

1959
Feb. 11, 12
*Apr. 28

M. MOLNER (*Plaintiff*)APPELLANT;

AND

STANOLIND OIL & GAS COM-
PANY AND REMPEL CON-
STRUCTION LIMITED AND }
OTHERS (*Defendants*) } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA,
APPELLATE DIVISION

Mechanics' liens—Mines and minerals—Surface and mineral lease of unpatented Crown lands—Liens for materials supplied for buildings—Whether liens to be registered with Registrar of Land Titles or with Minister of Mines and Minerals—The Mechanics' Lien Act, R.S.A. 1942, c. 236, as amended.

S. Co. held a surface lease and an oil and gas lease on unpatented Crown lands. On the land covered by the surface lease, R. Co. constructed for S. Co. certain buildings to house equipment and personnel engaged in the production of oil. Various mechanics' liens were filed for materials supplied to R. Co. in the construction of the buildings. The plaintiff M filed his first lien with the Minister of Mines and Minerals against the oil and gas, and his second lien with the Registrar of the Land Titles Office against the land. The plaintiffs C and I registered their liens with the Registrar against the land included in the surface lease only. An issue was directed as to where the liens should have been filed.

*PRESENT: Locke, Cartwright, Fauteux, Abbott and Martland JJ.

The trial judge held that only M's first lien was valid. In the Court of Appeal M's first lien was upheld and his second was declared not proper. A majority in the Court having held that the liens of C and I had been properly registered, M appealed to this Court, contending that only his lien, registered with the Minister, was valid.

Held: The claims for lien ought properly to have been filed with the Registrar of the Land Titles Office.

A lien which, as in this case, does not require to be registered with the Minister of Mines and Minerals under s. 48 of *The Mechanics' Lien Act* can be properly registered, under s. 19 of the Act, with the Registrar of the Land Titles Office, even though it relates to unpatented lands. *Union Drilling and Development Co. Ltd. v. Capital Oil & Natural Gas Co. Ltd.*, [1931] 2 W.W.R. 507, followed. In the present case, s. 48 did not require that any of the liens should have been registered with the Minister. The property in respect of which these liens were claimed consisted of houses, garages and a bath house. These buildings constituted improvements or appurtenances but could not be considered as falling within any of the three classes of property defined in s. 48(1).

1959
MOLNER
v.
STANOLIND
OIL &
GAS Co.
et al.

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division¹, reversing a judgment of Egbert J. Appeal dismissed.

V. M. Dantzer, for the plaintiff, appellant.

J. R. Smith, for the defendants, respondents Stanolind Oil and Gas Co. and Rempel Construction Co.

W. D. Dickie, for Crown Lumber Co. Ltd.

T. J. Dunn, for Imperial Lumber Co. Ltd.

The judgment of the Court was delivered by

MARTLAND J.:—On March 21, 1955, Her Majesty The Queen in the right of the Province of Alberta granted a petroleum and natural gas lease no. 102766 to Honolulu Oil Corporation in respect of 5,760 acres of land in township 47, range 9, west of the 5th meridian in the Province of Alberta for a term of twenty-one years from the 22nd of November, 1954, which was referred to in evidence as the "G" lease. This lease was later assigned by Honolulu Oil Corporation to Hudson's Bay Oil and Gas Company Limited on April 19, 1955, and subsequently, on the same date, by that company to itself and Stanolind Oil and Gas Company (hereinafter referred to as "Stanolind") as to an undivided 50 per cent. interest each. Fifty-six producing oil wells have been drilled on these lands.

¹ (1958), 24 W.W.R. 337, 13 D.L.R. (2d) 635.

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.
Martland J.

By lease no. 587, dated December 16, 1955, Her Majesty The Queen in the right of the Province of Alberta leased to Stanolind, for a pumper's housing area, 6.39 acres of land in the same township and range, in that portion which, if surveyed, would be the north west quarter of section 36. This was a surface lease for a term of ten years from September 1, 1955.

