years in the land and lot of ground whereon the same is erected and to which it is attached, the said the Hudson County Dry Dock and Wet Dock Company, a company duly incorporated by an act of the Legislature of the state of New Jersey, now is, and, at the time of the contracting of the debt for which this lien is claimed hereinbefore more particularly mentioned, was the owner.

RANSOM & BROWN,
Attorneys of Plaintiffs.

HUDSON COUNTY, ss.:

Israel Codington, John Herbert, and Levi Hetfield, Junior, partners in trade under the name, style, and firm of Codington, Herbert, and Company, put in their place Ransom and Brown, their attorneys, against Nathan J. Beebe, builder, and the Hudson County Dry Dock and Wet Dock Company owner of a plea of trespass on the case upon promises.

The following is a bill of the particulars of the demand and copy of the account whereon the foregoing declaration is founded, viz :

1859.

April 19.	To 16,000 feet white oak Timber	
	at \$34 per thousand	\$544.00
"	To 10,000 feet white pine Plank at	
	\$22.50	225.00
" 28.	To 20,675 feet white oak Timber	
	at \$34	702.98
" 29.	To 22,563 " " "	767.14
	Amount brought forward	\$2239.12
"	To 15,500 feet white pine Plank at	
	\$22.50 per thousand	348.75

May 3.	To 20,548 feet white oak Timber at		
	at \$34 per thousand	698.63	
" 18.	To 19,282 " " " "	655.59	
"	To 12,000 feet white pine Plank at		
	\$22.50 per thousand	270.00	
June 1.	To 19,000 " " " "	427.50	
"	To 23,564 feet white oak Timber at		
	\$34.00 per thousand	801.18	
" 14.	To 15,000 " " " "	510.00	
"	To 11,317 feet white pine Plank at		10
	\$22.50 per thousand	254.63	
July 15.	To 2000 feet white oak Timber at		
	\$34.00 per thousand	68.00	

Total amount of material furnished \$6273.37

CREDIT.

By freight paid by N. J. Beebe \$70.00

\$6203.37

Interest from July 15, 1859, till paid, to be added. 20

RANSOM & BROWN,
Attorneys of Plaintiffs.

HUDSON COUNTY, ss.:

And the said the Hudson County Dry Dock and Wet Dock Company, one of the said defendants, by Isaac W. Scudder, their attorney, come and defend the wrong and injury when, &c., and say that the said declaration, and the matter therein contained, in manner and form as the same as are above stated and set forth are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action and lien claim thereof against the said defendants, and they the said defendants are not bound by law to answer the same, and this they are ready to verify; wherefore by reason of the insufficiency of the said declaration in this behalf the said defendants pray judgment, and that the said plaintiffs may be barred 30

from having or maintaining their aforesaid action thereof against them, &c. And the said defendant according to the form of the statute in such case made and provided, state and show to the court here the following causes of demurrer to the said declaration. First: Because at the time when the said materials were furnished, as appears by the bill of particulars annexed to the said declaration forming a part thereof, the last charge in which bears date, July 15th, eighteen hundred and fifty-

10 nine, no lien could be had for the performance of work or the furnishing of materials for the erection or construction of the Floating Dry Dock, with the machinery and appurtenances, as in the said declaration mentioned under the said act of the Legislature, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March (11th, 1853,) eleventh, eighteen hundred and fifty-three, and the supplement thereto. Second: Be-

20 cause a floating dock, with the machinery and gearing thereto attached, as in the said declaration mentioned, could not, at the time in the said declaration mentioned, have been the subject matter of a lien under the act entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, eighteen hundred and fifty-three, and the supplement thereto. Third: Be-

