

NEW JERSEY
Court of Errors and Appeals

HERMAN RAAB, <i>Claimant-Respondent,</i>	} <i>On Mechanics' Lien. On Appeal from Supreme Court.</i>
<i>vs.</i>	
W. P. ELLISON, Inc., a Corpora- tion, Builder,	
<i>and</i>	
HARRY F. SINCLAIR, Owner, <i>Defendant-Appellant.</i>	

APPELLANT'S BRIEF.

The plaintiff herein claims a lien, under the Mechanics' Lien Act, for the doing of the carpenter work, and furnishing certain material in the erection of certain structures, consisting of bleacher stands, grand stand and fences, including certain dresser and locker rooms, toilets, ticket booths, etc., which together are used and designed for a professional baseball park, more particularly described in the state of the case.

The sole question upon this appeal is whether such structures constitute a building under our Mechanics' Lien Law.

As shown by the state of the case, it will appear that the defendant owner, Harry F. Sinclair, the appellant herein, in his answer, denied these structures were a building, or lienable under our act, and moved for a non suit and direction of a verdict

upon that ground, and likewise requested the Trial Court to charge the jury to the like effect, all of which were denied by the Trial Court. The case was submitted to the jury upon the other issues, and the Court reserved the question of law, and finally awarded judgment to the plaintiff for the amount of the verdict to be made specially of the land and buildings, etc. Appellant contends this was error, and the Court should have granted him a non-suit, or directed a verdict in his favor, or charged the jury that the structures in question were not lienable.

It is respectfully contended that our statute does not authorize a lien for the erection of structures of this character.

First, it will be observed that the structures are not a building in the ordinary sense of a dwelling house, church, shop, manufactory, etc., but are of an unusual character designed for occasional use of holding professional baseball games during the summer season and for the greater part of the time the grounds and park are idle and are not designed or used for the habitation of man or animal, or the sheltering of property, which are the characteristics of a building in the ordinary sense.

LaCrosse, &c., R. R. v. Vanderpool, 11 Wis., 119.

Rouse v. Catskill, 13 N. Y. Sup., 126.

Truesdell v. Gay, 79 Mass., 311, 312.

Not every kind of structure is included under the term building.

In 1863, the case of Coddington v. Dry Dock Co., 31 N. J. L., 477, at page 484 (1), says: "it is evident that the Legislature did not use the word

building in its broadest signification," but meant something in the nature of houses, mills, manufactories, a church, a shop, etc.

This definition was approved in 1902, in the case of *Children's Seashore House v. Atlantic City*, 68 N. J. L., 385, at pages 389-90, though not a Mechanics' Lien suit.

That the meaning of the word is limited, is also evident from the fact that though our original act gave a lien for the erection of "every building," yet subsequently several sections have been added (now sections 8 to 12) extending the lien right to alterations and repairs, fixtures for manufacturing purposes, mills, factories, docks, wharves, piers and additions.

If the word signified "everything that is built," as argued by plaintiff, it would seem to have been entirely unnecessary to add these sections. But the fact that they were added proves the limited meaning of the word "building" as used in the statute.

Other jurisdictions have also limited the term "building" under Mechanics' Lien Statutes.

The Wisconsin Statute gives a lien upon "any dwelling house or other building," and the meaning of "other building" under that statute was considered in *LaCrosse, &c., R. R. v. Vanderpool*, 11 Wis., 119, which is also reported in 78 Am. Dec., 691, and also held to include only buildings which have a capacity to contain and are designed for the habitation of man, or animal, or the sheltering of property and did not include "fences, bridges, or anything of that sort." See also citations following this case at pages 694 in the American Decisions Reports.

In Indiana and California the statutes give a lien upon "any building," but their Courts have construed the term to mean "a house or similar structure" and not to embrace a bridge.

Pike Co. Comrs. v. Norrington, 82 Ind., 190,
196.

Burt v. Washington, 3 Cal., 246.

Knaube v. Kisschner, 39 Ind., 217, 218.

The New York Statute is similar to ours, and gives a lien on "any building," but has been construed not to include a bridge.

Collins v. Drew, 87 N. Y., 149.

Under the Massachusetts Statute the term "building" was held not to include every species of erection on land, such as fences, gates and other like structures, but applies only to an erection for use and occupation of a habitation for some purpose or trade, manufacture, ornament or use, a fabric or edifice, such as a house, a store, a church or a shed.

Truesdell v. Gay, 79 Mass., 311, 312.

The word "building" under the Pennsylvania Statute is held to mean a fabric or edifice such as a house, shop, or the like, and does not include a lime kiln built of stone and brick, unless connected with a casting house or foundry.

Cowdrick v. Morris, 9 Pa., Co. Ct. R., 312,
314.

Central Trust Co. v. Cameron Iron & Coal
Co., 47 Fed. R., 136.

The Illinois Statute gives a lien on any "house or other building, or appurtenances thereto," but

has been construed not to give a lien for curbing, grading and paving the street in front of building.

Smith v. Kennedy, 89 Ill., 485, 486.

In the above States the following structures have also been held not lienable:

Fences, Walls and Gates.

Truesdell v. Gay (supra).

Fences.

Bailey v. Hull, 11 Wis.; 289, 290.—78 Am. Dec., 706.

Sidewalks, Yards and Areas.

Knaube v. Kirchner (supra).

McDermott v. Palmer, 8 N. Y., 383, 386.

Coke Ovens.

Central Trust Co. v. Cameron (supra).

Oil Tanks.

Short v. Miller, 120 Pa., 470; 14 Atl., 374.

Seiders, &c., Boiler Works v. Lewis, 21 Pa. Co. Ct., 80.

Swings and Seats in a dancing hall.

Lothian v. Wood, 55 Cal., 159, 163.

Stone Retaining Wall.