On September 6, 1955, Stanolind made a contract with Rempel Construction Ltd. (hereinafter referred to as "Rempel") for the erection upon these lands of seven four-room houses with attached one-car garage, a four-car garage, a three-truck garage and a bath house. In turn Rempel made a contract with the appellant for labour and materials on plumbing, gas lines, water lines, sewer lines and unit heaters in connection with these buildings. Rempel also contracted with the respondents Crown Lumber Company Limited and The Imperial Lumber Company Limited (hereinafter referred to respectively as "Crown" and "Imperial") for the supply of lumber and building materials for the same project. The appellant and the respondents Crown and Imperial furnished the labour and materials which respectively they had agreed to supply.

The lands described in the above-mentioned petroleum and natural gas lease and in the surface lease were not patented and consequently no certificates of title had issued under the provisions of *The Land Titles Act*.

The appellant registered two liens, the first, dated May 8, 1956, with the Minister of Mines and Minerals on May 9, 1956, and the second, dated June 7, 1956, in the Land Titles Office for the North Alberta Land Registration District on the same date.

The description of the land to be charged in the lien first mentioned was

the Petroleum and Natural Gas and related Hydrocarbons in that area known as Pembina Crown G Lease being Township Forty-seven (47) Range Nine (9) West of the Fifth (5) Meridian, and in particular LSD 12, S 36, T 27, R 9, W of the 5th M., comprised in oil and gas lease number 102766.

The description of the land to be charged in the second lien above mentioned was

Township Forty-seven (47) Range nine (9) West of the Fifth Meridian, and in particular LSD 12, S 36, T 27, R 9, West of the Fifth (5) Meridian.

Imperial registered a lien in the Land Titles Office dated April 5, 1956, on April 9, 1956. The description of the land to be charged was

S.W. Corner of L.S.D.—13—13—47—9 West of the 5th (Res. all M & M).

Crown registered a lien in the Land Titles Office dated April 9, 1956, on or about April 11, 1956. The description of the land to be charged was

The North West quarter of Section 36, Township 47, Range 9, West of 5th Mer.

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.
Martland J.

A statement of claim was issued by the appellant against Stanolind, later amended to add Rempel as a party defendant, on May 25, 1956, in respect of its first lien. Crown issued an originating notice of motion on June 22, 1956, in respect of its lien. The two proceedings were consolidated for trial by order of Chief Justice McLaurin on July 16, 1956. On December 6, 1956, by order of Boyd McBride J., it was directed that the first issue to be tried was whether the claims for lien should have been registered with the Minister of Mines and Minerals under s. 48 of *The Mechanics' Lien Act*, R.S.A. 1942, c. 236, as amended, or with the Registrar in the Land Titles Office of the North Alberta Land Registration District under s. 19 of that Act.

At the trial evidence was given by a Mr. Jones, the Superintendent of Pan American Petroleum Corporation in the Pembina oil field, as to the purpose of construction of the buildings in question. He stated that the "G" lease was relatively central to their operations south of the Pembina River and that the site was chosen so that they would have their personnel centrally located with respect to their operations. He said that houses were occupied by four pumpers, of whom three worked entirely on the "G" lease, handling production from that lease. Houses were also occupied by three supervisors who handled supervisory work, some on the "G" lease and some on other leases in that vicinity. He did not have specific, detailed knowledge of exactly how Stanolind planned to use the houses before the construction of them had actually started.

The learned trial judge held that the proper place of registration was with the Minister of Mines and Minerals and that, accordingly, only the lien of the appellant, which was registered there, was valid.

1959
 MOLNER
 v.
 STANOLIND
 OIL &
 GAS CO.
 et al.
 Martland J.

On appeal to the Appellate Division¹, Ford C.J.A. and Porter J.A. held that the proper place of registration was in the Land Titles Office. The latter went on to hold that none of the liens attached to surface rights.

Johnson J.A. and Macdonald J.A. held that the appellant's first lien, registered with the Minister of Mines and Minerals, was properly registered and that the liens of Crown and Imperial, registered in the Land Titles Office, were also properly registered.

