

avoiding "the violent shock and vibration that would otherwise result from rapidly reciprocating so heavy and inert a mass of metal as constitutes the beam and its direct co-acting parts" cannot be disregarded, as unimportant or unessential, or as not included in the combination of claim 5. This view is emphasized by the following language of the specification:

"One of the most important features of my invention is the method of counterweighting the vertically-reciprocating beam, E, which, more especially in the larger machines (nine-foot beams), is, by reason of the great strain to which it is subjected, necessarily very heavy, and should therefore be not only in perfect 'balance' but also in perfect 'cross balance' as well. To insure both such balance and cross balance, I form clutch, H, and brake wheel, I, each as much out of balance as equals one-half the weight moved vertically by eccentrics, h, so that the united counterweighting of said wheel and clutch equals the weight of the beam and its rods. Such counterweighting of the clutch and wheel is effected by forming one part skeleton-like, as at 4, while the opposite side, as at 5, is solid and continuous; such solid portions being arranged on shaft, i, diametrically opposite the throw of eccentrics, h, so that said solid portions are at the bottom of their circuit when the beam is at its highest point. Hence the machine performs its work without the violent shock and vibration that would otherwise result from rapidly reciprocating so heavy and inert a mass of metal as constitutes the beam and its direct co-acting parts."

We cannot disregard what the patentee terms one of the most important features of his invention without unduly extending the fifth claim. The defendant, as is conceded, does not employ the counterweighted clutch, or any equivalent therefor, and does not infringe the fifth claim, as properly interpreted. The bill will be dismissed.

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THE HAVANA.

(Circuit Court of Appeals, Third Circuit. February 6, 1899.)

No. 25, September Term, 1898.

**MARITIME LIENS—REPAIRS IN FOREIGN PORT—PRESUMPTIONS.**

When repairs are made on the order of a managing owner, whether or not in the home port, the presumption is against the existence of a maritime lien; and the mere fact that the repairer understands the contrary is insufficient to create a lien, unless the owner expressly or impliedly consents thereto.<sup>1</sup>

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

This is a libel in rem by William E. Woodall & Co. against the steamboat Havana and another, to recover a balance due for repairs. The libel was dismissed (87 Fed. 487), and libelants appeal. Affirmed.

John F. Lewis and Arthur D. Foster, for appellants.

Henry R. Edmunds, for appellee.

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

<sup>1</sup>As to maritime liens for supplies or services, see note to *The George Du-mois*, 15 C. C. A. 679.

DALLAS, Circuit Judge. By the libel in this case it was sought to enforce an asserted lien against the steamship Havana for a balance due for repairs which were ordered by her managing owner, and were made by the appellants, at Baltimore, which was not her home port. The court below dismissed the libel upon the ground that the facts did not sustain the claim of lien (87 Fed. 487), and we think it was right. "In the absence of an agreement, express or implied, for a lien, a contract for supplies [or for repairs] made directly with the owner in person is to be taken as made on his ordinary responsibility, without a view to the vessel as the fund from which compensation is to be derived." *The Valencia*, 165 U. S. 264-271, 17 Sup. Ct. 323. There certainly was not in the present case an express agreement for lien, and the record discloses nothing which would warrant the implication of such an agreement. Our own examination of the evidence satisfies us, as the learned judge found, that this work was, in point of fact, done, not on the credit of the vessel, but on that of the owner. Where repairs are ordered by an owner, even in a foreign port, a lien for their cost is not presumed to have been contemplated, and cannot be created by any act of the party doing the work, which he may claim to be indicative of a design on his part to look to the vessel for his compensation, unless it also appear that the other party had so understood that act, and had, at least impliedly, assented to its purpose. There is nothing to show such understanding or assent by the owner in this instance, and his testimony is, in effect, that he at no time supposed that the Havana would be subject to a lien. *The St. Jago de Cuba*, 9 Wheat. 409; *The Grapeshot*, 9 Wall. 136; *The Mary Morgan*, 23 Fed. 196; *Thomas v. Osborn*, 19 How. 22; *The Norman*, 28 Fed. 383; *The Pirate*, 32 Fed. 486; *The Aeronaut*, 36 Fed. 497; *The Now Then*, 5 C. C. A. 206, 55 Fed. 523. The decree is affirmed.

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#### THE SCOW NO. 15.

(Circuit Court of Appeals, Second Circuit. March 1, 1899.)

No. 101.

1. WHARFAGE—STATUTORY RATES—SCOWS.

Under Laws N. Y. 1882, c. 410, § 798, classifying vessels, and fixing the rates for wharfage accordingly, a scow engaged in carrying stone should be classed with the description "market boats and barges."

2. SAME—CUSTOM.

A customary rate of wharfage for scows cannot control the rates fixed by Laws N. Y. 1882, c. 410, § 798, since it includes all vessels engaged in carrying freight or passengers.

3. MARITIME LIENS—DOMESTIC VESSELS.

A maritime lien is created by the furnishing of wharfage to a domestic vessel.<sup>1</sup>

Appeal from the District Court of the United States for the Southern District of New York.

<sup>1</sup> For maritime liens as to supplies and services, see note to *The George Dumois*, 15 C. C. A. 679.