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Mechanic's Lien--Action to Cancel is Not a Local Action

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well as federal.¹⁴ This holding affirmatively answers the main question of the case—“Will a federal immunity statute apply to a subsequent state prosecution wherein federally elicited testimony is used?”—and is justified by Article I, Section 8, of the Constitution which empowers Congress to enact “necessary and proper” legislation in furtherance of its Constitutional powers.¹⁵ Such laws are the supreme law of the land,¹⁶ and as such override or suspend all state statutes in conflict,¹⁷ and are binding on all courts, both state and federal.¹⁸

By virtue of the Court's decision in the *Adams* case, “complete immunity” in its most literal meaning is given the subpoenaed witness in such a situation. It still remains for the Court to decide whether a witness is given the same protection under statutes not prohibiting the use of elicited testimony to discover other evidence with which to prosecute.

RUSSELL Z. BARON

MECHANIC'S LIEN — ACTION TO CANCEL IS NOT A LOCAL ACTION

The defendants had filed an affidavit with the Recorder of Lake County, Ohio, to obtain a mechanics' lien upon the plaintiffs' real property in that county. Neither of the defendants resided in Lake County; nor did the corporate defendant maintain a place of business therein. Subsequently the plaintiffs filed a petition in Lake County praying, *inter alia*,¹ that the lien be cancelled and discharged of record and that the plaintiffs' title be quieted against such lien. The defendants appeared solely to move that service on them in Cuyahoga County be quashed. That motion was granted, such ruling being later affirmed by the Lake County Court of Appeals.²

On appeal to the Supreme Court of Ohio it was held,³ in affirming the courts below, that the plaintiffs' petition did not state a cause of action “for the recovery of real property, or of an estate or interest therein,”⁴ since the action was not “rightly brought” the service upon the defendants outside of Lake County was not within the venue statute⁵ and was therefore invalid.

Although the common law distinction between local and transitory causes of action⁶ is still adhered to in some jurisdictions, apart from venue statutes, it has long been recognized in Ohio⁷ that no division of personal actions into local and transitory exists. All actions are transitory unless specifically designated local by statute,⁸ and they may be prosecuted in any county in which process may be served on the defendants.⁹

¹⁴ *Adams v. Maryland*, *supra* at 445.

¹⁵ *Id.* at 446.

¹⁶ *McCullough v. Maryland*, 4 Wheat. 316 (U.S. 1819).

¹⁷ *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 708 (1878).

¹⁸ *Hill v. Harding*, 107 U.S. 631, 2 Sup. Ct. 404 (1883).

It was pointed out in the instant case that the plaintiffs' positions were especially difficult because they were based on the belief that an action to quiet title or for the removal of a cloud on title to realty was strictly local. And even though the court assumed for the purpose of the opinion that a mechanics' lien was an "interest" in land, the result would have been no different because the plaintiffs still were not seeking "the *recovery* of real property, or of an estate or interest therein." (emphasis added) Thus, in light of the well-settled rule of statutory construction that the words of a statute will be interpreted in their ordinary acceptance and significance and the meaning commonly attributed to them,¹⁰ to "cancel and discharge of record" is not to "recover."

The plaintiffs in the instant case could have achieved the result they

¹ The plaintiffs' second prayer was for substantial damages for injury to reputation caused by the defendants' execution of the lien. The third and fourth were for damages resulting from the defendants' breach of contract.

² 121 N.E.2d 280, 282 (1953). The court of appeals, one judge dissenting, said: "This is not, in fact, a suit to quiet title at all, but merely an action to cancel a mechanics' lien. Section 8319, General Code (Ohio Revised Code, Section 1311.11) provides an adequate remedy at law for the plaintiffs in this case, and since a lien is not an estate or interest in land, the trial court did not err in granting the defendants-appellees' motion. A mechanic's lien is a creature of statute. Its removal or cancellation is provided for by statute."

³ *Gustafson v. Buckley*, 161 Ohio St. 160, 118 N.E.2d 403 (1954) (two judges dissenting).

⁴ OHIO REV. CODE § 2307.32.

⁵ OHIO REV. CODE § 2703.04.

⁶ 1 CHITTY, PLEADING 280, 281 (16th Am. Ed. 1883).

⁷ *Genin v. Grier*, 10 Ohio 209 (1840); *City of Fostoria v. Fox*, 60 Ohio St. 340, 54 N.E. 370 (1899); *Snyder v. Clough*, 71 Ohio App. 440, 26 Ohio Op. 367, 50 N.E.2d 384 (1942). *But see* *B. & O. R. Co. v. Hollenberger*, 76 Ohio St. 177, 81 N.E. 184 (1907); 11 Ohio St. L.J. 291.

⁸ *Snyder v. Clough*, *supra*, note 7.

These civil actions are considered local under the Code: OHIO REV. CODE § 2307.32 (venue in actions for recovery of realty or estates or interests therein; partitioning realty, foreclosure of mortgages and enforcement of liens); OHIO REV. CODE § 2307.33 (venue when the property is situated in more than one county); OHIO REV. CODE § 2307.34 (venue in actions for specific performance); OHIO REV. CODE § 2307.35 (actions for the recovery of fines, forfeitures or penalties imposed by statute; against public officers; on the official bond or undertaking of a public official); OHIO REV. CODE § 2127.09 (action by an administrator, executor, etc., to obtain authority to sell realty may be brought either in county of appointment or where the property is located); OHIO REV. CODE § 4515.01 (venue in an action for injuries caused by motor vehicles may be brought against the owner in the county where the injury occurred).

⁹ *City of Fostoria v. Fox*, *supra*, note 7; *Gauder v. Canton Provision Co.*, 56 Ohio App. 170, 9 Ohio Op. 288, 10 N.E.2d 163 (1937); OHIO REV. CODE § 2307.36; OHIO REV. CODE § 2307.39.

¹⁰ *Ludlow v. Johnston*, 3 Ohio 553 (1828); *Osborn v. Lidy*, 51 Ohio St. 90, 37 N.E. 434 (1894).