STANDARD ACCIDENT INSURANCE CO. *v.* U. S. FOR THE USE AND BENEFIT OF POWELL ET AL., RECEIVERS, ETC.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 41. Argued December 8, 1937.—Decided January 3, 1938.

1. A claim of a common carrier by railroad for unpaid freight charges, due for transportation of materials used in the construction of a federal building, is one for "labor and materials" within the meaning of the Act of August 13, 1894, as amended, and is covered by a contractor's bond given pursuant to that Act. Pp. 443–444.
2. The Act is to be liberally construed for the protection of those who furnish labor or materials for public works. P. 444.
3. That the carrier might have enforced payment of its charges by withholding delivery is not reason for excluding it from the benefit of the Act. P. 444.

89 F. (2d) 658, affirmed.

CERTIORARI, *post*, p. 664, to review a judgment affirming a judgment against the insurance company as surety on a public contractor's bond.

Mr. Stuart B. Warren, with whom *Mr. George W. Wylie* was on the brief, for petitioner.

Mr. John Bell, with whom *Messrs. Peter O. Knight* and *C. Fred Thompson* were on the brief, for respondents.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

The petitioner is surety on a post office construction bond given pursuant to the Act of Congress approved August 13, 1894, c. 280, 28 Stat. 278, as amended, 40 U. S. C. § 270, which provides—

"Any person or persons entering into a formal contract with the United States for the construction of any

public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. . . ."

Respondent, common carrier by railroad, having transported material for the structure, sued on the bond to recover freight charges and prevailed in both courts below. They held it was "a corporation who has furnished labor or materials used in the construction" of a public building. The correctness of this conclusion is the only question before us.

The cause is here because of conflicting opinions in Circuit Courts of Appeals. *U. S. to use of Sabine & E. T. Ry. Co.* v. *Hyatt,* 92 Fed. 442; *Title Guaranty & Trust Co.* v. *Puget Sound Engine Works,* 163 Fed. 168; *Mandel* v. *U. S. to use of Warton & N. R. Co.,* 4 F. (2d) 629; *Maryland Casualty Co.* v. *Ohio River Gravel Co.,* 20 F. (2d) 514; *Stuart for use of Florida East Coast Ry. Co.* v. *American Surety Co.,* 38 F. (2d) 193; *Standard Accident Ins. Co.* v. *U. S. for use of Powell,* 89 F. (2d) 658.

Petitioner maintains that freight cannot be considered as "labor or material" without doing violence to the words

of the statute; also that Congress did not intend to extend further protection to carriers who could enforce their lien for charges by retaining and selling the materials.

Stuart for use of Florida East Coast Ry. Co. v. *American Surety Co.,* Circuit Court of Appeals Fifth Circuit (1930), *supra,* carefully considered and denied these defenses and stated reasons therefor which we deem adequate. This was followed by the court below in the present cause.

The statute often has been before us. *Guaranty Co.* v. *Pressed Brick Co.,* 191 U. S. 416; *U. S. for use of Hill* v. *American Surety Co.,* 200 U. S. 197, 201; *Title Guaranty & T. Co.* v. *Crane Co.,* 219 U. S. 24; *U. S. Fidelity & Guaranty Co.* v. *U. S. for benefit of Bartlett,* 231 U. S. 237; *Equitable Surety Co.* v. *U. S. for use of McMillan,* 234 U. S. 448, 456; *Illinois Surety Co.* v. *John Davis Co.,* 244 U. S. 376, 383; *Brogan* v. *National Surety Co.,* 246 U. S. 257, 262. And we are committed to the doctrine that it should be liberally construed in aid of the evident public object—security to those who contribute labor or material for public works.

Certainly labor is required for loading freight on railroad cars, moving these over the road, and unloading at destination. A carrier who has procured the doing of all this in respect of material has "furnished labor." If a contractor had employed men to move the same kind of material in wheelbarrows, there could be no doubt that he furnished labor. In principle the mere use of cars and track and a longer haul creates no materially different situation.

Nor do we find reason for excluding the carrier from the benefit of the bond because it might have enforced payment by withholding delivery. The words of the enactment are broad enough to include a carrier with a lien. Nothing in its purpose requires exclusion of a railroad. Refusal by the carrier to deliver material until all charges

were paid might seriously impede the progress of public works, possibly frustrate an important undertaking.

State for use of Pennsylvania R. Co. v. *Aetna Casualty & Surety Co.*, (1929) 34 Del. 158; 145 Atl. 172, gave much consideration to a similar statute. The conclusion there reached accords with our view.

The judgment of the court below must be

Affirmed.

UNITED STATES EX REL. WILLOUGHBY, TRUSTEE, ET AL. *v.* HOWARD ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 30. Argued November 10, 1937.—Decided January 3, 1938.

1. By the common law it is the duty of a trustee or receiver, unless relieved by agreement, statute, or order of court, to exercise reasonable care in the custody of the fiduciary estate. P. 450.
2. In respect of the care of the funds of the bankrupt estates here involved, the duty of the trustee or receiver was not limited, by any agreement, statute, or order of court, to depositing them in one of the depositories designated by the court under U. S. C., Title 11, § 101. Pp. 450–452.
3. Although designation by the court of depositories for funds of bankrupt estates limits the discretion of the depositing officer and may render him absolutely liable for the loss of funds placed elsewhere, it does not relieve him of the duty of exercising care and prudence within the field left to his discretion. Pp. 451–452.
4. The mere imposition of statutory duties does not remove liability for breach of existing common law duties. P. 452.
5. The contention that the Bankruptcy Act established a depository system—analogous to the depository system established by Congress for the deposit of Treasury funds—which relieved trustees and receivers wholly of the duty of exercising care as to the condition or stability of a depository, cannot be sustained. P. 453.
6. As trustee or receiver of 123 separate bankrupt estates, H gave bond in each case conditioned, *inter alia*, on the faithful performance of his official duties. In a bank which made personal unsecured