

Case No. 5,235. GARDNER ET AL. V. THE ROSEDALE.  
[2 N. J. Law J. 83.]

District Court, D. New Jersey.

Feb. 11, 1879.

MARITIME LIENS—MATERIALS FURNISHED ON OWNER'S CREDIT.

[Where the proof shows that the credit for materials furnished to a vessel was not given to the vessel alone, but to the owner, the only action for the price of the materials is against the owner in personam.]

The libellants having proved that they furnished materials for a vessel upon the personal responsibility of the owner, the libel was dismissed.

NIXON, District Judge. This is a libel in rem to recover the amount due the libellants for furnishing seats to the steamer Rosedale. Both the libellants and claimant reside and carry on business in New York, and the steamer is owned and registered there. She was built at Norfolk, Va., in the year 1877, by George W. Beach for the claimant for the sum of 854,000. The putting in of the seats was in the original contract for her construction, and the seats were ordered by the builder, Beach, before the vessel was launched, but to save the transportation to Norfolk, she was brought to Hoboken, N. J., for the purpose of receiving the seats. After she reached there, and about the time the libellants began to furnish the articles, they learned that Beach had had trouble about paying his bills, and the work was suspended until some more satisfactory arrangement was made respecting payment for the same.

One of the clerks of the libellants called upon the owner's brother, Philemon Smith, who he understood was authorized to act for his brother in all matters pertaining to the steamer, and procured from him a promise that his brother would pay the bill if the seats were furnished. Mr. Gardner, one of the libellants, swears that it was in consequence of this personal guaranty by the owner that the debt was contracted. The claimant on the other hand insists that the materials were furnished and the work done on a contract with the builder, Beach, and as it came without the original contract for building and equipping the vessel, a libel in rem is not maintainable, because the contract was not maritime. The difficulty about the libellants' case is, that the proof which they offer, that Smith, the owner, agreed to pay for the seats, discharges the steamboat from all liability by a proceeding in rem. If the testimony is true, the credit was not given to the vessel, but to the owner, and in such cases the only remedy for the creditor is against the owner in personam.

All lien is lost, if any ever existed under the local laws, by lapse of time; and upon the proofs the libellants must be left to their personal remedy against the owner. The libel in rem is dismissed with costs.