

Case No. 778.

BAKER V. THE POTOMAC.

{18 How. Pr. 185;¹

41 Hunt, Mer. Mag. 711.]

Circuit Court, D. New York.

Oct. 1859.

APPEAL—WEIGHT OF EVIDENCE.

This court on appeal, upon a question of fact which has been established in the usual way, and with reasonable satisfaction, before the commissioner, will not disturb the decree of affirmance of the court below, where the rebutting proof is very general and indefinite.

{Appeal from the district court of the United States for the southern district of New York.]

{In admiralty. Libel by Elisha Baker against the ship Potomac for repairs and for materials furnished. Decree for libelant Respondent appeals. Affirmed.]

Benedict, Burr & Benedict, for libelant.

Beebe, Dean & Donohue, for respondent.

NELSON, Circuit Judge. The only question in this case arises on the report of the commissioner in the court below, in respect to the amount of repairs made, and materials furnished, to the ship Potomac. The court below placed its decision upon a defect in the exceptions taken to the report, as relating either to matters settled in the decree and not before the commissioner, or not sufficiently specific and pointed to raise the objection. I am inclined to think the court right in both grounds stated. But, independently of this answer, I have looked into the evidence before the commissioner, without regard to formal objections, and am satisfied that the weight of it sustains the report; at least the evidence furnished on the part of the respondent, tending to reduce the amount and value of the repairs,

BAKER v. The POTOMAC.

and to change the terms upon which they were made, is so questionable, that we are not disposed to interfere with the report, as the witnesses were personally before the officer making it, and who had a better opportunity to determine the degree of credibility to be given them than we can have. The extent and cost of the repairs seem to have been established in the usual way, and with reasonable satisfaction, and the rebutting proof is very general and indefinite. Decree below affirmed.

¹ [Reported by Nathan Howard, Jr., Esc]