THE PATAPSCO.

Supplies furnished to a ship in a foreign port and necessary to enable her to complete her voyage, and actually so used by her, constitute a lien, unless it can be inferred that the master had funds or the owners had credit; a presumption difficult to make when the owner is greatly embarrassed, and is raising money in the port where the vessel is, by mortgage of other vessels owned by him. The lien is of a high character, and when once to be inferred is removed only by proof which actually displaces it. Entries in a journal, and in a ledger, charging apparently the owners rather than the vessel—proof of the form of entry in the day-book not appearing, owing to its being dispensed with by the material-man—*held* not sufficient to displace the lien.

APPEAL from the Circuit Court for the Southern District of New York; the case being thus:

Boyce, a coal dealer in Baltimore, filed a libel against the steamer Patapsco, in the District Court at New York, to recover a demand for six separate supplies of coal furnished between the 3d of February and the 26th of March, 1866, to the steamer. One Borland intervened as claimant. The question was whether the coal had been furnished on the credit of the vessel or on that of her owners only.

The facts, as the court assumed them from the weight of the evidence, itself somewhat inconsistent, were thus:

The Commercial Steamboat Company, a corporation of Rhode Island, owned and chartered certain steamers, the Kingfisher, &c., and used them as a line of steamers from New York to Baltimore. The Patapsco was chartered by the company to run on the line, and registered at New York in the individual name of one Bacon, president of the company; though the company controlled her. The company had an agent at Baltimore, and the course of dealing was as follows:

When the steamers would arrive at Baltimore, their engineers would inform this agent of the amount of coal they needed for their different vessels. Thereupon the agent would fill up a printed circular directed to Boyce, requesting him to furnish "with invoice," *to that steamer, by name*

(in this case the Patapsco), so many tons of coal; saying nothing about charging anybody. Boyce would then fill up a printed order to his clerk, directing him to furnish the coal *to the steamer named.* On receipt of this latter order, the coal would be delivered on board the steamer. At the end of a month a bill would be made of all the deliverances to all the boats. The object of making out a general bill at the end of each month, it appeared, was to avoid a multiplication of bills, and for the sake of convenience.

The entries in the libellant's *journal* were thus—one example showing all:

BALTIMORE, March, 1866.

COMMERCIAL ST'B'T CO.:

80 tons Geo. C'k, st'r Kingfisher,	$7, ...	$560
25 " " " " Patapsco,	7, ...	175
80 " " " " Kingfisher,	7, ...	560
42 " " " " Patapsco,	7, ...	294
		$1,589

And in his *ledger* they were thus:

COMMERCIAL ST'B'T CO. DR.

1866.		
Jan'y 30th.	To coal ac., ...	$2,896 36
" "	" bituminous ac., ...	2,963 60
Feb. "	" coal ac, ...	790
Feb.	" bituminous ac., ...	2,416 10
Mar.	" coal ac., ...	1,550
"	" bituminous ac., ...	1,589
April	" coal ac., ...	1,462 50
"	" bituminous ac., ...	65
May 16.	" cash, ...	39 10
		$13,761 66

CR.

Feb. 5th.	By cash, ...	$3,000
" 9th.	" "	1,000
" 15th.	" "	1,849 96
Mar. 30th.	" coal ac., ...	73 50
May 5th.	" cash, ...	136
June 30th	" "	3,008 41
" "	" balance, ...	4,693 79
		$13,761 66

DR.

To balance, ...	$4,693 79

Statement of the case.

The form of entries in the libellant's *day-book* did not appear; the claimant waiving the production of *it*, and the bills rendered to the company were not produced.

The coal was sold at the lowest price, and it was necessary for the Patapsco to make her trips and was used by her in making them. The agent of the steamship company stated that "the coal bought for the Patapsco was ordered for this steamer expressly, but on account of the Commercial Steamship Company, the same as all coal was ordered and bought for the several steamers constituting the line." "*The owners or charterers*," he added, "*were not known in the transaction*, but the steamer was supposed to belong to the Commercial Steamboat Company by the parties who furnished the coal."

During the whole time that this coal was furnished, the steamboat company was in an embarrassed state. And on the 3d of February, on which day the *first* item of the coal for which the steamer was libelled, was furnished, the steamship company executed six promissory notes for $7500 each —$45,000 in all—to the Baltimore and Ohio Railroad Company; following them immediately, and by the 6th, by mortgages on three of their steamers to secure payment. And it owed a balance of $25,800 to the Neptune Steamboat Company on the 1st February, 1866, so much remaining due for money laid out, paid, or advanced in the preceding year.

On the 2d of April, 1866, nine days after the last item of coal furnished to the Patapsco, the registered owner, Bacon, executed a bill of sale of her to Borland, already mentioned as the claimant in the case, to secure to him a debt of $10,500. And on the 10th following, the company failed entirely; the failure being followed by attachments to a very large amount, much of it like the $25,800 already mentioned for money lent or debts due prior to the 3d February, 1866; and the result being a general break up of the company in which the creditors got but a small portion of their claims from the whole effects of the corporation.

It was in virtue of his bill of sale above mentioned that Borland contested the libellant's claim.

The District Court dismissed the libel; holding that there was no credit to the vessel. The Circuit Court, on appeal, held that there was, and reversed the decree. From this reversal Borland appealed to this court.

Mr. C. Donohue, for the appellant:

When material-men mean to charge a vessel specifically, they have, as is perfectly well known, a mode of making their entry which shows that they *do* charge it. The vessel is charged by name. In this case the charge would have been thus:

THE STEAMER PATAPSCO, DR.

Or,

THE STEAMER PATAPSCO (Commercial Steamboat Company owners), DR.