30 cause the declaration sets forth that the estate of the Hudson County Dry Dock and Wet Dock Company, in the lot in the said declaration described, is an estate for years, while, by the said act of the Legislature, an estate for years cannot be the subject matter of a lien. Fourth: If by the said declaration it is intended to declare against the said the Hudson County Dry Dock and Wet Dock Company as tenants, and subject any supposed estate of the said company as tenants to said lien, then the said declaration is defective, inasmuch as it does not show who was the landlord, who the tenant,

and does not specify and set forth the facts which would, in law, constitute a tenancy, nor does the declaration allege that the said defendants were tenants. Fifth: Because the said declaration unlawfully claims a lien on the fixed machinery and gearing attached to, and connecting with the said floating dock. Sixth: Because the said declaration unlawfully claims a lien upon lands under water, and upon a pier and basin; inasmuch as the said declaration described certain property, together with the exclusive right to all the land under water, eastwardly in front of the above-mentioned tract, for the purpose of a wet dock or basin, and eastwardly in front of Southmayd or South Seventh street, and up to and along the wharf or pier there standing, for the same purpose; together with the land and land under water upon which the said wharf or pier now stands. Seventh: Because the said declaration is incongruous, charging the said company, in one part thereof, as having an estate for years, in another part as owners. Eighth: Because the said declaration leaves it uncertain where the said Floating Dock is, whether on land or on the water; if in the water there cannot be any lien. 10 20

And the said declaration is uncertain and incongruous in the particular last aforesaid; and, also, that the said declaration is, in other respects, uncertain, informal, and insufficient.

I. W. SCUDDER,

*Att'y for the Hudson County Dry Dock
and Wet Dock Company.*

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HUDSON COUNTY, ss.:

The Hudson County Dry Dock and Wet Dock Company, defendants in this suit, put in their place, I. W. Scudder, their attorney, at the suit of Israel Codington, John Herbert, and Levi Hetfield, Junior, in a plea of trespass in the case, under the lien law.

And the said plaintiffs say that the said declaration, and the matters therein contained in manner and form, as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs, to have and maintain their aforesaid action thereof against the said defendants; and the said plaintiffs are ready to verify and prove the same, as the Court here shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the said declaration, nor hitherto in any manner denied the same, the said plaintiffs pray judgment, and their damages, by reason of the not performing the said several promises and undertakings in the said declaration mentioned to be adjudged to them, &c.

And because the said Court now here are not yet advised what judgment to give of, and upon, the premises, therefore, the process thereof is continued between the parties aforesaid of the plea aforesaid in this same Court until the 1st Tuesday of May, A. D., eighteen hundred and sixty-one, at the city of Hudson, in the county of Hudson aforesaid. And the same day is given to the parties aforesaid at the same place to hear the judgment of the said Court thereupon, at which day, before the Court aforesaid, at the city of Hudson aforesaid, come as well the said plaintiffs as the said defendants by their respective attorneys aforesaid; whereupon all and singular the premises aforesaid being seen and by the said Court here fully understood, and mature deliberation being thereupon had, it appears to the said Court here that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said plaintiffs to have and maintain their aforesaid action thereof against the said defendants.

Therefore it is considered that the said plaintiffs take nothing by their said writ but that they be in mercy, &c., and that the said defendants go

thereof without day, &c. And it is further considered by the said Court now here, that the said defendants do recover against the said plaintiffs twenty dollars and sixty-nine cents for their costs and charges by them about their defence in this behalf laid out and expended, by the said Court here adjudged to the said defendants, and with their assent, according to the form of the statute in such case made and provided, and that the said defendants have execution thereof, &c. 10

Judgment signed this twenty-first day of August, A. D., eighteen hundred and sixty-one.

On the return of the Writ of Error the plaintiffs in Error assigned Errors as follows :

N. J. COURT OF ERRORS AND APPEALS.

ISRAEL CODINGTON, JOHN HERBERT,
and LEVI HETFIELD, Junior, partners in
trade, under the name, style, and firm of
CODINGTON, HERBERT & COMPANY,
Plaintiffs in Error,

vs.

NATHAN J. BEEBE, Builder, and the HUD-
SON COUNTY DRY DOCK AND WET
DOCK COMPANY, Owners,
Defendants in Error.