Missouri Valley C. S. Works v. Brown, 50 Mo. App., 407.

Ice House as Distinct Building.

Killingsworth v. Allen, 1 Phila., 220.

Power House.

Industrial & Guarantee Co. v. Electrical Supply Co., 58 Fed., 732; also 7 C. C. A., 471.

Cases may be found collected in:

Volume I., Words and Phrases, Title Building, 895, 898 and 20 A. & E. Enc., 2nd Ed., 290, 291.

It will be observed that most of the cases cited below by plaintiff, and many reported cases; are cases where the courts have sustained the lien, because the structure was an integral or necessary part of a building, which building was lienable.

Thus, in *Willamette Falls Trans. Co. v. Remick*, 1 Ore., 169, the dam or breakwater was attached to and used for the company's mills, and essential to their use.

The same is true of *Derrickson v. Edwards*, 29 N. J. L., 468; where the flume ran into the mill conveying water to the wheel, which also was within the mill building.

And *Tomuschat v. No. Br. Mercantile Ins. Co.*, 92 Atl., 329, merely deals with a question of insurance upon a structure covered by a policy.

The case of *H. T. Cady Lumber Co. v. Greater American Exposition Co.*, 4 Neb., 168; 93 N. W. Rep., 961; dealt with the question of lien for the erection of an amphitheatre for seating spectators, which was open to the sky, and also a framework for the display of fireworks, under their statute, giving a lien on a "house, mill, manufactory, or building, or appurtenances," and the lien apparently was only sustained because the statute included "appurtenances," for the Court says, page 962:

“We think that what the framers of the statute have attempted to do is to specify the most common structures, and to include all the others in the generic term ‘Appurtenances,’ and that this was intended to cover structures like that in controversy, which are attached to the land.”

Our statute contains no such generic term.

The true meaning of the term building under the statute.

It can hardly be denied that the ordinary man would not naturally refer to these bleachers, grand stand and fences, designed for exhibition purposes, and a “Building” or “Buildings,” under the common sense and meaning of that term. We submit that the natural meaning of the word refers to a *structure attached to land, enclosed by walls and roof, not left open to the elements, and also includes the idea of a structure designed for continuous and permanent use as a habitation or shelter for man, animal or property.*

We feel the Supreme Court failed to give recognition to this normal sense of the word, and relied to strongly upon the general words of the Coddington case (p. 484), referring to a building as “an edifice constructed for use or convenience” without giving proper force to the specific illustrations immediately following the general words, namely, “a house, a church, a shop, etc.,” and to the statement in that case that “it is evident that the Legislature did not use the term building in its broadest signification.” It is submitted that when the concrete illustrations are considered, they will all be seen to fall within the natural meaning of the word as above contended for. And the adjudicated cases cited from other jurisdictions sustain this sense of the word. And no cases have been cited by re-

spondent, where a lien has been allowed upon structures other than those falling within the natural meaning of the term building as above defined—in fact, respondent's citations in Supreme Court referred merely to disputes regarding specific claims for *incidental* items and in so far as they were allowed, they were included because merely incidental or connected with the main contract for erection of a structure *admittedly* lienable as a building and did not involve any definition of that word. And the Cady Lumber Co. case is no exception, because the amphitheatre there was held lienable, only because of the general term "appurtenances," included in Nebraska Statute, in addition to the word building itself. But here the essential question is, whether these fences, bleachers and grand stands are a "building" within the statute. Wherein do they resemble houses, churches, shops, mills, factories, etc.? If "building" is not used "in its broadest signification," certainly *everything built* for use or convenience is not included. Where, there is the line of demarcation between what is and what is not included?

Considering all the authorities and illustrations given in decided cases and the common meaning of the word we respectfully urge that our structures are outside the scope of our statute, which must be strictly construed as to what is included.

The Court below failed to discuss the adverse authorities cited, or to distinguish between the structures therein dealt with and those here in question.

We respectfully urge that this Court should define the limitation of the word building and establish the proper line of demarcation.

Conclusion.

We respectfully contend, therefore, that the structures in this cause do not come within the terms of our statute or of the adjudication of this and other states, but that they are of an unusual character, designed and used for occasional exhibition games, and are not of the character commonly known as buildings, which are structures designed and used continuously for the purpose of habitation of man or animals, or the sheltering of property, such as dwellings, churches, mills, factories, etc. Wherefore, appellant respectfully urges that the judgments of the Circuit Court and Supreme Court should be reversed and set aside as to him and his property.

Respectfully submitted,

DAVIS & HASTINGS,

Of Counsel with Appellant.

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character,
non
known as

NEW JERSEY
Court of Errors and Appeals.

HERMAN RAAB,
Plaintiff,

vs.

W. P. ELLISON, Inc., a Corporation, Builder,
and

HARRY F. SINCLAIR, Owner,
Defendants.

On Lien Claim.

Plaintiff's Brief in Support of Mechanic's Lien.

Section 1 of the Mechanic's Lien Act provides:

“Every building hereafter erected or built
* * * shall be liable for the payment
of any debt * * * for labor per-
formed, etc., for the erection and con-
struction thereof, which debt shall be a
lien on such buildings, and on the land
whereon it stands, including the lot or
curtilage whereon the same is erected.”

The proofs show that the work performed and materials furnished by the plaintiff was in performance of a contract between the owner, Harry F. Sinclair and W. P. Ellison, Inc., of New York City, builder, for the erection of a building upon land owned by Harry F. Sinclair, for professional baseball purposes.

The building is a frame and iron structure, enclosing a professional baseball park, made up of grand stand, bleacher stands, and high fences, the main or grand stand being roofed, floored and partly enclosed at certain parts and entirely enclosed at other parts, containing two club houses, dressing rooms, bath rooms, heating rooms, locker rooms, toilet rooms, ticket booths, refreshment booths, and offices, having stairs and equipped with seats. The bleacher stands have flooring, seats, and toilet rooms. The fences are high and strongly constructed; they enclose the playing field, and are connected up to and are a part of the stands.

