

HB 2851

None opposed

Rep. Elaine Hassler spoke in favor.

Rep. Mary Jane Johnson asked that the contents of HB 3047 be amended into HB 2851.

Mr. Tom Groneman, Wyndotte County Register of Deeds, spoke in favor of amending HB 3047 into HB 2851.

Attachment: 1. Statement in favor of HB 2851 by Rep. Elaine Hassler

Sub-Committee recommendation: Recommended *that* HB 3047 be amended into HB 2851; recommended further that HB 2851 be passed with other technical amendments.

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STATE OF KANSAS

ELAINE R. HASSLER
REPRESENTATIVE, SIXTY-EIGHTH DISTRICT
DICKINSON AND MORRIS COUNTIES
ROUTE 2
ABILENE, KANSAS 67410



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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Senate Judiciary Committee
HB 2851

March 22, 1988

Almost two years ago, an owner of a tire store in Abilene, Don Nebelsick, came to me with a problem he had encountered with tire sales. He found that when a vehicle was repossessed he had no way to make a claim for the unpaid part of the tire payments for the tires on that truck. That may not seem such a huge dollar amount if you're thinking of a couple car tires. But on an 18 wheeler we could be looking at a two or three thousand dollar amount.

His lawyer started the procedure to invoke claim on the tires only to find that the statutes don't cover tires as it does improvements, labor or repairs on vehicles in the present lien law as shown in lines 23 and 24. In the attached materials, you note the case annotation #12 where such opinion was rendered. You also have a copy of the Rouse vs. Paramount Transit Co. case from the Kansas Supreme Court where it was ruled that "a dealer who sells to customers auto vehicle tires, tubes, and rims, and installs them gratis, is not entitled to a lien on a vehicle for the price of the articles."

Thus the case for the amendments that HB 2851 brings to you. You see on the several appropriate lines the added words "or replace or add equipment" which we believe would cover tires also in the liens on personal property.

Attach 1

register of deeds, under oath, a statement of the items of the account and a description of the property on which the lien is claimed, with the name of the owner thereof and the date upon which work was last performed or material last furnished in performing such work or making such repairs or improvements, in the county where the work was performed and in the county of the residence of the owner, if such shall be known to the claimant.

History: R.S. 1923, 58-201; L. 1947, ch. 313, § 1; L. 1961, ch. 264, § 1; L. 1969, ch. 273, § 1; July 1.

Source or prior law:

©S. 1868, ch. 58, § 1; L. 1872, ch. 142, § 1; L. 1903, ch. 383, § 1; L. 1913, ch. 218, §§ 1, 2; L. 1917, ch. 232, § 1; Revised, 1923.

Cross References to Related Sections:

Liens of subcontractors and others, see 60-1103.

Research and Practice Aids:

Mechanics' Liens 132(1), 134.

Hatcher's Digest, Liens § 4.

C.J.S. Mechanics' Liens §§ 139 et seq., 150 et seq.

Liens, Kansas Practice Methods § 1339.

Statement of artisan, mechanic, etc., for lien, Vernon's Kansas Forms § 4132.

Law Review and Bar Journal References:

Case in annotation No. 15 below discussed in 1953-55 survey of debtor-creditor law, F. J. Moreau, 4 K.L.R. 196, 204, 205, 206 (1955).

Amendments of 1961 explained in 1959-61 survey of debtor-creditor law, Wesley E. Brown, 10 K.L.R. 197, 199 (1961).

Possible unconstitutionality of repairman's lien and provisions concerning security interest in goods on which services are performed discussed in "The New Kansas Consumer Legislation," Barkley Clark, 42 J.B.A.K. 147, 151, 198 (1973).

Perfecting security interests in mobile homes, 15 W.L.J. 708, 710 (1979).

"Survey of Kansas Law: Consumer Law," John C. Maloney, 27 K.L.R. 197, 210 (1979).

