

MEAGHER V. THE LIZZIE.

{2 Woods, 243.}¹

Circuit Court, D. Louisiana. April Term, 1876.

APPEAL—ADMIRALTY—FACTS NOT AVERRED IN
PLEADINGS NOR SHOWN IN EVIDENCE.

Where, on a libel in rem to recover for repairs to a steamer, the jurisdiction of the district court was submitted to and the cause tried on its merits; after appeal to the circuit court, the claimants could not for the first time set up that the repairs were made in the home port of the steamer, and therefore did not create a maritime lien, no such fact being averred in the pleadings or shown by the evidence.

{Appeal from the district court of the United States for the district of Louisiana.

{This was a libel by M. Meagher and J. Meagher against the steamboat Lizzie, to recover a balance due for repairs.}

B. Egan, for libellants.

Thomas Gilmore, for claimants.

BRADLEY, Circuit Justice. This suit was brought to recover a balance claimed by the libellants to be due them for repairs made to the steamer Lizzie. The point is taken by the claimants in this court for the first time, that the repairs were made to the steamer in her home port, and therefore did not create a maritime lien. This point is made too late, and is not tenable now. It is not made by the pleadings, nor was it made in the district court, and I cannot find anything in the evidence even to show that the Lizzie belonged to the port of New Orleans when the repairs were made. The jurisdiction of the court was submitted to, and the cause tried on its merits. The objection cannot be raised now.

¹ {Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.}

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