The structure was built by the owner on land for business purposes, and is permanently affixed.

The primary inquiry, therefore, is whether the entire structure all taken together, built for professional baseball purposes, any part of which lacking destroys the usefulness of the whole, is a building within the meaning of the Mechanic's Lien Act of this State.

Webster defines a building as "A fabric or edifice constructed; a thing built as a house, a church, etc." A building is defined by the New Standard Dictionary as, "An edifice for any use; that which is built as a dwelling house, barn, etc.

The case of *Coddington vs. Beebe*, 2 Vr., 477, is chiefly relied on.

There claimant furnished lumber which was built into a floating dry dock. The lumber was furnished and the dry dock was built at a point remote from the land on which the lien was claimed. It was built on the land and launched as a ship and then floated to a point opposite the owner's land where it was moored some sixteen feet away from the land and floated freely on the surface of the water. The

lien was claimed not against the land under water over which the dock floated but against the upland.

The lien was denied on the primary ground that the act gave a lien upon a building only when attached to and a part of the land and did not give a lien on movable personal property.

The tests stated are (p. 480):

“First—The building, by virtue of which it is sought to charge the land, must be a building within the meaning of the first or fifth sections of the act. Second—Such building must have been built and erected on the lot of land sought to be charged. Third—Such building, when erected, must stand on land, not float on water. Fourth—It must have stood on the land when first erected, and continued to stand thereon until the lien claim was filed. Fifth—The owner of the building must have some estate in the land.”

It is apparent that the second, third, fourth and fifth requirements as thus stated were wholly lacking. The structure was completely erected remote from the land charged and thereafter floated to its mooring. The structure was at all times a floating structure and never stood on the land charged. The floating dock was not affixed to the upland of the defendant owner, and the land under water over which the dock floated was not owned by the defendant owner, and was not capable of private ownership under the then existing laws, but was subject to the mere right of navigation.

In the present case the structure and its foundation are a rigid part of the land: The land is owned by the builder.

The land itself was built up so that the land could be used for baseball purposes, and for such use would have been useless without the structure, consisting of grand stands and fences, all connected, so as to exclude all persons except those who paid the charge established by the owners of the baseball property for admission.

A shed of three sides and a roof is a lienable building; the use of the shed is for the sheltering from the elements of some variety of personal property. A grand stand is a shed for the sheltering of persons from the elements, and giving to persons a comfortable and advantageous point of observing a sport.

Pennsylvania has defined "Building" as something sufficiently substantial to entitle them to the character of buildings, although they are not elaborate structures, yet were permanent and suited to the purpose for which they were erected, dealing with sheds. Possibly merely uprights supporting a roof over machinery.

Short vs. Miller, Pa., 14, Atl., 374.

In *Wheatman v. Andrews*, 89 Atl., 283, V. C. Backus, in dealing with the question of covenants running with land says: "The complainant contends that the word building means dwelling house; that it should be so construed. It cannot be gathered from the context of the covenant that the parties intended the word, "Building," to apply to a certain kind of building. To interpret the word "Building," to mean dwelling would prevent the erection of a church, a theatre, a municipal building, hotel, or private club house.

Judge Young, in *Tomuschat v. North British Ins. Co.*, 92 Atl., 330, says: "It is the general rule that

the words of a statute are to be given their ordinary meaning * * * and any structure with walls and a roof is a building within the ordinary meaning of that word"—citing *Newell v. Academy*, 130 Mass., 209; Cent. Dict., 712.

This case was under an insurance policy; a construction risk; building insured not yet completed and destroyed by fire. The Appellate Court found for plaintiff.

Judge Speer, in *Davis vs. Miel*, reported 90 Atl., 315; confirmed by the Court of Errors, opinion by Chancellor Walker, who in writing the opinion of the Court of Errors and Appeals, referred to the opinion of Judge Speer in which the Court says, referring to the Mechanic's Lien law: **"The statute is remedial in its nature and must by its terms, receive a liberal construction. It is designed for the protection of a needy and most meritorious class of persons, and should receive such a construction as will further the benign purposes which the Legislature had in view in its passage."**

Judge Vredenburg, in *re Coddington* said: "The Legislature did not mean by "building," or "every building," its broadest significance; it did not mean ships or horse rakes, but the Legislature did mean when it said "Every building hereafter erected or built * * * and on the land where it stands," buildings attached to and becoming a part of the dry land itself; they meant by it the definition given to it by Webster in his dictionary, "An edifice constructed for use or convenience, as a house, a church, a shop, &c."

In *Wells vs. Christian*, 76 N. E., 518, (*Ind.*, 1916), a lien was allowed upon a manufacturing plant for work done in hauling dirt, dug out of a trench in a street, dug for the purpose of connecting a steam

pipe with the plant. The Court said at page 519:

“The contract for the excavation of the trench, the laying of the pipe therein and the restoration of the street to its original condition called for the performance of labor in and upon the erection of said manufactory. The hauling of materials to be used in the performance of the work and hauling away of surplus earth excavated were incidental matters inseparably connected with the principal undertaking and constituted items of labor for which a lien may be acquired (citing *Beatty vs. Trenton, &c., R. R. Co.*, 70 N. J. Law, 684). The work which appellant performed being directly and necessarily connected with the erection of appellee’s heating system, as already shown, it was immaterial whether such work was performed upon the particular properties to which the labor liens primarily attach, or upon a street in front of the same.”

In *Steger vs. Artic Ref. Co.*, 11 L. R. A., 580, a lien was allowed under a statute practically identical with the New Jersey Statute, for laying pipes connecting the refrigerating plant with its customers at a distance, and held that the lien could be enforced upon the land where the factory was located, although the pipes were laid on the land of strangers.