Now the charge here, in the only books produced, is not in this form, but in another and a different form; one showing that the reliance was on the company navigating the vessel and ordering the coal; and on it alone. The fact that the particular vessel to which the coal was furnished is mentioned in the charge against the company does not prove an intent to charge the vessel, but only that the material-man was careful to identify the transaction.

The only possible answer to our view is, that the company was so embarrassed that it cannot be presumed that *it* was looked to. But this is no answer at all, unless you show that Boyce knew of the embarrassment, or at least suspected it. There is no proof that he did either. All presumptions are the other way. The vessels were pursuing their regular trips. To the world everything appeared as usual. Boyce had been furnishing coal before, and had been paid, without question and without any recourse against the vessels. The vessels of the company were registered in places far away from Baltimore, and a hundred mortgages might have been executed in those places and Boyce never hear of one. The company did not proclaim that it had borrowed $45,000 of the Baltimore and Ohio Railroad. Even if Boyce knew that

it did so borrow, the case is not altered, for the fact of the loan did not prove that the coal would not be paid for. Contrariwise, it showed that the steamboat company was in possession of ready money. The presumption would be that it meant to take up small and floating debts by a large and more permanent loan. A company might occasionally borrow in this way and yet be doing a most successful business.

This court has already gone very far in sustaining secret liens on vessels. To go further will seriously embarrass the transfer of this sort of property.

Mr. D. McMahon, contra.

Mr. Justice DAVIS delivered the opinion of the court.

Whether the coal was furnished on the credit of the vessel, or of the owners, is the only point of inquiry in this case. The case itself is not without its embarrassments, for the evidence, in some of its aspects, is not consistent with either theory, but the weight of it, in our opinion, enables us to assert the lien against the ship.

It is undisputed that the Patapsco was in a foreign port, and that the coal was ordered for her, specifically by name, and delivered to the officers in charge of her. It is equally free from dispute that the supply of coal was necessary—indeed, indispensable—to enable her to make her voyage at all. In such a case the inference is, that the credit was given to the vessel, unless it can be inferred that the master had funds, or the owners had credit, and that the material-man knew of this, or knew such facts as should have put him on inquiry.* There is no reason to suppose that the master had funds, or the owners of the line credit, nor that the libellant was guilty of laches. On the contrary, it is in proof that the company which owned the line of steamships was, at the date of these transactions, hopelessly insolvent, and were borrowing large sums of money on a mortgage of their steamers, away from home, and in the very city where the libellant resided. It would be strange if the libellant

* The Lulu, 10 Wallace, 192.

did not know this condition of things, and, in the absence of proof on the subject, it is a reasonable inference that he did. If he had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished. The company running the steamers was a distant corporation, of no established name, and without personal liability in case the enterprise recently undertaken should prove a failure, and it is hard to believe that a large and intelligent coal merchant in Baltimore, in dealing with this corporation, intended to renounce his claim against the steamers in case he was not paid. It is very clear that there was no credit to the company at the time of sale, because the coal was sold for cash at the lowest market price. And when the libellant waived his privilege of cash on delivery, and put the coal on board the steamship, the presumption of law would be that he thereby gave credit to the steamship, and not to the owners thereof, inasmuch as the supplies were furnished in a foreign port.

If the credit was to the vessel there is a lien, and the burden of displacing it is on the claimant. He must show, affirmatively, that the credit was given to the company to the exclusion of a credit to the vessel. This he seeks to do by the form of charge in the libellant's journal and ledger. If it be conceded that these entries tend to support this position, they are far from being conclusive evidence on the subject. Entries in books are always explainable, and the truth of the transaction can be shown independent of them. The form of charge in any book of original entries does not appear, as the day-book was not called for by the claimants, nor are the "invoices" which the libellant was directed to furnish with the coal produced. But, from the form of entry in the journal itself (where the amount furnished to each vessel is set opposite to its name), we are led to the conclusion that the day-book entries which are thus journalized were debited to each steamer by name. If this be so, the journal entries are not inconsistent with the idea of the credit being given on the security of the ship. More

especially is this apparent when it is proven that the reason why monthly accounts were made out to the steamboat company in bulk was for the sake of convenience, and to save a useless accumulation of bills. There is nothing besides this journal entry to indicate that the coal was furnished on the personal credit of the company; and, as the other facts in the case are in favor of a charge direct to the steamship, we do not think the legal inference of credit to the ship is removed.

The lien of material-men for supplies in a foreign port is of so high a character that, in the case of *The St. Jago de Cuba*,* it was protected, along with that of seamen's wages, against a forfeiture which had accrued to the United States; and the recent decisions in this court have had the effect to place this lien on a more substantial footing than some previous cases seem to have left it.†

On the whole, while we concede that the case is not free from difficulty, we are not disposed to disturb the decree of the Circuit Court, in any particular. It is accordingly

AFFIRMED.

BRADLEY *v.* FISHER.

1. An order of the Criminal Court of the District of Columbia, made in 1867, striking the name of an attorney from its roll, did not remove the attorney from the bar of the Supreme Court of the District, the Criminal Court being at that time a separate and independent court; and in an action by the attorney against the judge of the Criminal Court, that order was inadmissible to show a removal by order of the defendant, or by order of the court held by him, from the Supreme Court, notwithstanding that an act of Congress, passed in 1870, changed the independent character of the Criminal Court, and declared that its judgments, decrees, and orders should be deemed the judgments, decrees, and orders of the Supreme Court of the District. The act of Congress, in enlarging the operation of the order, did not alter its original character.

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* 9 Wheaton, 409.

† The Grapeshot, 9 Wallace, 129; The Lulu, 10 Id. 192; The Kalorama, Id. 204.