

Case No. 7,490.

{Taney, 456.}¹

JONES ET AL. V. THE RATLER ET AL.

Circuit Court, D. Maryland.

Nov., 1841.

LIEN FOR REPAIRS TO VESSEL—OWNERSHIP—BURDEN OF PROOF.

1. On a libel against a vessel owned by residents of New York, and against her owners, for materials furnished such vessel at the city of Baltimore, partly before, and partly after she came into their possession: *Held*, that as the vessel was previously owned by a resident of Baltimore, the materials furnished her, whilst so owned, were no lien.
2. But materials furnished after the change of ownership, at the request of the master and former owner, under whose charge the vessel was fitted out were a lien upon her, unless it be shown that they were furnished on credit of the master. And the burden of proof as to this fact was on the libellants.

{Appeal from the district court of the United States for the district of Maryland.}

The libel in this case was filed in admiralty, on the 29th of August 1834, stating that between the months of January and August, 1834, at the special instance and request of the agent of the owners of the brig Ratler,

prelimhe libellants [Francis Jones, surviving partner of John Craig, and others] furnished and provided various materials necessary and proper for said brig, and for her safety and navigation on the high seas, the times when and amounts whereof were more particularly specified in a schedule annexed to said libel, and prayed to be taken as a part thereof. That at the times when such materials were furnished, said vessel was a foreign vessel belonging to Oakley & Roome, of the state of New York, and that the libellants had a lien on said vessel for such materials, enforceable by this court. That they had often applied to said owners for the payment of the balance due on said schedule or account, but said owners had always refused to pay the same. The libel prayed for the usual process, and that the vessel might be sold, and the proceeds applied to the payment of the libellants' said debt

The defendants [Charles Oakley and Edward Roome] in their answer denied that the libellants, between the periods mentioned in the libel, provided said materials at the request of the defendants; they admitted that they had been the owners of said brig since the 19th of April, 1834; that they believed that not more than thirty dollars of value of the said bill was furnished by the libellants for the use of said brig, and they insisted that the small amount, if any, which was furnished for the use of the said brig, was furnished upon the personal credit, which the master, under whose charge she was fitted out, had with the libellants, and especially with Francis Jones, one of them, with whom the said master, Wm. H. Trott, was upon the most intimate and friendly terms; that the defendants did not know the libellants, and they denied that they, or either of them, or any one for them, requested the libellants to perform any work on the brig, or to furnish any materials for her use, and they denied that, to their knowledge, the libellants performed any work or labor on the said brig, or furnished any materials or other things necessary for her or for her use, unless they furnished some small amount of not more than thirty dollars in value, which the respondents did not admit, but left the libellants to prove the same.

The account filed with the libel was for \$242 70, to which was annexed an affidavit of Francis Jones, one of the libellants, "that the within account is just and true, as stated, and that he hath not, nor hath his co-partner, or any other person for said firm, received any part or parcel of, or security or satisfaction for the same, to his knowledge." A deposition of the master, William H. Trott, was filed, in which he stated, that he had a running account with said libellants for such materials and supplies as, from time to time, he required in the course of his business; such materials and supplies being furnished exclusively by them, upon his personal credit. That none of the stores on said bill were for the brig Ratler, except the last item for \$13 36; that he did not do anything with her, until six weeks before she was libelled by the libellants; that his whole account with the libellants for supplies and materials, for several vessels that the deponent had had under

his charge, was between two and three thousand dollars; and that the brig Ratler was the property of Oakley & Roome, of New York, from some date in April, 1834; that the outfit she required was entirely furnished by them; he further said, that the anchor mentioned in said account was paid for by him in exchange, by giving another; what he did on the Ratler, he did as agent of Oakley & Roome, by virtue of a power of attorney. This deposition was taken by consent, to be used as evidence on the part of the claimants of the brig, so far as the same contained legal evidence; the other facts proved will appear from the opinion of the court. The decree in the district court was in favor of the libellants, and on appeal taken, the case was argued in the circuit court.

D. Stewart, for appellants.

R. Johnson, for appellees.

TANEY, Circuit Justice. The libel in this case was filed in the district court for the district of Maryland, against the brig Ratler, to recover the value of necessary materials, furnished by the libellants, for the purpose of fitting her out, at the port of Baltimore; the libel charging that she was a foreign vessel, the owners residing in the city of New York.

The claimants admit, in their answer, that they became the owners of the brig on the 19th day of April, 1834, and that they reside in New York, and insist, that the materials furnished after they became owners, was a very small amount, if any; and they insist, that they were furnished on the personal credit of the master, under whose charge the brig was fitted out. Various items, necessary for the equipment of the vessel, are charged in the libellants' account, which begins on the 21st of February, 1834, and ends on the 15th of July in the same year.

The evidence offered, proves that the vessel was owned by William H. Trott, of the city of Baltimore, until the time mentioned in the answer of the claimants, and the materials furnished during that period are, consequently, no lien upon the brig.

But the claimants, having admitted in their answer, that they became the owners of the brig on the 19th of April, 1834, and were residents of the city of New York, and that the materials were furnished at the request of the master, under whose charge the vessel was fitted out, the materials furnished during that period are, undoubtedly, a lien upon her, unless the claimants can substantiate their allegation, that they were furnished on the credit of the master; the burden of proof, as to this fact, is on them. The

only witness who testified to this fact, is the master himself; but every witness examined, proves him to be unworthy of credit on oath; this testimony, therefore, must be disregarded. The conversations with one of the libellants, as given in evidence by another witness for the claimants, show no intention to waive any lien the libellants had on the brig.

The books of the libellants have been called for, and used and made evidence by the claimants, and they show that necessary materials of the value of eighty-one dollars and thirty-six cents, were furnished after the claimants became owners; and allowing them a credit of ten dollars for an old anchor, as proved by the testimony, a balance of seventy-one dollars and thirty-six cents was due for these materials on the 15th of July, 1834, which is a lien upon the vessel; and the court proceed to decree accordingly. The brig, it appears, was delivered, upon stipulation, to the claimants by the district court.

Decree for \$71 36, each party paying their own costs.

¹ [Reported by James Mason Campbell, Esq., and here reprinted by permission.]