In *National Foundry & Pipe Wks. Co. vs. Oconto Water Co.*, 52 Fed. Rep., 43, held that a lien could be maintained upon the plant of a water company for work done in laying pipes through the city streets. The Court says (p. 51):

“This piping was attached to the pumping works laid through the streets. The plant is an entirety. * * * The pipe is merely an extension and continuation of the apparatus for the production and distribution of the water supply; it is a part of it and not separable from it without destroying the efficiency of the whole. * * * The principal announced has authoritative support. In *Commissioners vs. Gaslight Co.*, 12 Allen, 75, and in *Gaslight Co. vs. State*, 6 Cold., 311, it was held that gas pipes laid in the streets of a city constituted part of the apparatus. In *Manufacturing Co. vs. Gibson*, 36 Conn., 86, a blow pipe conveying air from a blower to a forge was held part of the forge; in *Derrickson vs. Edwards*, 29 N. J. Law, 469, a flume 100 feet in length for the conveyance of water from a pond to a wall within a mill was declared to be ‘as necessary and as fixed a contrivance for making paper at that establishment as the water wheel and the brush shaft and the grinding engines are’ covered by a lien upon the mill.”

In *Williamette Falls Transportation Co. vs. Remick*, supra, the statute gave a lien for labor in the construction of “any building.”

The Court said:

“It is clear that for work of any kind upon the building in its construction the statute gives a remedy. Much of Remick’s labor was expended upon a dam, or breakwater, attached to and for the use of the Company’s mills, and it is contended that for such labor he is not en-

titled to a lien upon said mills. This view of the statute seems to be both unreasonable and unequal, for a mill made to run by hydraulic power would be worthless, without the structure necessary to secure and obtain water; and the labor bestowed upon such structures is to the same utility and importance to the owner of the mill as the labor put upon the mill building. Whatever enters into or is connected with a mill essential to its use ought to be treated to under the statute as a part of the mill; so that all who contribute their toil to make it valuable may have an equal chance to obtain compensation for their labor."

In *Beatty vs. Parker*, 141 Mass., 523, 6 N. E., 754, a lien was claimed for the construction of a connection from a house to a street sewer. In sustaining the lien, the Court said:

"The piping inside of the house and out-of it to the sewer, was necessary to the use of the house, and a part of it, and was included in the contract for building it."

In *Boisot on Mechanics Lien*, it is stated:

"Improvements which, although outside of a building, are so connected therewith as to be necessary for its proper use, and are on the same tract of land, may be the subject of a lien on the lands and buildings."

In *Reid vs. Berry* (Mass.) 59 N. E., 760, the Court sustained a lien for grading, saying:

“But we think that, if the grading was reasonably necessary to the proper construction and occupation of the house, it fairly could be considered as a part of its erection, and that the petitioner should have a lien for it. In *Perry vs. Potashinski*, 169 Mass., 351, 47 N. E., 1022, it was assumed that there was a lien for grading.”

In *Rouse vs. Catskill*, 13 N. Y. Supp., 126, “Building means an erection intended for the use or occupation, as a habitation, or for some purpose of trade, manufacture, ornament or use, such as a house, a store, a church, a shed.”

Bouvier’s law dictionary says: “A building is an edifice or structure, erected upon or over the soil, connected together and designed for use in the position in which it is so fixed.”

The 24th section of the present act, in prescribing the plea that may be filed, has changed the language commented on in the *Coddington* case, and strikes out the word “House,” and inserts in lieu thereof the word “Building.”

Sections 8, 9 and 10 do not refer in any way to what the Legislature meant when it used the words, “Every building.” Section 8 handles an addition erected to a former building. Section 9 extends the lien for or about the repairing of any fixed machinery, &c., in all mills and manufactories of every description. Section 10 extends the lien for the labor or materials in making alteration to buildings.

The *H. T. Cady Lumber Co.* case, in fact supports the findings of this Court in the *Coddington* case, and the findings of the Supreme Court in this case. The fireworks amphitheatre was a large uncovered grand stand on one side of the lake, and the

framework used for the display of fireworks was erected on the other side of the lake.

The statute provided for a lien on a house, mill, manufactory, or building, or appurtenance. The Court said, "It is clear that this structure would not be included within the first three enumerated in the statute. If it is subject to a lien, it must be because it constitutes a building or an appurtenance."

The Court was referred to the statutes of other States. The Court said: "Whatever may have been the construction of other States, we feel bound to the prior decision of this Court to hold that the word appurtenance in our statute, means an appurtenance to the ground and not merely an appurtenance to some other building. The Court holding that these structures were necessary to the use of the ground, found that they came with the word appurtenance." The Court did not need to go further, and did not attempt to define the word building.

The Court says, on page 962, "It would hardly be possible to enumerate specifically in the act, all the structures to which it was intended that a mechanic's lien should attach. We think that what the framers of the statute have attempted to do, is to specify all the most common structures and to include all the others in the generic term, appurtenance."

Generic means wide in application. Our Legislature did not even attempt to enumerate the various kinds of structures, buildings, etc.; they used language of the widest application. They said, "Every building hereafter erected or built and on the land whereon it stands."

This immense structure was not erected for the occasional use of professional baseball. It was

erected for yearly use. The professional baseball season runs from April to October. During the Winter months, such structures are used for housing and protecting the personal property belonging to the company.

All the grounds of appeal are considered together.