Boyd McBride J.A. agreed with the learned trial judge.

A majority of the Court having held that the liens of Crown and Imperial had been properly registered, the appellant appealed to this Court, contending that only his lien, registered with the Minister of Mines and Minerals, was valid.

The relevant sections of *The Mechanics' Lien Act*, applicable in this action, which are contained in R.S.A. 1942, c. 236, as amended by 1952 (Alta.), c. 51, are the following:

2. In this Act, unless the context otherwise requires,

* * *

(c) "improvement" includes structure, erection, building, railway, tramway, wharf, pier, bulkhead, bridge, trestlework, vault, mine, water, gas, oil or other well, gas or oil pipe line, excavation, fence, sidewalk pavement, fountain, fishpond, drain, sewer, ditch, flume, aqueduct, roadbed, way, fruit or ornamental trees and the appurtenances to any of them;

* * *

6. (1) Unless he signs an express agreement to the contrary and in that case, subject to the provisions of section 4, a person who performs any work or service upon or in respect of or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving, demolishing, or repairing of any improvement for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for so much of the price of the work, service or materials as remains due to him in the improvement and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work or service is performed, or upon which the materials are to be used.

* * *

(4) When a lienholder's claim is for work, service or material supplied,
 (a) for any mining or drilling operation; or

¹(1958), 24 W.W.R. 337, 13 D.L.R. (2d) 635.

(b) to prospect for or recover any mineral;
the lien given by subsection (1) shall attach only to the mineral and shall not attach to the surface of the land.

* * *

19. (1) A claim for the registration of a lien, Forms 1, 2 and 3, of the Schedule, may be made to the Registrar in the Land Titles Office of the Land Registration District in which the land is situate, and shall set out,

- (a) the name and residence of the person claiming the lien and of the owner or alleged owner of the land, and of the person for whom and the time within which the work was or is to be done;
- (b) a short description of the work done or to be done;
- (c) the sum claimed as due or to become due;
- (d) a description of the land sufficient for the purpose of registration;
- (e) the date of ceasing to work;
- (f) an address for service of the claimant.

(2) The claim shall be verified by the affidavit (Form 4) of the claimant or of his agent or assignee.

* * *

(5) Every Registrar under *The Land Titles Act* shall be supplied with printed forms of such claims and affidavits in blank, which shall be supplied to every person requesting the same and desiring to register a lien.

(6) Every such Registrar shall decide whether his office is or is not the proper office for the registration of the lien and direct the applicant accordingly; and no claim shall be adjudged insufficient on the ground that it was not made to the proper Registrar.

* * *

(8) Upon the filing of the claim and affidavit, the Registrar shall enter and register the lien as an incumbrance against the land, or the estate or interest in the land therein described, as provided by *The Land Titles Act*.

* * *

21. (1) A substantial compliance with section 19 shall be sufficient and no lien shall be invalidated by reason of failure to comply with any of the requisites of the section unless, in the opinion of the judge, the owner, contractor or subcontractor, mortgagee or other person, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

(2) Nothing in this section shall dispense with the making of a claim for the registration of a lien.

* * *

48. (1) Where a lien is claimed in respect of property which consists of,—

- (a) any mine; or
- (b) any well drilled for the purpose of obtaining oil, gas or other mineral; or

(c) any work or operation conducted preparatory thereto;
and if the property is held under any claim, lease, license, permit, reservation or other agreement from the Crown granted pursuant to the *Dominion Lands Act*, or pursuant to *The Provincial Lands Act*, or pursuant to *The Mines and Minerals Act*, or by some person claiming by, through or under

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.
Martland J.

1959

MOLNER

v.

STANOLIND

OIL &

GAS CO.

et al.

Martland J.

any holder of such claim, lease, license, permit, reservation or other agreement, the claim for registration of the lien shall be made to the Minister of Mines and Minerals instead of to the Registrar of Land Titles.

