

Case No. 3,769. DELAWARE RIVER STORAGE CO. v. THE THOMAS.

[15 Int. Rev. Rec. 147; 4 Chi. Leg. News, 218; 29 Leg. Int. 116; 6 Abb. Law J. 292; 6 Am. Law Rev. 765; 7 Am. Law Rev. 381; 20 Pittsb. Leg. J. 19; 20 Int. Rev. Rec. 175, 4 Leg. Gaz. 114.]

Circuit Court, E. D. Pennsylvania.

April 1, 1872.

MARITIME LIENS—WHARFAGE—ADMIRALTY JURISDICTION.

1. A claim for wharfage as a maritime lien upon the respondent's vessel is not cognizable in admiralty.
2. The admiralty jurisdiction is not to be invoked to enforce common law rights, for which the common law has provided appropriate and efficacious remedies.

[In admiralty. Appeal from the district court of the United States for the eastern district of Pennsylvania.]

J. Warren Coulston, for appellant.

Isaac Hazlehurst, contra.

MCKENNAN, Circuit Judge. In *Jones v. The Coal Barges* [Case No. 7,458], Mr. Justice Grier, with characteristic sententiousness, said: "A court of admiralty is not needed to try common law actions of trespass, nor to administer common law remedies in any form." And so it may be said here, that the admiralty jurisdiction is not to be invoked to enforce common law rights, for "which the common law has provided appropriate and efficacious remedies. The libellants are wharfingers at Philadelphia, and presented their libel in rem, to the district court, to enforce the payment of wharfage as a maritime lien upon the respondent's vessel. There is no authoritative adjudication that a claim of this sort stands upon such a footing. Certainly it has not been so decided by the supreme court. The weight of judicial opinion is the other way. It has generally been treated only as a common law lien, to be enforced by the detention of the vessel by the wharfinger, or to be recognized and paid as such out of the proceeds of the sale of the vessel, which had been brought under the control of the court otherwise than by an original libel, founded upon the dockage demand. This is the import of the opinion of Judge Peters, in *Gardner v. The New Jersey* [Id. 5,233], and of Mr. Justice Johnson in *The St. Iago, de Cuba*, 9 Wheat [22 U. S.] 418; and I do not regard the opinion of Judge Story in *Ex parte Lewis* [Case No. 8,310] as determining a different rule. Until the supreme court shall decide otherwise, I see no reason for expanding the admiralty cognizance of a demand, which rests securely upon a basis of common law right, and for the enforcement of which by the wharfinger himself the common law supplies an effectual remedy. The disallowance of the libel by the district court is therefore affirmed.