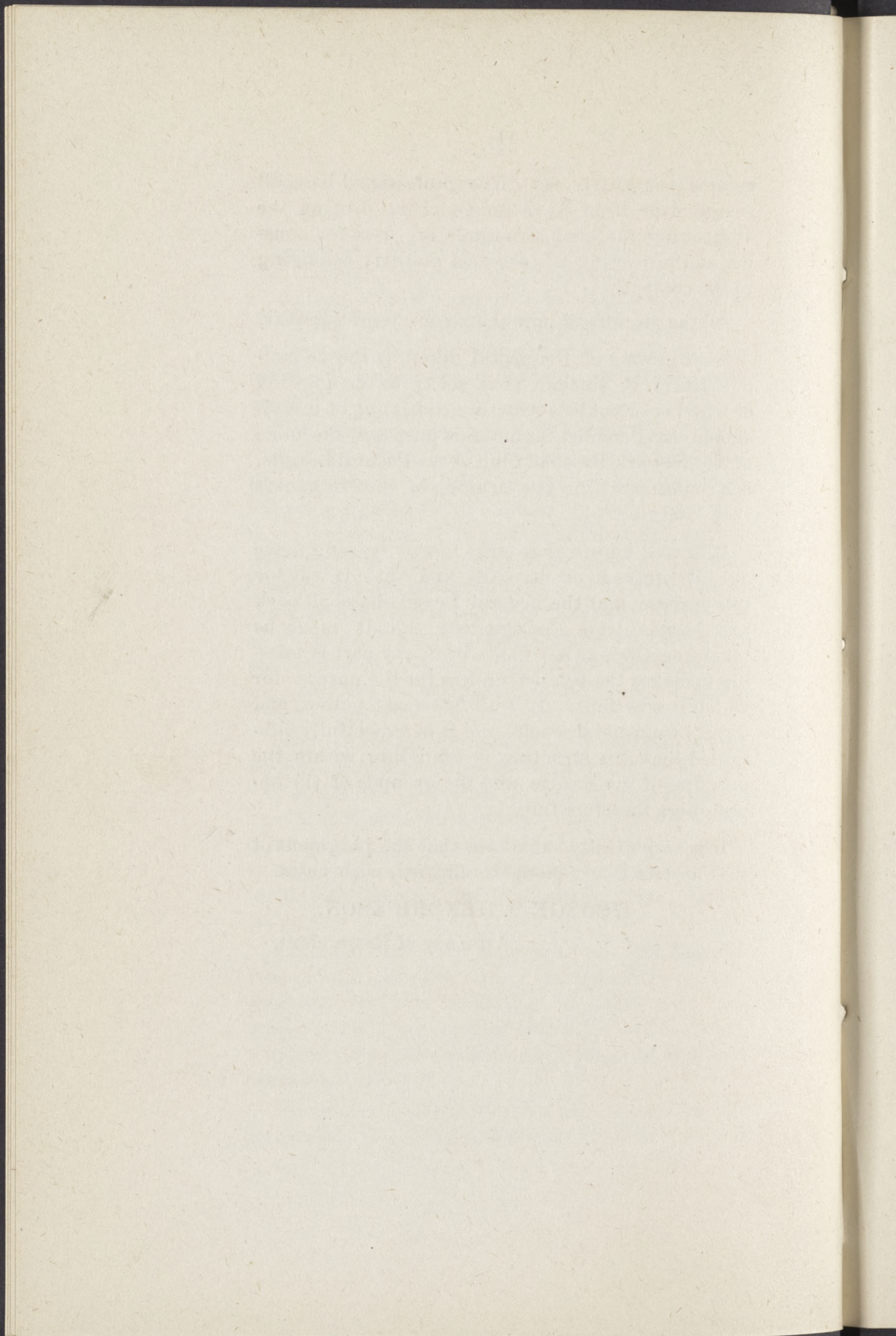
Each ground of the appeal taken by the defendant, Harry F. Sinclair, runs solely to the question of whether or not this structure, consisting of grandstands, &c., erected for business purposes, the home of the Newark Baseball Club of the Federal League, is a building within the meaning of the Mechanic's Lien Statute.

It is well known that large money is being made out of professional baseball, and that it was for this purpose that the Federal League baseball park and stands were constructed; that it must be taken together, as a whole, for if any part is missing it makes the balance useless for the purpose for which it was built. It is all fastened together, and a part of a general whole, and it is respectfully submitted that this structure is a building within the meaning of the statute, and the grounds of the appeal must therefore fail.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed, with costs.