* * *

(3) The provisions of this Act as to registration by the Registrar of Land Titles shall apply, *mutatis mutandis*, to registration hereunder by the Minister, and upon registration, the lien shall be enforceable as against the interest of the holder of the claim, lease, license, permit, reservation or other agreement as aforesaid in the same manner as a lien duly registered pursuant to section 19.

The view of the learned trial judge was that all the liens claimed fell within subs. (4) of s. 6, which, he said, covered all operations incidental to the recovery of a mineral, including oil. He held that registration of the liens, under s. 19, in the Land Titles Office was a nullity because the lands were not patented lands and consequently compliance with that section was an impossibility. He thought that the judgment of the Appellate Division in *Union Drilling and Development Company Limited v. Capital Oil & Natural Gas Company Limited*¹, had ceased to be applicable after the enactment of s. 23 of the Act (the predecessor of s. 48). He held that the buildings in question here were appurtenances to oil wells within s. 2(c) and that registration of the appellant's lien under s. 48 was valid.

With regard to the question as to whether registration of a lien in respect of unpatented lands can be effected under s. 19 of the Act, this point was decided by the judgment of Harvey C.J.A., speaking for the whole Court, in the *Union Drilling* case previously mentioned. In that case it was held that there may be a valid lien, under *The Mechanics' Lien Act*, against an interest in unpatented lands, although, since, in such a case, there is no certificate of title, a "registration" of the lien, within the strict meaning of that term in *The Land Titles Act*, is not possible. It was the opinion of the Court that s. 21 was a very comprehensive, curative section and that, when read along with s. 19, it was sufficient to warrant the registration of such a lien. While the facts of that case related to an oil well on a Crown lease, the proposition of law stated in it was not limited to that type of case, but was of general application.

¹[1931] 2 W.W.R. 507, 3 D.L.R. 656, 25 A.L.R. 529.

In 1931, by c. 24, provision was made for registration of a lien with the Minister of Lands and Mines in case it was claimed in respect of property which consisted of any oil well or gas well, or oil and gas well, or any property held in connection with any such well, and if such property was held under lease from the Crown. This section, which was originally s. 22a of the Act, later became s. 23. In 1952 it was replaced by s. 48, in which the wording is somewhat altered. In particular, whereas the earlier section had referred to "any property held in connection with any such well", s. 48(1)(c) refers to "any work or operation conducted preparatory thereto".

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.
Martland J.

I do not think that the decision in the *Union Drilling* case ceased to have effect because of these provisions. A lien which does not require to be registered with the Minister of Mines and Minerals under s. 48 can, on the basis of the judgment in that case, be properly registered, under s. 19 of the Act, with the Registrar at the Land Titles Office, even though it relates to unpatented lands.

Do the liens in question here come within the provisions of s. 48? The learned trial judge has pointed out, with justification, the extreme difficulty of construing the wording of this section and his view in that regard is shared by judges of the Appellate Division. However, a construction of the section must be attempted. It requires registration of a lien with the Minister of Mines and Minerals and not with the Registrar of the Land Titles Office, if the lien is granted in respect of property which consists of:

- (a) any mine; or
- (b) any well drilled for the purpose of obtaining oil, gas or other mineral; or
- (c) any work or operation conducted preparatory thereto;

The property in respect of which these liens are claimed consists of houses, garages and a bath house. Being buildings, they constituted improvements within the definition in s. 2(c) and, by virtue of s. 6(1), the appellant, Crown and Imperial would acquire liens in them. I do not see how these buildings can be considered as falling within any of the three classes of property defined in subs. (1) of s. 48.

1959

MOLNER
v.
STANOLIND
OIL &
GAS Co.
et al.
Martland J.