Assignment of 20
Errors.

Afterwards, that is to say, on the fifth day of November, in the year of our Lord one thousand eight hundred and sixty-one, before the Judges of the Court of Errors and Appeals of the State of New Jersey, at Trenton, come the said Israel Codington, John Herbert, and Levi Hetfield, Junior, partners, &c., by Stephen B. Ransom, their attorney, and say, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit : That by the 30

judgment aforesaid, it is adjudged that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said Israel Codington, John Herbert, and Levi Hetfield, Junior, to have or maintain their aforesaid action thereof against the said Nathan J. Beebe, builder, and the Hudson County Dry Dock and Wet Dock Company, owners; whereas, by the law of the land the said declaration and the matters therein contained are sufficient in law for the said plaintiffs to have and maintain their aforesaid action thereof against the said defendants; therefore, in this there is manifest error. And, also, there is error in this, to wit: That the judgment aforesaid, by the record aforesaid, appears to have been given for the said Nathan J. Beebe, builder, and the Hudson County Dry Dock and Wet Dock Company, owners, against the said Israel Codington, John Herbert, and Levi Hetfield, Junior, partners, &c., whereas, by the law of the land, the said judgment ought to have been given for the said Israel Codington, John Herbert, and Levi Hetfield, Junior, against the said Nathan J. Beebe, builder, and the Hudson County Dry Dock and Wet Dock Company, owners. And the said Israel Codington, John Herbert, and Levi Hetfield, Junior, partners as aforesaid, pray that the judgment aforesaid, for the errors aforesaid, and for others errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

S. B. RANSOM,

Att'y for, and of, Counsel with Plaintiffs in Error.

The defendants in Error have filed the common joiner in Error.

OPINION OF JUDGE OGDEN

ON RENDERING JUDGMENT IN THE CIRCUIT COURT.

HUDSON CIRCUIT, MAY TERM, 1861.

ISRAEL CODINGTON, and others,

*vs.*NATHAN J. BEEBE, builder, and THE DRY
DOCK AND WET DOCK COMPANY,
owners.In case under Me-
chanics' Lien Law.Demurrer to Nar-
ration.

The issue on this demurrer presents the question,
whether the Mechanics' Lien Law applies to the struc- 10
ture described in the plaintiffs' declaration.

The materials exhibited in the bill of particulars, filed
with the pleadings, were not furnished for the construc-
tion of a building in the common acceptance of the
word, nor for an addition to a former building, nor for
making fixed machinery, or gearing, or other fixtures
for manufacturing purposes, as those terms are ordi-
narily understood; but in the language of the declara-
tion for a building known by the name of a floating
dock, being constructed in five sections, connected and 20
fastened together, making a building "of a certain
length, and width, and height," having an opening
and a deck on which to float vessels, extending through
all the sections, and a floor eight feet and ten inches
above the bottom, extending the whole length of the
structure; together with a boiler and steam-engine
fixed in and to the same, and making a part thereof
and an engine-house attached to and making a part
of the structure, and used for pumping water out of
the same. The lien is also claimed upon the estate 30
which the dock company, the owners of the said struc-
ture, have in the land on which it stands, and to which
it is attached; which is described as an estate for years
in a lot of land set out by metes and bounds, together

with the exclusive right to use the land under water in front of the tract, for the purposes of a wet dock or basin, together with the land, and land under water, upon which the wharf or pier stands.