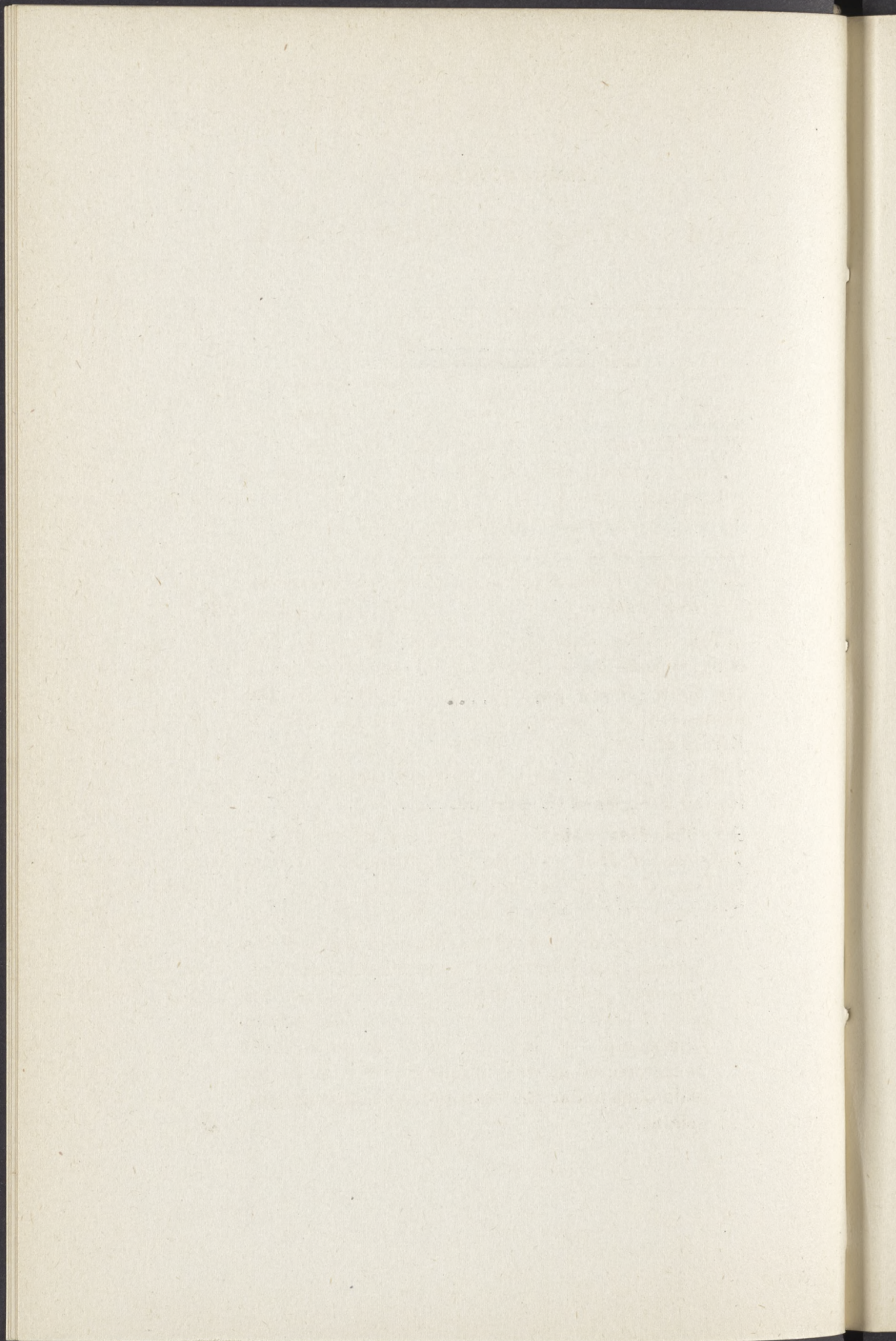
GEORGE D. HENDRICKSON,

Attorney of Respondent.



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Notice of Appeal.

New Jersey Supreme Court.

<p style="text-align: center;">HERMAN RAAB, <i>Claimant-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">W. P. ELLISON, INC., A corpora- tion, builder, and HARRY F. SINCLAIR, owner, <i>Defendant-Appellant,</i></p>	}	<p style="text-align: center;"><i>On Mechanics Lien.</i></p> <p style="text-align: center;"><i>Notice of Appeal.</i></p>	<p>10</p>
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To George D. Hendrickson, Attorney for Claimant-Respondent: 20

Take notice, that the defendant, Harry F. Sinclair, appeals from the whole of the judgment of the New Jersey Supreme Court entered in the above entitled cause, to the New Jersey Court of Errors and Appeals.

The appellant, Harry F. Sinclair, states the following grounds of appeal:

1. The Supreme Court erred in affirming the judgment of Hudson County Circuit Court against this appellant for the following reasons: 30

(a) The Trial Court erroneously entered judgment against this defendant, to be made of the buildings and lands in the complaint described, whereas judgment should have been given for said defendant, as the structure mentioned in the complaint and the lands whereon same were erected are not buildings, or lienable for said debt under the statute mentioned in complaint. 40

NOTICE OF APPEAL

(b) The Trial Court refused to non-suit plaintiff-claimant as to this defendant, though requested, upon the grounds aforesaid.

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(c) The Trial Court refused to direct a verdict in favor of this defendant, though requested, upon the grounds aforesaid.

(d) The Trial Court refused to charge the jury that the structures mentioned in complaint, and land whereon the same were erected, are not lienable for said debt under the statute mentioned in complaint.

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(e) The Trial Court refused to non-suit plaintiff-claimant against this defendant, though requested, upon the grounds that said complaint disclosed no cause of action against this defendant and his property.

2. The Supreme Court erred in its determination that the structure involved in this suit was a building within the meaning of the Mechanics Lien Law.

December 5, 1916.

DAVIS & HASTINGS,
Attorneys for Appellant.

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COMPLAINT

New Jersey Supreme Court.

HERMAN RAAB, <i>Claimant-Respondent.</i>	}	10
<i>vs.</i>		
W. P. ELLISON, Inc., a Corpora- tion, Builder,		<i>On Mechanic's Lien.</i>
<i>and</i>		
HARRY F. SINCLAIR, Owner, <i>Defendant Appellant.</i>	}	20

Agreed State of the Case on Appeal.

Attorneys for claimant-respondent and defendant owner, Harry F. Sinclair, appellant, hereby agree upon the following state of the case on appeal.

Claimant's complaint, filed in the Hudson Circuit Court, July 22d, 1915, declared upon a lien claim filed for a debt contracted and owing for labor performed and materials furnished for the erection and construction of a certain building, upon lands situate in the town of Harrison, described in said lien and complaint, "The said building consists of the frame and iron baseball enclosure, consisting of fences, grand stands and bleachers, located on a lot or curtilage situated in the Town of Harrison, Hudson County, State of New Jersey, all of which is enclosed in and under said building," particularly describing the land by meets and bounds, under a contract between the owner, Harry F. Sinclair and W. P. Ellison, Inc., builder, which contract was

ANSWER. SPECIFICATION OF DEFENSES
DESCRIPTION OF PREMISES

not filed, and claimant claimed a lien upon the said lands and building by virtue of an Act, entitled, "An Act to Secure to Mechanics and Others, Payment for their Labor and Material in Erecting any Building," for the sum of \$2,352.68, and interest.