The appellant, however, points out that the definition of an improvement in s. 2(c) includes, among a number of other items, "gas, oil or other well" and that at the end of that paragraph there are added the words "and the appurtenances to any of them". He contends that the buildings were appurtenances to the oil wells and, therefore, argues that they fall within para. (b) of subs. (1) of s. 48. I do not agree with this contention. Section 2(c) says only that an appurtenance to an oil well is an improvement. It does not say that it is an oil well. Section 48 does not make use anywhere of the word "improvement". It refers only to specific kinds of property in respect of which a lien is claimed.

It is true that s. 6(1) provides for the existence of a lien in the land occupied by the improvement, as well as in the improvement itself, and that "land", as defined in *The Land Titles Act*, includes mines and minerals, so that a lien may attach to mines and minerals. Section 6(4), in certain defined circumstances, limits the lien to the mineral and prevents its attaching to the surface of the land. Section 48 is headed by the words "Lien on Minerals Held from the Crown" and applies in respect of liens which affect leases from the Crown. It does not, however, by its terms, apply in every case where there is a claim of a lien in respect of a mineral which is under lease from the Crown. Its operation is dependent upon a lien being claimed in respect of a mine; a well drilled for oil, gas or other mineral; or work or operations conducted preparatory thereto. It seems to me that none of the liens in question was claimed in respect of property of that kind.

This conclusion would appear to dispose of the issue here, which, it should be remembered, was restricted solely to the question of the proper place for the registration of the liens under consideration in these actions. For the reasons given, it is my opinion that s. 48 does not require that any of these liens should be registered with the Minister of Mines and Minerals and they can properly be registered with the Registrar of the North Alberta Land Registration District under s. 19 of the Act.

There was a good deal of discussion, in the judgments at trial and in the Appellate Division, as to whether or not subs. (4) of s. 6 applied in respect of these liens, so as to restrict their application solely to the minerals. This subsection restricts, in certain defined cases, the extent of a lien which arises under s. 6(1). My own view would be that the work, services and materials in question here were not supplied to recover a mineral within the meaning of para. (b) of subs. (4) of s. 6. It is true that the buildings in relation to which they were supplied were used by an oil company to house employees and vehicles employed and used in connection with the production of oil, but I feel that to say that the work, services and materials in question here were actually supplied to recover oil is extending the application of that paragraph too far. They were supplied to construct buildings and they only related indirectly to the recovery of oil because of the use to which Stanolind intended to apply the buildings.

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.
Martland J.

I do not think that this conclusion is in any way in conflict with the decision of the Appellate Division in *McFarland v. Greenbank*¹, where the issue was as to whether equipment of an oil or gas well could be termed appurtenant to the well, even though it were not annexed to the realty.

The formal judgment order of the Appellate Division in this matter does not contain any judgment of the whole Court, but consists merely of a recital of the conclusions reached by the individual members of it. However, as pointed out previously, a majority of that Court held that the liens registered by Crown and Imperial could properly be registered with the Registrar at the Land Titles Office. It was against that decision that the appellant appealed to this Court to contend that only his lien, registered with the Minister of Mines and Minerals, was valid. That contention has failed and, accordingly, the appeal should be dismissed. The order of this Court should be that the answer to the question raised in the order of Boyd McBride J., dated December 6, 1956, is that the claims for lien there mentioned ought properly to have been filed with the Registrar in the Land Titles Office of the North Alberta

¹ [1939] 1 W.W.R. 572, 2 D.L.R. 386.

1959
MOLNER
v.
STANOLIND
OIL &
GAS CO.
et al.

Land Registration District. The respondents Crown and Imperial should be entitled to their costs in this Court as against the appellant.

Appeal dismissed with costs.

Martland J.

Solicitors for the plaintiff, appellant: Cormack & Dantzer, Edmonton.

Solicitors for respondents, Stanolind Oil & Gas Co. and Rempel Construction Co.: Allen, MacKimmie, Matthews, Wood, Phillips & Smith, Calgary.

Solicitors for Crown Lumber Co.: Sanford, Dickie & Oughton, Calgary.

Solicitors for Imperial Lumber Co.: Ross, Wallbridge, Johnson, Cox, Pilon, Lefsrud & Wilson, Edmonton.