The principle of construction which led to the adoption of the third section of the lien law of 1853, which declares that additions to former buildings and fixed machinery or gearing, or other fixtures for manufacturing purposes shall be considered as buildings for
 10 the purpose of the act, determines that a floating dry dock, which is constructed in sections seated on tide waters and attached to the front land only by mechanical contrivances, cannot be held to be embraced within the purposes of the act. The whole scope of the Mechanics' Lien Law is to make the owner of the land, or of an estate therein, liable to the material men for the value of lumber furnished to the builder, although he may pay the whole contract price to his employee; and it is contrary to all rules of justice to extend lan-
 20 guage beyond its legitimate and ordinary meaning for the purpose of subjecting an innocent person to double payment. Who, upon a critical reading of the act of 1853, would suppose that a floating dock, which might be moored to one wharf in Jersey City to-day, and towed around and attached to another to-morrow, or even be anchored out in the stream for convenience, would be a building or fixed machinery, or a fixture for manufacturing purposes within the contemplation of the act? What ship-builder or repairer of vessels would suppose
 30 that in employing a proper mechanic to construct such a work for him, the sections of the dock and his interest in the land to which an end of it might be attached, would be clouded by the lien created by the law of 1853? Who, in purchasing from him his estate in the lands and wharves, and land under the tide-water, would contend that the floating dock attached to it passed as fixed machinery, or a fixture for manufacturing purposes?

As the case is of much importance, and is destined to receive the adjudication of the Supreme Court, if not that of the Court of Errors, I shall content myself with expressing my clear convictions, without elaborating the argument by which they can be supported. Neither the language of the act to which I have referred, nor any construction that has been given to it by our courts, nor the cases cited from New York and Indiana satisfy me that the structure described in the declaration comes within the scope of the Mechanics' Lien Law of 1853. 10

But the case has been presented in another aspect.

It appears by the bill of particulars that the materials, amounting to over \$6,200, were furnished to Beebe, the builder, between the 19th of April and the 15th of July, 1859. No lien claim was filed before the 22d of March, 1860; and we find, on that day, that a supplement to the lien law was approved, which took effect immediately—wherein it is provided that the words, “fixtures for manufacturing purposes,” as used in the said fifth section of the act, “shall be construed 20
to include any building, erection, or construction, of whatever description, attached or annexed, or intended to be attached or annexed, to any land or tenement, and designed to be used in the building or repairing of vessels, whether the same be permanently attached to the freehold, or so built as to be removed from place to place, and only temporarily attached to the land, and whether the same be intended and designed to use on land or water.” This was, at least, a very liberal enactment in favor of mechanics and material men; and it 30
looks very much as if it was placed before, and pressed through, the Legislature for the purpose of meeting this very case.

My mind is clear in two respects of the law that it cannot avail the present plaintiffs. If it was intended for the purpose of extending the operation of the lien law, by embracing subjects not before within its scope, it is manifest that the law-making law proved that the

old law did not reach far enough, although the Legislature is omnipotent within the limits of the Constitution, and may say that the word stone-house, as used in the act of March, 1798, shall be construed to include bulls, yet it would not be contended that a farmer, who wilfully and negligently suffered his bull to run at large before the passage of such explanatory act, would be liable to a penalty of ten dollars. The most which can be said in favor of the act of 1860, is that its operation

10 can be prospective and not retrospective. Again: If the supplement was intended to give relief in this very case the plaintiffs can take nothing by it. The contract between the Wet and Dry Dock Company and Mr. Beebe, was made when the act of 1853 was the only one which gave liens. If the material men had no right to the lien, when they trusted Beebe with the lumber, it was the right of the Dock Company to have their work done without being subject to the embarrassing consequences of the lien law. They could pay Mr. Beebe for

20 all the work and materials—they could mortgage the work and land and water rights at their pleasure, and if the act of 1860 was necessary for the purpose of creating a lien, it is retrospective in its operation, injuriously affects the vested rights of the Dock Company, and creates a new obligation upon them in derogation of their contract with Beebe. A citizen, free of a debt or burden, by the laws of the land, cannot be made a debtor, merely by a Legislature act declaring him such. The whole purpose of the act of 1860, if considered with

30 reference to this particular case, seems to be to create a liability where none existed by the law, as it stood before the supplement. I am of opinion that the property and premises, described in the declaration, are not subject to the provisions of the Mechanics' Lien Law, and that the defendant should have judgment on the demurrer, with costs.

E. B. DAYTON OGDEN,

Judge.