Defendant's answer, filed September 17th, 1915, among other things, denied said alleged debt was a lien upon the said land and structures of the defendant owner, Harry F. Sinclair, and also specially pleaded the following:

SECOND DEFENSE.

1. Said structures mentioned in complaint and the land therein described are not liable for said alleged debt.

Issue was duly joined between the respective parties.

Upon demand of said claimant for a specification of defences, upon which the defendants intend to rely at the trial of the cause under the second defence in the answer, said defendants duly served the specification of such defences including the following:

"1. That the structures mentioned in complaint are not of a character for which the statute mentioned in complaint provides for any lien for the erection thereof."

The building is a frame and iron structure, enclosing a professional baseball park, made up of grand stand, bleacher stands, and high fences, the main or grand stand being roofed, floored and partly enclosed at certain parts and entirely enclosed at

MOTION FOR NON-SUIT

other parts, containing two club houses, dressing rooms, bath rooms, beating rooms, locker rooms, toilet rooms, ticket booths, refreshment booths, and offices, having chairs equipped with seats. The bleacher stands have flooring, seats, and toilet rooms. The fence is high, strongly constructed and incloses the playing field. It is physically connected with the main grand stand at the northeasterly corner thereof, from which point the fences run northerly about twenty feet and thence westerly parallel with the main grand stand to corner of the field and thence southerly parallel with the said main grand stand to the right field corner of the field; thence easterly until it joins and is part of the centre field stand called the bleachers and forming the back of the said bleachers to the extreme center field corner of the field; thence northerly as part of the said bleacher and in continuation thereof to the left field corner of the field; thence westerly to the said corner of the grand stand. Entrances through the fence in the rear of the main grand stand are connected physically with the main grand stand by frame and wire passage ways to the frame stair ways inside of and up into the main grand stand.

The case was tried before Judge Luther A. Campbell and a jury at the Hudson Circuit, March 8th, 1916.

Attorneys for defendant-owner, Harry F. Sinclair, duly moved the Court to non-suit plaintiff-claimant as to said defendant upon the ground that the structures mentioned in the complaint and the lands whereon same were erected are not buildings, or lienable for said debt under the statute mentioned in complaint and because the complaint disclosed on cause of action against said defendant and his property and which request was refused and objection to such ruling made by said defendant.

MOTION TO DIRECT VERDICT
REQUEST TO CHARGE COURT'S MEMORANDUM

Said defendant likewise duly requested the Court to direct a verdict in favor of said defendant-owner, upon the same grounds, and such request was refused and said defendant objected to said ruling.

10 Said defendant likewise duly requested the Court to charge the jury that the structures mentioned in complaint and the lands whereon the same were erected are not lienable for said debt under the statute mentioned in complaint, which request was denied and said defendant objected to said ruling.

HUDSON COUNTY CIRCUIT COURT.

20	<p style="text-align: center;">HERMAN RAAB, <i>Claimant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">W. F. ELLISON, Inc., Builder, and HARRY F. SINCLAIR, Owner. <i>Defendants.</i></p>	}	<i>Lien Claim.</i>
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30 GEO. D. HENDRICKSON, Esq., Atty. of Plaintiff.
Messrs. DAVIS & HASTINGS, Attys. for Defendants.

Finding of Facts.

Campbell, J.

Upon the trial of the above issue there was reserved by the Court the finding of law as to whether or not the debt sought to be recovered was the subject of a lien under the Mechanics Lien Act.

40 My conclusion is, after an examination and consideration of the briefs of counsel, which I am filing herewith, that the debt is lienable; and a rule for

RULE FOR JUDGMENT

judgment, upon a verdict, may accordingly be taken, pursuant to the provisions of the Mechanics Lien Act.

Dated March 2, 1916.

LUTHER A. CAMPBELL,
Judge. 10

Rule for Judgment.

This action having been tried before Judge Luther A. Campbell, with a jury, in the presence of the counsel of the respective parties, on February 14th and 15th, 1916, and the Jury having returned a verdict in favor of the plaintiff for \$2,458.55, and against the defendant, W. P. Ellison, Inc., a corporation, generally, and to be made specially of the lands described in the complaint, 20

And the Court upon the trial of the said issue having reserved the finding of law as to whether or not the said debt sought to be recovered was the subject of a lien, under the Mechanics Lien Act, and the Court having now filed its conclusion, that the said debt is lienable, and that a rule for judgment upon the verdict may be taken, pursuant to the provision of the Mechanics Lien Act,

It is ordered, that judgment final be entered in favor of the plaintiff and against the defendant, 30
W. P. Ellison, Inc., a corporation, generally and against the defendant, Harry F. Sinclair specially, for the sum of \$2,458.55, besides costs of suit to be taxed but only to be made specially of the land and buildings in the said complaint described, etc.

Rule actually entered March 8th, 1916.

On motion of

GEORGE D. HENDRICKSON,
Attorney for Plaintiff. 40

JUDGMENT

The following judgment was entered:

This action was tried before Judge Luther A. Campbell with a jury, at the Hudson Circuit, March 8th, 1916.

10 The cause having been heard and submitted to the jury, they returned their verdict as follows:

They say they find for the plaintiff and against the defendant, and they assess the damages of the plaintiff on occasion of the premises at the sum of two thousand four hundred fifty-eight dollars and fifty-five cents (\$2,458.55).

20 Whereupon it is adjudged that the plaintiff recover of the defendant the sum of two thousand four hundred fifty-eight dollars and fifty-five cents damages and his costs, which are taxed at seventy-eight dollars and ninety-seven cents (\$78.97), making in the whole the sum of two thousand five hundred thirty-seven dollars and fifty-two cents (\$2,537.52).

Judgment entered this 8th day of March, 1916.

