

*The GENERAL SMITH : HOLLINS *et al.*, Claimants.

Admiralty jurisdiction.—Maritime liens.

The admiralty possesses a general jurisdiction in cases of suits by material-men, *in personam*, and *in rem*.

Where, however, the proceeding is *in rem*, to enforce a specific lien, it is incumbent upon the party to establish the existence of such lien, in the particular case.

Where repairs have been made, or necessities furnished to a foreign ship, or to a ship in a port of the state to which she does not belong, the general maritime law gives the party a lien on the ship itself for his security, and he may maintain a suit *in rem*, in the admiralty, to enforce his right.

But as to repairs and necessaries in the port or state to which the ship belongs, the case is governed altogether by the local law; and no lien is implied, unless by that law.

By the common law, material-men furnishing repairs to a domestic ship, have no particular lien upon the ship itself for their demand.

A ship-wright who has taken a ship into his possession to repair it, is not bound to part with the possession until he is paid for the repairs; but if he parts with the possession (of a domestic ship) or has worked upon it, without taking possession, he has no claim upon the ship itself.

The common law being the law of Maryland, on this subject, it was held, that material-men could not maintain a suit *in rem*, in the district court of Maryland, for supplies furnished to a domestic ship, although they might have maintained a suit *in personam*, in that court.

APPEAL from the Circuit Court of Maryland. This was a libel, filed on the 4th day of October 1816, in the district court of Maryland, setting forth that James Ramsey, the libellant, had supplied and furnished for the use, accommodation and equipment of the ship General Smith, at Baltimore, in *439] the district *of Maryland, to equip and prepare her for a voyage on the high seas, various articles of cordage, ship-chandlery, and stores, amounting in the whole to the value of \$4599.75, for no part of which he had received any compensation, payment or security. That the said ship was then owned by a certain George Stevenson, to whom he had applied for payment of said materials furnished, but without effect. And praying the usual process against the ship, and that she should be sold under the decree of the court, to pay and satisfy the libellant his claim. A claim was given for the ship, by John Hollins and James W. McCulloch, merchants, of Baltimore.

On the hearing of the cause in the court below, it was proved, or admitted by the parties, that the ship was an American vessel, and formerly was the property of George P. Stevenson, a merchant of Baltimore, and a citizen of the United States; and that whilst the ship so belonged to Stevenson, the libellant, a ship-chandler of Baltimore, furnished for her use various articles of ship-chandlery to equip and furnish her, it being her first equipment, to perform a voyage to a foreign country, to wit, to Rotterdam and Liverpool, and back to Baltimore. That Stevenson was also the owner of several other vessels, for which the libellant, from time to time, furnished articles for their equipment for foreign voyages, and that payments were made by Stevenson to the libellant, at different times, on their general account, without application to any particular part of the account. That *440] the ship soon afterwards sailed, &c. That the ship departed *from Baltimore, on the voyage, without any express assent or permission of the libellant, and also without objection being made on his part, and without his having attempted to detain her, or enforce any lien which he had

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against her for the articles furnished. That the ship continued to be the property of said Stevenson, during the said voyage, and after her return, and was not sold or disposed of in any way by him, until the 3d day of October 1816, when, finding himself embarrassed in his pecuniary affairs, and obliged to stop payment, he executed an assignment to the claimants of his property, including the ship General Smith, in trust for the payment of all bonds for duties due by said Stevenson to the United States, and for the payment and satisfaction of his other creditors, &c.

Another libel was filed, on the 11th of November 1816, against the same ship, by Rebecca Cockrill, administratrix of Thomas Cockrill, deceased, alleging that the said Thomas, in his lifetime, at Baltimore, in the said district, did furnish a large amount of iron materials, and bestow much labor and trouble, by himself, and those hired and employed by him, in working up and preparing certain iron materials for building and preparing the said ship for navigating the high seas, all which materials, and work and labor, were in fact applied and used in the construction and fitting said ship, according to a bill of particulars annexed. That the libellant had been informed and believed, that said ship was owned and claimed by various persons in certain proportions, but in what proportions, and who were the several owners, *she did not know, and could not, therefore, state. [*441 That neither the said Thomas, in his lifetime, nor the libellant, since his decease, had ever received any part of said account, nor any security or satisfaction for the same. Concluding with the usual prayer for process, &c.

