

Case No. 7,432.

THE JOHN WALLS, JR.

{1 Spr. 178;¹ 12 Law Rep. 24.}

District Court, D. Massachusetts.

March, 1849.

MARITIME LIENS—REPAIRS—COSTS.

1. Necessary repairs made in Massachusetts, upon a vessel belonging to another state, may create a lien, both by the general maritime law, and by the Massachusetts statute of 1848 (chapter 290).
2. Where a term of credit is given, the lien cannot be enforced, until after the expiration of the credit.
3. Where the libel was sustained for only a small part of the amount demanded, costs were refused.
4. When the marshal holds a vessel, by virtue of two warrants to arrest, in different suits, the custody fees are to be charged equally upon the two suits.

{Cited in *The Circassian*, Case No. 2,725.}

{This was a libel in the admiralty, to enforce the lien of material men. The libellants [Nathaniel C. Jackman and others] had furnished a quantity of copper nails, marks, dove-tails, and other copper fastenings, to be used in repairing the vessel libelled at Salem. When the proceedings were commenced, it was thought that she was a domestic ship, but it appeared from the answer that she was owned in the state of Maine. The vessel, when the warrant was issued, was in Boston, but twenty days had not elapsed since her departure from Salem. The libel contained an allegation, that by a statute of this commonwealth (St. 1848, c. 290), the libellants' claim constituted a lien upon the vessel, and contained no allegation as to her citizenship, whether foreign or domestic. The demand upon which the libellants founded their claim for a lien, was set forth in a long account, in which the bark *John Walls, Jr.*, and owners" were charged in detail for copper nails and other materials. They were credited by a certain amount of old copper, &c. The respondent [John Walls, Jr.] did not dispute the items and amount claimed by the libellants, but contended that a six months' credit was given, and as that time had not expired, the libel ought to be dismissed. The libellants sustained their charges by their own books, and the evidence of the ship-carpenter who repaired the bark, and contended that it was a sale for cash. The claimant produced an agent, who testified that a conversation took place between said agent and one of the libellants, in which the latter promised to furnish nails on the same terms which he had furnished spikes for the vessel once before, namely, twenty-two cents, six months; it appeared by the books of the libellants, and the testimony of one of them, that such a sale of spikes on six months, was made some time previously. The agent also testified that one of the libellants told him that that was "as cheap as they could be got in Boston." This was contradicted by a workman in the libellants' shop, who testified that he was present and must have heard the whole conversation. He testified that the libellants said they should charge "twenty-two cents per pound, as cheap as they could be obtained in Boston." He said he heard no more, and that he was in a position

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where he thinks he must have heard every thing. A Boston merchant testified that his six months' price was twenty-two cents. The counsel for the libellants also submitted the question whether this action to enforce the lien might not be sustained, before the term of credit had expired. The language of the Massachusetts statute is "Whenever a debt is contracted," &c.]²

S. H. Phillips, for libellants.

Isaac Story, Jr., for respondent.

SPRAGUE, District Judge. As this vessel was owned in another state, a lien for necessary repairs is given, both by the general maritime law, and by the Massachusetts statute of 1848 (chapter 290). The most difficult question here is one of fact. Was there a credit of six months? [There is a direct conflict of evidence, and under such circumstances the principle of law requires that the affirmative evidence of the agent must be credited rather than the negative evidence of the workman. By the testimony of the former, it appears that there was a contract to furnish "nails" at twenty-two cents per pound, and on a credit of six months. Consequently, as to the "nails" this proceeding was premature. But as to the other articles (marks, dove-tails, &c.) it was not premature.]² I think a credit of six months was given for the greater portion of supplies, and for such portion no libel can be sustained until after the expiration of the credit. The Nestor [Case No. 10,126]; The Chusan [Id. 2,717]. But for the residue, so far as it remains unpaid, a lien may now be enforced.

Certain payments have been made, which

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are to be appropriated to the extinguishment of the libellants' claim, which first became due. This will leave only \$14.76, for which the libellants can now have a decree. As they did not limit their demand to this small amount, they cannot have costs.

A question of the mode of taxing costs subsequently arose. It appeared that this vessel was in the custody of the marshal, upon a previous libel, when this suit was instituted, and that it had been the practice of the marshal, where he held property by virtue of two warrants of arrest, to charge the whole custody fees in the first suit; but THE COURT directed that they should be apportioned equally, charging one-half to each suit.

¹ [Reported by F. E. Parker. Esq., assisted by Charles Francis Adams, Jr., Esq., and here reprinted by permission.]

² [From 12 Law Rep. 24.]