CASE ANNOTATIONS

1. Civil engineer has lien on field notes, maps, etc. Irrigation Co. v. Briesen, 1 K.A. 758, 767, 41 P. 1116.

2. Lien not destroyed by agreement postponing payment for labor. Olson v. Orr, 94 K. 38, 40, 145 P. 900.

3. Compliance with statute; possession held not surrendered to owner. Olson v. Orr, 94 K. 38, 40, 145 P. 900.

4. Work, etc., must be at owner's request, or with consent. Olson v. Orr, 94 K. 38, 40, 145 P. 900.

5. Automobile; lien of mechanic superior to holder of sale contract. Automobile Co. v. Dennis, 104 K. 241, 242, 243, 178 P. 408.

6. Automobile; lien of mechanic superior to prior chattel mortgage. Overland Co. v. Evans, 104 K. 632, 634, 180 P. 235.

7. Mechanic's right of possession not affected by failure to file. Overland Co. v. Evans, 104 K. 632, 634, 180 P. 235.

8. Statute gives lien to one who makes repairs; section construed. Motor Co. v. Kline, 109 K. 227, 230, 198 P. 949.

9. Section does not give lien to person having repairs made. Motor Co. v. Kline, 109 K. 227, 230, 198 P. 949.

10. Lien of mechanic prior to mortgage, when: Hockaday Auto Supply Co. v. Huff, 121 K. 113, 245 P. 1013.

11. Constitutionality of priority feature affirmed. Clark v. Davis, 123 K. 99, 254 P. 399.

12. Dealer selling tires and installing them gratis not entitled to lien. Rouse v. Paramount Transit Co., 137 K. 858, 860, 22 P.2d 429.

13. Similarity between chattel mortgages and conditional sales contracts discussed. Freuhauf Trailer Co. v. State Corporation Comm., 149 K. 465, 472, 87 P.2d 641.

14. Duration and extent of lien; amendment of lien statement; lien assignable; priority; expenses in repossessing property not lienable. National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 534, 535, 536, 537, 134 P.2d 639.

15. Amendment of filed lien statement permitted, when. Butel Motors, Inc. v. Warsaw, 176 K. 491, 492, 494, 271 P.2d 237.

16. Section does not impose lien for unpaid rent on mobile home. Reimer v. Davis, 224 K. 225, 229, 230, 580 P.2d 81.

17. Lien waived; failure to file lien statement; possession of race car voluntarily surrendered. Weatherhead v. Boettcher, 3 K.A.2d 261, 262, 263, 264, 594 P.2d 257.

18. Cited; no lien created for repairs made on stolen automobile at thief's request. United States Fidelity & Guaranty Co. v. Marshall, 4 K.A.2d 9, 601 P.2d 1169.

58-202. Same; enforcement and foreclosure. Said lien may be enforced and foreclosed as security agreements are enforced under the provisions of the uniform commercial code.

History: L. 1913, ch. 218, § 3; R.S. 1923, 58-202; L. 1965, ch. 564, § 404; Jan. 1, 1966.

Research and Practice Aids:

Mechanics' Liens 245(1).

Hatcher's Digest, Chattel Mortgages §§ 96 to 107; Liens § 8.

C.J.S. Mechanics' Liens § 263.

Law Review and Bar Journal References:

Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 431 (1970).

CASE ANNOTATIONS

1. Expense of repossessing chattel cannot be charged as costs of sale. National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 537, 134 P.2d 639.

2. Lien waived; must file lien statement. Weatherhead v. Boettcher, 3 K.A.2d 261, 262, 263, 594 P.2d 257.

58-203. Lien for threshing or husking. Any person operating a threshing machine, or engaged in the business of threshing and harvesting grain or grain crops, shucking, husking or gathering of corn, either by hand

MAR 17 1933

Rouse v. Paramount Transit Co.

case quite similar to the present one. There it was held, in effect, that it was competent for the mortgagor to give possession to the mortgagee of the rents and profits of the mortgaged property, and where this is done that no judicial proceeding is necessary to gain possession of that right, and that the right so acquired is superior to that of a garnishing judgment creditor. Here, the mortgagor not only stipulated that the mortgagee might possess himself of the rentals in a certain contingency but actually joined the mortgagee carrying out the stipulation. He consented to act as trustee, and did act in that capacity for a time, collecting rentals and having them applied on the default payments due on the mortgage. Under the circumstances the loan company was in effect a mortgagee in possession with a right to the rentals, having obtained them with the consent and cooperation of both parties.