A claim was given for the same parties, and at the hearing, the same proofs and admissions were made as in the suit of James Ramsey; except that it did not appear, that Thomas Cockrill had furnished any other vessels belonging to Stevenson with materials, nor that any payments on account had been made by said Stevenson to said Cockrill, or to the libellant, as his administratrix.

The district court ordered the ship to be sold, and decreed, that the libellants should be paid out of the proceeds the amount of their demands for materials furnished. In the circuit court, this decree was affirmed, *pro forma*, by consent, and the cause was brought by appeal to this court.

March 9th. *Pinkney*, for the appellants and claimants, admitted the general jurisdiction of the district court, as an instance court of admiralty, over suits by material-men *in personam* and *in rem*, and over other maritime contracts; but denied, that a suit *in rem* could be maintained, in the present case, because the parties had no specific lien upon the ship for supplies furnished in the port to which she belonged. In the case of materials furnished or repairs done to a foreign ship, the maritime law has given such a lien, which may be enforced by a suit in the admiralty. *But in the case [*442 of a domestic ship, it was long since settled by the most solemn adjudications of the common law (which is the law of Maryland on this subject), that mechanics have no lien upon the ship itself for their demands, but must look to the personal security of the owner. *Abbott on Ship*. p. 2, c. 3, § 9-13, and the cases there cited; *Woodruff v. The Levi Dearborne*, 4 Hall's L. Jour. 97. Had this been a suit *in personam*, in the admiralty, there would have been no doubt, that the district court would have had

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jurisdiction: but there being, by the local law, no specific lien to be enforced, there could be no ground to maintain a suit *in rem*.

Winder, contra, insisted, that the question of jurisdiction and lien were intimately and inseparably connected. In England, the lien has been denied to attach, in the case of domestic ships, because the courts of common law, in their unreasonable jealousy, of the admiralty jurisdiction, would not permit the only court, which could enforce the lien, to take cognisance of it. Consequently, the lien has been lost with the jurisdiction. But the universal maritime law, as administered in the European courts of admiralty, recognises the lien, in the case of a domestic, as well as a foreign ship: *Stevens v. The Sandwich*, 1 Pet. Adm. 233, note; *De Lovio v. Boit*, 2 Gallis. 400, 468, 475; and commercial policy demands that it should be enforced in both cases.

*443] *March 10th, 1819. STORY, Justice, delivered the opinion of the court.—No doubt is entertained by this court, that the admiralty rightfully possesses a general jurisdiction in cases of material-men; and if this had been a suit *in personam*, there would not have been any hesitation in sustaining the jurisdiction of the district court. Where, however, the proceeding is *in rem*, to enforce a specific lien, it is incumbent upon those who seek the aid of the court, to establish the existence of such lien in the particular case. Where repairs have been made, or necessaries have been furnished to a foreign ship, or to a ship in a port of the state to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit *in rem*, in the admiralty, to enforce his right. But in respect to repairs and necessaries in the port or state to which the ship belongs, the case is governed altogether by the municipal law of that state; and no lien is implied, unless it is recognised by that law. Now, it has been long settled, whether originally upon the soundest principles, it is now too late to inquire, that by the common law, which is the law of Maryland, material-men and mechanics furnishing repairs to a domestic ship, have no particular lien upon the ship itself for the recovery of their demands. A ship-wright, indeed, who has taken a ship into his own possession to repair it, is not bound to part with the possession, until he is paid for the repairs, any more than any other artificer. But if he has once parted with the possession, *or
*444] has worked upon it, without taking possession, he is not deemed a privileged creditor, having any claim upon the ship itself.

Without, therefore, entering into a discussion of the particular circumstances of this case, we are of opinion, that here there was not, by the principles of law, any lien upon the ship; and, consequently, the decree of the circuit court must be reversed.