LUTHER A. CAMPBELL,
Judge.

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NOTICE OF APPEAL

The defendant, Harry F. Sinclair, thereafter duly served and filed the following notice of appeal, on March 23, 1916.

HUDSON COUNTY CIRCUIT COURT.

HERMAN RAAB, <i>Claimant,</i>	}	10
<i>vs.</i>		
W. P. ELLISON, Inc., a Corpora- tion, Builder,		<i>On Mechanics Lien.</i>
<i>and</i>		
HARRY F. SINCLAIR, Owner, <i>Defendants.</i>		20

Notice of Appeal.

*To George D. Hendrickson, Attorney of Plaintiff-
Claimant:*

TAKE NOTICE, that the defendant, Harry F. Sinclair, appeals from the whole of the judgment entered in the above entitled cause to the New Jersey Supreme Court,
March 23, 1916.

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DAVIS & HASTINGS,
Attorneys for Appellant.

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GROUNDS OF APPEAL

Thereafter said defendant duly served and filed the following grounds of appeal.

NEW JERSEY SUPREME COURT.

10

HERMAN RAAB,
Claimant-Respondent,

vs.

W. P. ELLISON, Inc., a Corpora-
tion, Builder,

and

HARRY F. SINCLAIR, Owner,
Defendant-Appellant.

*On Mechanics
Lien.*

20

Grounds of Appeal.

The appellant, Harry F. Sinclair, states the following grounds of appeal:

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1. The Trial Court erroneously entered judgment against this defendant, to be made of the buildings and lands in the complaint described, whereas judgment should have been given for said defendant, as the structures mentioned in the complaint and the lands whereon same were erected are not buildings, or lienable for said debt under the statute mentioned in complaint.

2. The Trial Court refused to non suit plaintiff-claimant as to this defendant, though requested, upon the grounds aforesaid.

3. The Trial Court refused to direct a verdict in favor of this defendant, though requested, upon the grounds aforesaid.

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4. The Trial Court refused to charge the jury that the structures mentioned in complaint, and land

GROUNDS OF APPEAL

whereon the same were erected, are not lienable for said debt under the statute mentioned in complaint.

5. The Trial Court refused to non-suit plaintiff-claimant against this defendant, though requested, upon the grounds that said complaint disclosed no cause of action against this defendant and his property. 10

DAVIS & HASTINGS,
Attorneys for Appellant.

DAVIS & HASTINGS,
Attorneys for Appellant

GEORGE D. HENDRICKSON,
Attorney for Respondent.

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OPINION

Before Gummere, Chief Justice, and Justices
Trenchard and Black.

For the appellants, DAVIS & HASTINGS.

For the respondent, GEORGE D. HENDRICKSON.

The opinion of the Court was delivered by TREN- 10
CHARD, J.

The plaintiff below recovered a judgment in a
Mechanics' Lien suit.

The sole question on this appeal is whether the
structure upon which the plaintiff's labor and ma-
terials were expended is liable for such labor and
materials.

We think that question must be answered in the 20
affirmative.

The first section of the Mechanics' Lien Law (C.
S., p. 3291), provides that

“Every building hereafter erected or built
within this State shall be liable for the
payment of any debt contracted and
owing to any person for labor performed
or materials furnished for the erection
and construction thereof, which debt
shall be a lien on such building, and the 30
land whereon it stands, including the
lot or cartilage whereon the same is
erected.”

The question is further narrowed by the fact that
the sole contention is that the structure is not a
“building” within the meaning of that term as
used in that section of the law.

By the term “building” as there used the Legis- 40
lature meant “An edifice constructed for use or

OPINION

convenience as a house, a church, a shop, etc., attached to and becoming a part of the land itself." *Coddington vs. Dry Dock Co.*, 31 N. J. L., 477.

10 Now, the structure in question is of frame and iron and is designed for the professional baseball purposes of the Newark Baseball Club of the Federal League. It consists of a grand stand, roofed, floored, and in parts enclosed, containing clubhouses, dressing, bath, heating, locker and toilet rooms, refreshment booths, offices, stairs and seats; bleacher stands, having flooring, seats and toilet rooms, and high tight board fences enclosing the playing field and physically connected with the stands.

20 Manifestly such a structure is a building within the meaning of that term as defined.

It was constructed by the owner on land for business purposes. It was designed for the shelter, use and convenience of the management of a professional baseball club and their agents, players and patrons. It was a single structure, in part roofed and enclosed, every part of which was essential to the purpose for which it was designed.

30 The judgment below will be affirmed, with costs.

Affirmance.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">HERMAN RAAB, <i>Plaintiff-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">W. P. ELLISON, a Corporation, Builder, and HARRY F. SIN- CLAIR, Owner. <i>Defendant-Appellant.</i></p>	}	<p style="text-align: center;"><i>On Mechanics'</i></p> <p style="text-align: center;"><i>Lien.</i></p> <p style="text-align: center;"><i>Order of</i></p> <p style="text-align: center;"><i>Affirmance of</i></p> <p style="text-align: center;"><i>Judgment.</i></p>	<p>10</p> <p>20</p> <p>30</p>
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This cause having been duly submitted on brief at the June term of this Court by George D. Hendrickson, of counsel for the plaintiff-respondent, and Davis & Hastings, of counsel for the defendant-appellant, and the Court having considered the same, and finding no error in the record or proceedings in the Hudson County Circuit Court,

It is, thereupon, ordered and adjudged, that the judgment of the Hudson County Circuit Court, removed to this Court of Appeal, be affirmed with costs, and that the record be remitted to the Hudson County Circuit Court, to be proceeded with in accordance with this judgment, and the practice of said Court, on motion of attorney of plaintiff-respondent.

Entered November 23, 1916.

On motion of

GEO. D. HENDRICKSON,
Attorney.