The district court committed no error in holding that the Railroad Building, Loan and Savings Association was entitled to the rentals as against the claim of a subsequent garnishing creditor.

The judgment is affirmed.

No. 31,171.

WALLACE T. ROUSE, Plaintiff, v. THE PARAMOUNT TRANSIT COMPANY, Defendant, THE MARTIN-JACKSON TIRE AND SUPPLY CORPORATION, Intervener, Appellee, THE C. I. T. CORPORATION, Intervener, Appellant.

(22 P. 2d 429.)

SYLLABUS BY THE COURT.

LIENS—For Labor and Repairs—Construction of Statute. Under the statute providing for an artisan's lien for services on personal property (R. S. 58-201), a dealer who sells to customers auto vehicle tires, tubes and rims, and installs them gratis, is not entitled to a lien on the vehicle for the price of the articles.

Appeal from Sedgwick district court; division No. 2; THORNTON W. SARGENT, judge. Opinion filed June 10, 1933. Modified.

Charles G. Yankey, Harvey C. Osborne, John G. Sears, Jr., and Verns M. Laing, all of Wichita, for the appellant.

Harold H. Malone, of Wichita, for the appellee.

The opinion of the court was delivered by

BURCH, J.: The question in this case is whether a dealer who sell

Rouse v. Paramount Transit Co.

to customers auto vehicle tires, tubes and rim, and installs them gratis, is entitled to a lien on the vehicle for the price of the articles.

The question arose between intervening creditors in an action by Wallace T. Rouse against the Paramount Transit Company, in which a receiver was appointed for the transit company. The vehicle involved is a three and a half ton Dodge truck with six wheels. The C. I. T. Corporation claimed possession of the truck under a conditional sales contract having the effect, so far as this litigation is concerned, of a chattel mortgage. The Martin-Jackson Tire and Supply Corporation claimed possession of the truck by virtue of a lien duly perfected under the statute providing for a lien for services on personal property. The principal items were for tires and tubes, and for a rim. By order of court, the truck was placed in storage to await final determination of the case. After trial by the court, judgment was rendered awarding the Martin-Jackson Company a first lien for \$598.26, awarding the C. I. T. Corporation a second lien for \$1,632, and providing for sale of the truck and application of proceeds. The C. I. T. Corporation appeals.

The Martin-Jackson Company has an establishment consisting of a store in which it keeps a stock of merchandise comprising automobile tires, tubes, rims and other automobile supplies, a repair shop, and a parking place for vehicles to be serviced. The truck in question was used by the Paramount Transit Company for transportation of merchandise between Wichita and Kansas City, Mo. The truck made a trip to Kansas City every night and returned to Wichita the following day. On its return, it would be parked in the Martin-Jackson Company yard and would be serviced as needed—air in the tires, flat tires repaired, new tires supplied, etc.

Automobile tires and tubes are distinct articles of merchandise sold by manufacturers to dealers who distribute them to auto vehicle users. They may not as yet be purchased at drug stores, but they may be purchased of dealers in general merchandise. Certain dealers specialize in the sale of tires and tubes. The articles are sold at list prices based on manufacturer's prices, and the seller installs the tube or tire without charge for the labor. Rims are not often kept in stocks of general merchandise. Small dealers in tires and tubes seldom keep them in stock, but other dealers do. They are sold at list prices, in this instance fixed by a wheel and rim association, just as tubes and tires are sold, and a purchase of a rim is

purchase of the article mounted. As in other commercial transactions, large buyers and some others are allowed a discount from list prices. A transportation company having a fleet of buses was a large buyer from the Martin-Jackson Company, but did its own mounting. It was given a special discount; but the Martin-Jackson Company made no charge for the labor involved in mounting the merchandise it sold.

