

tight joint. Yet the court held that this did not anticipate complainant's patent No. 4,372, because the "same observation" applies equally to this method of constructing a well as to that described in "McKenzie's 5,000 Receipts." In other words, the court said that merely boring a hole to be followed by a pipe driven into it in the manner described was, to repeat the language already cited from the opinion, "a simple process of finding water in the usual way, as in the case of an ordinary dug or bored well, such as have been immemorially used."

It is therefore plain that the claim of the complainant in patent No. 4,372 was held by the supreme court to be construed in its natural sense,—that is, a well obtained by actually driving a pipe into the earth without previous boring, and without removing the earth upward, so that the earth crowded back tends to make an air-tight joint; but the patentee is entitled to the benefit of this method of construction, although the driving is for only a portion of the depth, if that portion intervenes between the surface and the water-bearing stratum. *Eames v. Andrews*, 122 U. S. 70, 7 Sup. Ct. Rep. 1090.

This view of the patent, which this court feels bound to accept from its reading of the opinion in *Eames v. Andrews*, disposes of and renders unimportant all the experiments described by the defendant, of coloring the surrounding surface water, and holds the defendant liable for all wells which were driven in any part by wrenches or mauls, as described by the witnesses Walden and Hunt. So far as the wells were sunk by the use only of the water drill, they class with those described in *Rees' Cyclopaedia*, according to the reference already made, and are not infringements.

The patent has expired, but, as the bill was filed during its currency, the jurisdiction of the court in equity is not affected thereby. There can, of course, be no injunction.

There will be a decree dismissing the bill so far as relates to patent No. 218,875, and sustaining it so far as relates to patent No. 4,372, and for an account so far as touches any wells driven in whole or part by a wrench or maul, or by analogous methods, with costs for the complainant. Complainant will file a draft decree, and give notice thereof on or before the 22d day of the current month, and defendant will file corrections, and give notice thereof on or before the 29th day of the current month.

THE NOW THEN.

HERRESHOFF MANUF'G CO. v. THE NOW THEN.

(Circuit Court of Appeals, Third Circuit. April 25, 1893.)

1. REPAIRS TO VESSEL—LIEN—EVIDENCE.

If necessary repairs and materials be made and furnished to a vessel in a port other than her home port, the prima facie presumption is that they were made and furnished on the credit of the vessel, unless the work be done by order of the owner, in which case a lien by agreement of the parties must be shown. 50 Fed. Rep. 944, affirmed.

2. SAME—PERSONAL CREDIT OF OWNER.

Repairs to a yacht, amounting to \$1,615.05, were furnished on the order and credit of the owner, who was reputed a rich man and solvent, by libelants, from whom the owner had purchased the yacht. Afterwards further repairs, amounting to \$97.10, were furnished, and included in the same bill for the first repairs. *Held*, that in both instances libelants must be presumed to have relied upon the personal sufficiency of the owner for payment of their claims, and were not entitled to a lien on the vessel.

Appeal from the District Court of the United States for the District of Delaware.

In Admiralty. Libel by the Herreshoff Manufacturing Company against the steam yacht *Now Then* for repairs. The libel was dismissed below. 50 Fed. Rep. 944. Decree affirmed.

Henry W. Bates, (J. H. Hoffecker, Jr., of counsel,) for appellant.
Willard Saulsbury, Jr., for appellee.

Before ACHESON and DALLAS, Circuit Judges, and BUTLER, District Judge.

DALLAS, Circuit Judge. This is an appeal from a decree in admiralty dismissing a libel to enforce an asserted lien against the steam yacht *Now Then*. It was alleged in the libel that the libelants, "at the request of the master of the said vessel," and in a port as to which she was a foreign vessel, had repaired the yacht, and that there was due therefor \$1,712.15, with interest. The demand comprised two separate subjects of charge, viz.: As of October 24, 1889, \$1,615.05, for repair or renewal of the boiler, performed in or about the month of July, 1889; and as of April 11, 1891, \$97.10, for certain other repairs or materials made or furnished at the last-mentioned date. The main question was and is whether the libelants had established a right to a lien upon the vessel. The court below, citing the case of *The Lulu*, 10 Wall. 197, held the general rule to be: "If necessary repairs and materials are made and furnished to a vessel in a port other than her home port, the prima facie presumption is that they were made and furnished on the credit of the vessel, unless the contrary appears from the evidence in the case;" but also referred to the qualification of this rule under *The Mary Morgan*, 28 Fed. Rep. 196, and *The Francis*, 21 Fed. Rep. 715, to the effect that, "when the work is done by order of the master, a lien is implied, but for work done by order of the owner no lien will exist unless proved by the agreement of the parties." The learned judge of the district court was of opinion that, in view of this qualification of the rule, a lien did not exist in this case, because the work was not done nor the materials supplied upon the order of the master, but by order of a representative, not of the vessel, but of the owner; and that, even under the rule as broadly stated, there would be no lien, because it appeared from the evidence that, in point of fact, the work was not done on the credit of the vessel. We have no hesitation in adopting the learned judge's opinion as to the law, nor in accepting his finding of fact with relation to the first item of the claim; but with respect to the items of April 11, 1889, we have had some doubt; and have reached the same conclu-

sion as to them, only after careful consideration of the peculiar facts of the case.

Mr. Addicks bought this yacht from these libelants. He personally paid for it, and gave it to his wife. As is stated in the opinion of the court below, "he was reputed to be a rich man, able to pay his debts, and there was no thought on the part of the libelants that they would require a lien on the vessel to secure payment for their work." The previous repairs had been made upon his credit, not upon that of the vessel; and the only inference which can fairly be drawn from the evidence is that the libelants relied solely upon him for payment of all their claims. They presented both of these charges, finally, in the same bill; and in no manner did they ever distinguish between them as to the credit given. It is scarcely conceivable that, being content with the personal sufficiency of Mr. Addicks for the larger amount, they intended to hold the vessel for the comparatively insignificant sum of \$97.10; and therefore, although as to this item the materials were not supplied, as in the instance of the boiler repairs, upon the direct order of Mr. Addicks, we think the reasonable deduction from the proofs is that they also were furnished upon his credit. The decree is affirmed.

THE BEECHE DENE.

J. T. LUNN CO., Limited, et al. v. CAMERON et al.
(Circuit Court of Appeals, Fifth Circuit. January 16, 1893.)

No. 42.

SHIPPING—INJURIES TO GOODS—LIABILITY—EVIDENCE.

Where the fact of damage to goods on the voyage, and the extent of such damage, are shown, the burden is on the carrier to show that it was occasioned either by inherent defects in the goods or by sweat of the ship, and hence within the exceptions of the bill of lading.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

In Admiralty. Libel by William Cameron and J. W. Castles, trading as Cameron & Castles, against the steamship Beeche Dene, her tackle, etc., (the J. T. Lunn Company, Limited, claimant,) for damages to a cargo of sugar. The vessel was released on claimant's bond, Richard Milliken, surety. The district court entered a decree for libelants, from which the claimant and its surety appealed. Affirmed.

Joseph P. Hornor and Guy M. Hornor, for appellants.
Richard De Gray, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

McCORMICK, Circuit Judge. The appellants claim that the damage to the cargo was occasioned either by inherent defects in the goods or by sweat of the ship, and within the exceptions in the