Decree reversed. (a)

(a) See *The Aurora*, 1 Wheat. 96, 103, in which case a lien of material-men on foreign ships was recognised by this court. The common law is the municipal law of most of the states, as to supplies furnished to domestic ships: but the legislature of New York has, by statute, given a lien to ship-wrights, material-men and suppliers of ships, for the amount of their debts, whether the ships are owned within the state or

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not. Acts of 22d sess. c. 1, and 40th sess. c. 59. This lien existing by the local law, may consequently be enforced, upon the principle of the above case in the text, by a suit *in rem* in the admiralty.¹

McIVER's Lessee v. WALKER *et al.**Land-law of Tennessee.*

If there be nothing in a patent to control the call for course and distance, the land must be bounded by the courses and distances of the patent, according to the magnetic meridian; but it is a general principle, that the course and distance must yield to natural objects called for in the patent.

All lands are supposed to be actually surveyed, and the intention of the grant is, to convey the land according to the actual survey; *consequently, distances must be lengthened or [*446 shortened, and courses varied, so as to conform to the natural objects called for.

If a patent refer to a plat annexed, and if, in that plat, a water-course be laid down as running through the land, the tract must be so surveyed as to include the water-course, and to conform as nearly as may be to the plat, although the lines, thus run, do not correspond with the courses and discourses mentioned in the patent; and although neither the certificate of survey nor the patent call for that water-course.

ERROR to the Circuit Court for the District of East Tennessee. This was an ejectment brought in that court, by the plaintiff in error, against the defendants. Upon the first trial of the cause, a judgment was rendered in the circuit court in favor of the defendants, and upon that judgment a writ of error was taken out, and the judgment reversed by this court, at February term 1815 (9 Cranch 173); and the cause was sent back to be tried according to certain directions prescribed by this court.

As the opinion given by this court upon the reversal of the first judgment contains a statement of the facts given in evidence upon the first trial, it is deemed proper to insert the opinion in this place. It is as follows:

¹ It was decided in *Peyton v. Howard*, 7 Pet. 324, that when the state law give a lien for supplies furnished to a domestic vessel, in her home port, it may be enforced by a proceeding *in rem* in the court of admiralty; and in 1844, in pursuance of authority conferred upon the supreme court by the acts of 8th May 1792, and of the 23d August 1842, it adopted, what is known as the 12th rule in admiralty, which provided, that "in all suits by material-men for supplies, repairs or other necessaries for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master and owner alone *in personam*; and the like proceeding *in rem* shall apply to cases of domestic ships, where, by the local law, a lien is given to material-men for supplies, repairs and other necessaries." Under this rule, the jurisdiction *in rem* was always sustained. The state lien, however, was enforced, not as a right which the court was bound to carry into execution, upon the application of the party, but as a discretionary one, which the court might lawfully exercise, for the purposes of justice, where it did not involve controversies beyond the limits of admiralty jurisdic-

tion. The *St. Lawrence*, 1 Black 530. In many of the states, however, the laws were found not to harmonize with the principles and rules of the maritime code, and embarrassed the federal courts in applying them. And accordingly, in 1859, the last clause of the 12th rule was modified, so as to read as follows: "And the like proceeding *in personam*, but not *in rem*, shall apply to domestic ships for supplies, repairs or other necessaries." This rule, whilst in force, took away the power from the district courts to enforce such claims against domestic vessels by process *in rem*. The *Adele*, 1 Ben. 309; The *Circassian*, 11 Bl. C. C. 472. But in 1872, the rule was again amended, so as to provide, that "in all suits by material-men for supplies or repairs or other necessaries, the libellant may proceed against the ship and freight *in rem* or against the master or owner alone *in personam*." And this restored the old rule, giving the proceeding *in rem* to enforce liens created by the state law. The *Lottawanna*, 21 Wall. 558. And see *Norton v. Switzer*, 93 U. S. 366-66; The *Mary Gratwick*, 2 Sawyer 342; The *Lewellen*, 4 Biss. 156, 167.