The statute reads as follows:

A first and prior lien is hereby created in favor of any blacksmith, horse-dresser, wagon maker, keeper of a garage, or any other person, upon any goods, chattels, horses, mules, wagons, buggies, automobiles, or other vehicles, and farm implements of whatsoever kind, which shall come into his or their possession for the purpose of having work done on said property, or repairs or improvements thereon, and said lien shall amount to the full amount and reasonable value of the services performed, and shall include the reasonable value of all material used in the performance of such services. Such lien shall be valid as long as the person claiming the same retains possession of said property, and the claimant of said lien may retain the same after parting with the possession of said property by filing within thirty days in the office of the register of deeds, under oath, a statement of the items of the account and a description of the property on which the lien is claimed, with the name of the owner thereof, in the county where the work was performed and in the county of the residence of the owner, if such shall be known to the claimant. [Revised, 1923; old sections, L. 1872, ch. 142, § 1; L. 1903, ch. 383, § 1; L. 1913, ch. 218, § 2; L. 1917, ch. 232, § 1.] (R. S. 58-201.)

As indicated, this section is a revision. While it is based on previous statutes relating to artisan's liens, it is different from any of them, is different from the common law, and takes its place among other statutory lien statutes. Because special privileges are conferred, such statutes are strictly construed in determining to whom and for what a lien is given. (*Bridgeport Machine Co. v. McKnab*, 36 Kan. 781, 786, 18 P. 2d 186.)

The lien is for the amount and value of services performed, including value of material used in performing the service. The service is primary. The material used to effectuate the service is subordinate and collateral, and this court has so held.

"By the language of the statute and from its analogy to similar laws it is obvious that the labor upon the article intrusted to the artisan is the principal thing, the material furnished being incidental." (*Clark v. Davis*, 123 Kan. 9, 102, 254 Pac. 399.)

Among the items for which a lien was claimed were the following:

"1 900/20 truck 10-ply casing and application.....	\$71.00
1 900/20 truck balloon casing, tube and application.....	81.00
2 975/20 truck balloons and application, 2 No. 60 tubes and application.....	204.00
1 975/20 truck 12-ply casing and application, 2 No. 60 heavy mold tubes and application.....	102.00
1 975/20 truck balloon casing and application.....	78.61

Some labor was involved in mounting tires on this big truck. The wheel might be an inner wheel of a rear pair, and to mount a tire might take two hours' time. However, the price of a tire was considerable, and each transaction was precisely the same as if the vehicle had been an Austin. A. E. Jackson testified on behalf of his company as follows:

"Q. What is your custom with reference to the sale of truck tires in the community? A. We sell these tires installed."

The result is, labor was not an element of value in the transactions, much less the necessary primary element.

Tires and tubes are not "material" incidentally used in the performance of labor. To illustrate, one item for which a lien was claimed was "1 900/20 section job, \$12." There was a hole in a tire, but the tire was not unfit for service and it was repaired. Some material was used, but the charge was chiefly for labor. Other charges were for tube repairs, which we all know about. The mechanic puts a patch on a tube. The charge is chiefly for labor but includes a bit of material used in performance of the labor. Another charge was for casing repair, and another was for a boot repair of a casing, the price of the boot being \$2.50. All these were lienable items, but the statute may not be stretched to embrace tires, tubes and rims sold out of stock, and this would be true if a reasonable charge were made for installation. (*Clark v. Davis*, 123 Kan. 99, 254 Pac. 399.) With respect to those articles, the merchant sells on the personal credit of the buyer.

The case of *Clark v. Davis* involved replacements and additions to a car already fitted with standard equipment. It was held there was no lien. The decision was based on the ground the articles were not "improvements" within the meaning of the statute. In the opinion it was said that if a worn tire had been replaced by a new one a different question would have been involved, which is true. Putting on a new tire in place of an old one would improve the car, and we have in this case the question left open in *Clark v. Davis*.