

ESTEP *v.* BLUE RIBBON COAL COMPANY.

Opinion delivered April 16, 1928.

MORTGAGES—PRIORITY OF MINERS' LIEN.—Under Acts 1923, p. 490, and Crawford & Moses' Dig., § 7293, giving miners a lien for work done in operating a mine, such lien was not superior to the lien of a chattel mortgage on the leasehold interest and equipment of the mine existing at the inception of the miner's lien.

Appeal from Logan Chancery Court, Northern District; *J. E. Chambers*, Chancellor; affirmed.

STATEMENT BY THE COURT.

This suit involves a controversy between certain coal miners, appellants, against appellees, the Blue Ribbon Coal Company, the First National Bank of Paris, Arkansas *et al.*, in which the miners alleged that their wages had not been paid, that they were entitled to the payment thereof and to a lien upon all the machinery, equipment, supplies and property in and about the coal mine, under the laborers' lien law of the State, and that such liens are superior and paramount to all other liens or incumbrances.

The First National Bank was made a defendant because it held a mortgage upon the lease, leasehold interests and certain machinery and equipment at the mine, which was given by C. A. Gaither, the owner, and filed before the miners did the work. The bank claimed that its prior mortgage was a lien in its favor superior to the liens claimed by the miners. The mortgage was filed as a chattel mortgage on the 11th day of August, 1925, after the passage of act 615 of the Acts of 1923 and § 7293 of C. & M. Digest.

There is no dispute about the miners having worked in and about the mine with the machinery and equipment in question and earned the amount of money claimed to be due them for their services, nor that the suit was filed by them within the time necessary to preserve liens under the statute.

Several vendors of machinery and other equipment sold and installed and used in the mine in production,

loading and shipping coal claimed, by intervention, title and right to possession of such property, the sales being conditional and the title retained by the sellers until the purchase price was fully paid. The miners resisted these claims of the interveners upon the ground that the machinery and equipment was placed in and about the mine to be used in the operation thereof, and that they used same in their work at the mine, and had a lien upon it under said act 615 of the Acts of 1923 and § 7293, C. & M. Digest.

Much evidence was introduced by the parties, in which there was no material conflict, after which the court held that the plaintiff miners could not acquire liens upon property which had been conditionally sold, the title being retained by the vendors, even though such property was used by the miners when their work was being done.

The court held that the miners were entitled to liens upon the other machinery and equipment in the mine, but that such liens were subject to the prior mortgage lien of the First National Bank, and rendered judgment in favor of the miners for the amounts of their claims, and also rendered judgment for a foreclosure of the bank's mortgage and a sale of the property to satisfy the debts secured thereby, from which judgment the miners appealed.

G. L. Grant, for appellant.

White & White and *Evans & Evans*, for appellee.

KIRBY, J., (after stating the facts). The appeal involves the construction of the statutes giving liens to miners as to whether such liens are superior to prior mortgages, the appellants insisting that the miners' liens are only subject to the mortgage of the leasehold interest in any event, and that their liens upon the machinery, material, supplies and specific improvements at the mine are superior to the bank's mortgage, notwithstanding it was executed and recorded before their labor was done at the mine.

Appellants claim under the statutes, § 7293, C. & M. Digest, which is silent as to the priority of the time given, and act 615 of the Acts of the General Assembly of 1923, the first section of which gives laborers and materialmen who, under contract with the owner or lessee, perform labor or furnish material, machinery, supplies, etc., for operating, equipping, maintaining or repairing any mine, a lien on the land or leasehold interest therein, except the lien does not attach to the fee in the land when the labor is performed or material is furnished to a leaseholder.

Section 4 deals with the priority of the lien given, declaring that it "shall be prior and paramount to and in preference of any and all subsequent liens, incumbrances or mortgages, and * * *. The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien, or incumbrance, or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies and specific improvements are placed or located; provided, however, that any lien, incumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected thereby; and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the lien hereby created."

The statutory lien given to the miners for work done in operating the mine could not become paramount to a prior recorded mortgage unless the statute creating the lien manifests an intention to give it preference. In *Easter v. Goynes*, 51 Ark. 22, a case wherein the question involved was whether a statutory lien would take precedence over a prior recorded mortgage, executed after the passage of the act giving the statutory lien, the court said: "The statute under consideration does not evince the intention to give preference to the statutory lien, and, in the absence of a legislative intent to that effect, the

courts have not, unless in exceptional instances, permitted the lien created by the statute to become paramount to a prior recorded mortgage. Jones on Liens, §§ 691-3, and cases cited; Jones on Chattel Mortgages, § 474." See also the New Mexico case of *Eccles, Artesian Well Supervisors, etc., v. Will*, 170 Pac. 748, L. R. A. (N. S.) 1918C, 1022. In a note to this case, found on page 1024 L. R. A. (N. S.) 1918C, it is said: "The view taken in the *Eccles* case, that, where the statute creating the lien is silent on the question, the lien does not take priority over an existing mortgage, is in accord with the general rule declared in such cases," many of which are cited, and among them our case of *Easter v. Goyne, supra*.

It is true it is expressly provided that the lien given the laborers shall attach to the machinery, material, etc., in preference to any prior lien, incumbrance, or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies and specific improvements are placed or located, provided that any lien, incumbrance or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected hereby. The inception of the statutory lien could not have been before the material and supplies were begun to be furnished and the labor done, and it was not the intention of the statute to make the lien of the laborer or materialman superior to the lien of the prior mortgage upon the leasehold interest and equipment of the mine before the inception of the lien given the laborer by the statute, which expressly declares that such mortgage lien shall not be affected thereby. It was obviously not intended that the laborer or material furnisher should have a superior lien upon the leasehold and equipment of the mine to the lien of the mortgage existing at the inception of the statutory lien. In other words, at best, the statute, under a fair construction, cannot be held to intend the giving of a lien to laborers and material-furnishers on the materials,

improvements and equipment of the mine already installed and covered by a valid mortgage of the leasehold at the inception of the statutory lien, which could attach only to such machinery, material, and specific improvements thereafter installed becoming superior to the mortgage lien therefor.

Since the testimony does not show that the machinery, equipment and specific improvements upon which the lien was claimed by appellants were installed in the mine after the miners began their operations and the materialman furnished such equipment, no error is shown in the decree as rendered, which must be affirmed. It is so ordered.
