

Case No. 7,196.  
[5 Blatchf. 496]<sup>1</sup>

THE JAMES GUY.

Circuit Court, E. D. New York.

Sept. 24, 1867.<sup>2</sup>

LIEN FOR REPAIRS TO VESSEL—NECESSITY—FOREIGN PORT.

1. To sustain a libel in rem against a vessel owned in New York, for repairs put upon her at Baltimore, the necessity for the repairs and for a lien upon the vessel to enable the master to procure them, must be shown.

[Cited in *The Washington Irving*, Case No. 17,244; *The Eledona*, Id. 4,340; *The Walkyrien*, Id. 17,091; *The Maitland*, Id. 8,979; *The George T. Kemp*, Id. 5,341; *The Aeronaut*

## The JAMES GUY.

36 Fed. 499; The Kate, 63 Fed. 713; The Allianca, Id. 732.]

{See note at end of case.}

2. The case of *Pratt v. Reed*, 19 How. [60 U. S.] 359, explained.

[Appeal from the district court of the United States for the Eastern district of New York.]

This was a libel in rem, filed in the district court, by Young Tall, against the steamboat James Guy, to recover for materials furnished to that vessel in Baltimore, she being owned at the time in New York. Her owner claimed that the articles were not furnished on the credit of the vessel, and that there was no necessity for giving credit to her, because her owner was in good credit at the time. The district court decreed for the libellant [Case No. 7,195], and the claimant appealed to this court.

Emerson, Goodrich & Wheeler, for libellant.

Beebe, Dean & Donohue, for claimant.

NELSON, Circuit Justice. The main question in this case is, whether the steamboat is subject to a lien for the bill of repairs put upon her by the libellant; and that turns upon the point whether the credit was given to the vessel or to Olney, the owner. After a very full examination of the evidence, I am satisfied that it was the intention of both parties that the payment was to be made when the repairs were finished, and that, in the meantime, the mechanic or workman should look to the vessel as his security. It is needless to go over the proofs in support of this conclusion. All the facts and circumstances attending and surrounding the case tend in this direction.

It is supposed by the counsel for the claimant, that the case of *Pratt v. Reed*, 19 How. [60 U. S.] 359, has an important bearing in this case adversely to the lien. I do not so understand it. The necessity for the repairs and for the lien upon the vessel to enable the master to procure them, are insisted on, in that case, as essential elements to support the lien, and, in respect to the soundness of that view, there can be no controversy; but the necessity for the repairs and for the lien must depend upon the facts and circumstances of the case. In *Pratt v. Reed* [supra], they repelled the necessity for the lien. In the present case they support it. I am not aware that any other rule has ever been established.

I also concur with the court below, that the claimant, who sets up the purchase of the vessel as a matter of defence, is chargeable, on the proofs, with notice of the charges against the vessel for the repairs.

The decree below is affirmed.

[NOTE. An appeal was then taken by the claimant to the supreme court, where the decree was affirmed, in an opinion by Mr. Chief Justice Chase, who said that liens for repairs made in a foreign port are only allowed on proof of necessity. Where proof of such necessity is shown, and of credit given to the ship, a presumption will arise, conclusive in the absence of evidence to the contrary, of necessity for credit 9 Wall. (76 U. S.) 758.]

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<sup>1</sup> [Reported by Hon Samuel Blatchford, District Judge, and here reprinted by permission.]

<sup>2</sup> [Affirming Case No. 7,195. Decree of the circuit court affirmed in 9 Wall. (76 U. S.) 758.]