

Case No. 8,900.

MCMAHON V. THE PRIMERA.

[N. Y. Times, Jan. 24, 1855.]

District Court, D. Connecticut.

Jan. 23, 1855.

MARITIME LIENS—REPAIRS—ABANDONMENT BEFORE COMPLETION.

[Abandonment of repairs by a contractor before the completion thereof bars recovery for more than a quantum meruit.]

[This was a libel by James McMahon against the brig Primera. A decree was rendered for libelant (unreported). Heard on claimants' exceptions to the commissioner's report.]

Mr. Byrne, for libelant.

Lapaugh & Andrews, for claimants.

INGERSOLL, District Judge. This case was tried in last October, and a decree rendered in favor of the libelant, with a reference to a commissioner to ascertain and report the amount of damages. The libel is filed to recover for repairs and supplies furnished to the brig. At the time of trial the question was raised upon what basis the damages should be calculated, it being claimed by the libelant that not only should he be paid for the actual repairs put on the vessel, but also that the profits should be included which he would have made if he had concluded all the work which he had contracted to do. The commissioner was thereupon directed to report the actual value of the repairs, and also to report what would have been his profits. The commissioner now reports the amount of the repairs at \$414.10, and the profits which he would have made at \$1,800; and to this latter item in the report the claimants except. The libelant alleges that this ship, having sailed from this port for Glasgow, and having put back in need of repairs, was placed in his hands by the master to be repaired. He does not allege that any contract was made as to how the work was to be done, but only that he was to do the needful repairs. After he had begun the work some one, who claimed to be agent for the owners, told him not to go on in the work, and intimated that he might have difficulty in collecting his pay for what he had done, and upon this the libelant ceased his work. The claim in the libel is in the nature of a quantum meruit. The libelant could have gone on in his work, but he voluntarily discontinued it, and I cannot conceive how he can recover any more than he has actually expended upon the ship. He does not claim profits in his libel. That part of the report, therefore, which allows the profits must be stricken out.