

**Case No. 8,287.** LEVERING v. BANK OF COLUMBIA.  
[1 Cranch, C. C. 207.]<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1804.

MARITIME LIENS—PROVISIONS AND REPAIRS—SEAMAN'S LIEN.

The wages of a seaman on board of a ship in port who was hired to take care of her, at a dollar a day while in port, are not a lien on the ship; nor are repairs and provisions furnished to a ship in Baltimore in Maryland, the owners residing in Alexandria, District of Columbia.

Assumpsit, for money paid and advanced for the use of the defendants. The jury not having agreed at the former trial, in December term, 1803 [Case No. 8,286], the cause now came on again, and the facts appeared to be as follows: The defendants had sold to the plaintiff half of the ship *Alexandria*, to be delivered to the plaintiff free of all liens and incumbrances. One Donaldson was hired by the former owners, at Alexandria (D. C.), to go to Baltimore, and to take charge of the ship, until the owners should get a freight for her, and prepare her for a voyage. In case a freight should be procured he was to go the voyage as mate, at thirty-six dollars a month. The owners then resided in Alexandria.

Mr. Morsell, for plaintiff, contended that the following claims are liens on the ship: (1) Mate's wages while the vessel lay in the port of Baltimore. (2) Repairs, particularly a figure-head, &c., made in Baltimore. (3) Provisions and necessaries furnished the ship while in Baltimore, by persons residing in Baltimore, and cited the following authorities: *Wells v. Osman*, 2 Ld. Raym. 1044; *Rich v. Coe*, Cowp. 636; 2 Bac. Abr. (Gwyll. Ed.) 108, 181; 4 Inst 141; 1 Vent. 146, 343; 3 Mod. 244, 245; *Clay v. Sudgrave and Bayly v. Grant*, Salk. 133, pl. 4, 5; 1 Ld. Raym. 576, 632, Carth. 518; *Wheeler v. Thompson*, Strange, 707; *Ragg v. King*, Id. 858; *Read v. Chapman*, Id. 937; *Alleson v. Marsh*, 2 Vent. 181; Rolle Abr. 533; Cro. Car. 296. Resolution of the judges respecting the admiralty jurisdiction: *Ross v. Walker*, 2 Wils. 264; 1 Com. Dig. 390; *Hook v. Moreton*, 1 Ld. Raym. 397;

## LEVERING v. BANK OF COLUMBIA.

*Opy v. Child*, 1 Salk. 31; *Westerdell v. Dale*, 7 Term R. 306; *Farmer v. Davies*, 1 Term R. 108; 4 Burrows, 2220; *Green v. Farmer*, Id.; *Farrel v. McClea*, 1 Dall. [1 U. S.] 392.

Mr. Mason and Mr. P. B. Key, contra, contended that there was no lien for any of the claims. The wages claimed by Donaldson were not due upon a contract to be performed at sea; it was a contract made on land, to be performed on land; it was not in the usual form of a maritime contract. No voyage was ever agreed upon or made. There is no lien for repairs made in the country of the owner. As to the admiralty jurisdiction, all the ports of the United States are parts of one country. Alexandria and Baltimore are not foreign to each other. There was no lien for provisions furnished to the ship in Baltimore. They cited the following authorities: 1 Bac. Abr. (Old Ed.) 622, tit "Admiralty"; *Ross v. Walker*, 2 Wils. 264; 6 Mod. 238; *Wells v. Osmond*, 6 Mod. 238; *Watkinson v. Bernadiston*, 2 P. Wms. 367, and note to that case; *Abb. Shipp.* 290, 378; *Buxton v. Snee*, 1 Ves. Sr. 154; *Abb. Shipp.* 91, 379, and the cases there cited; *Hoare v. Clement*, 2 Show. 338; *Ex parte Shank*, 1 Atk. 234; *Wilkins v. Carnichael*, Doug. 101; *Wood v. Hamilton*. Dom. Proc., June 15, 1789.

THE COURT instructed the jury as follows: That if the jury should be of opinion, from the evidence, that the contract between the owners and Ronald Donaldson was that he should go from Alexandria to Baltimore, there to take charge of the said ship as mate, and prepare her to receive a cargo as soon as the owners should be able to procure a freight for her, and that he should be paid at the rate of one dollar a day for the time he should be so employed in the port of Baltimore, the ship was never liable for the wages due to him for the time he was so employed. But if the jury should be of opinion, from the evidence, that the work done by Donaldson was done by him as mate, under a contract made by the owners with him to perform a stipulated voyage, then the ship was liable for his wages for the time he was actually employed, although the contemplated voyage was not performed, unless the non-performance was owing to the default of the said Donaldson. The ship was not liable for the repairs, nor for the provisions furnished.

The jury having been out two days, THE COURT ordered them to be brought in and gave them the following instruction, viz.: The court, in this case, further instruct the jury, that if they should find the facts to be true, as stated in the paper handed to them and admitted by the counsel on both sides, then the contract made by the owners of the said ship with the said Donaldson consisted of two separate parts, one of which was absolute, whereby he was to go to Baltimore and go on board the said ship and prepare her to receive a cargo as soon as the said owners should be able to procure a freight for her, and that he was thereby to receive for his wages one dollar a day and be found, while he continued on board the ship in port preparing her to receive a cargo. That the other part of the said contract was contingent, and was not to take effect until the said ship should take in a cargo and proceed to sea; and that by this last part of the contract, if it had been

carried into effect, the said Donaldson would have been entitled to thirty-six dollars per month for his time after the vessel sailed, but no provision was in this second part of the contract made for his wages while in the port of Baltimore, as aforesaid. Verdict for the defendants. No writ of error was ever prosecuted. See *Ramsay v. Allegre*, 12 Wheat [25 U. S.] 611, Judge Johnson's opinion, and *Clinton v. The Hannah* [Case No. 2,898]; *Shrewsbury v. The Two Friends* [Id. 12,819]; *Bridgeman's Case*, Hob. 11; *Justin v. Balam*, 2 Ld. Raym. 805.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]