The Potomac

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SooperKanoon Citation : sooperkanoon.com/81122

Court : US Supreme Court

Decided On : 1862

Appeal No. : 67 U.S. 581

Appellant : The Potomac

Judgement :

The Potomac - 67 U.S. 581 (1862)
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The Potomac

67 U.S. (2 Black) 581

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. Case of *The Steamer St. Lawrence,* 1 Black 525, reaffirmed.

2. The claimant of a vessel libeled for repairs cannot be permitted in this Court to contest the amount of libellant's claim except insofar as specific objections appear by the record to have been taken to it in the court below.

3. Where a master found the amount due but stated no account, and his report was excepted to as being excessive, not sufficiently proved, erroneous under the pleadings, and founded on illegal evidence, such general objections may justly be treated as frivolous, and if overruled and the case brought here on appeal, this Court cannot say that particular charges were wrongly admitted or particular credits wrongly thrown out.

4. Where the libellant proved his demand by shop books, the circuit court might well consider the evidence in his favor stronger than the contrary opinion of experts taken *ex parte* after the work was done.

5. The decree of the court below is presumed to be right, and a record showing that it may possibly be erroneous or raising a doubt upon conflicting evidence is not enough to reverse it.

6. If the contract was made and the work done by the libellant, his right to recover in his own name cannot be defeated by showing that he had a partner interested in the contract.

On the 23d of November, 1855, the libel in this cause was

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filed in the District Court of the United States for the Southern District of New York by Baker, a shipwright and carpenter, *in rem* against the ship *Potomac* to recover a bill of repairs. The *Potomac* was a ship of more than five hundred tons, and was engaged in the general freighting business. She had just returned from a foreign voyage and was about to sail for Australia. The libel stated that the repairs were necessary and that without them she could not proceed to sea and earn freight and passage money; that they were furnished on the credit of the vessel, and master and owners (the master was an owner); that the libellant had a lien upon her for them, and that the case was within the jurisdiction of the admiralty.

The answer admitted the repairing the vessel, but not to the amount claimed, and did not deny the jurisdiction, the necessity for the repairs, or the lien.

The district court made a decree that the libellant recover the amount of his repairs, and referred it to a commissioner to ascertain the amount. The commissioner reported $3,996.18, including the interest. The claimant excepted to the report.

The court overruled the exceptions and made a final decree that the libellant recover the amount reported by the commissioner.

The claimant appealed to the circuit court from the whole of the final decree.

The libellants moved the circuit court to dismiss the appeal on the ground that it had not been perfected. The motion was denied on condition that the claimants deposit the amount of the decree in court, which was done, and by order of the court it was paid over to the libellants on their giving a bond to obey the order of court in the cause.

Much conflicting evidence was given upon the trial, the libellant proving his demand for work and materials from the books and accounts kept by his clerks in the ordinary course of business, while the claimant brought persons, said to be skilled in the business of building and repairing ships, to show that the amount expended upon the vessel, fell far short of that claimed

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by the libellant. The circuit court affirmed the decree of the district court, and the claimant took this appeal.

MR. JUSTICE GRIER.

When the counsel prepared their briefs of argument in this case, they could not have seen the report of the case of *The Steamer St. Lawrence,* 1 Black 525, or they would have considered it labor lost to argue the same question of jurisdiction on the very same facts again at this term. The opinion of the Court in that case was unanimous; the question was fully discussed and the opinion delivered by THE CHIEF JUSTICE, and needs no further remark.

The appellant, in his answer, admits that the repairs were made to his ship by the libellant, but takes issue on the amount and alleges an agreement that the repairs to be made should not exceed a certain sum, less by one-half than the bill finally presented.

But it appeared clearly from the evidence that although the libellant made an estimate of what would be the probable cost of the repairs, he did not contract to do the work for any given sum. The contract was to supply the timber and materials at market prices and to receive certain wages *per diem* for each person employed. When the vessel was stripped, it was found necessary to make repairs on a much larger scale than had been at first estimated. The amount of libellant's bill, of course, far exceeded his original estimate. The report of the master found the amount due, but stated no account. The exceptions to it were 1st., "that it was for an amount far exceeding any amount of work performed;" 2d., "that the libellant had not proved any work performed for which he was entitled to a decree;" 3d., "that the libellant was not, under the pleadings, entitled to any decree whatever in his favor;" 4th., "that commissioner erred in admitting evidence," &c.;

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If the respondent wished to contest any of the specific charges of the account, he should have had the report referred back to the master, with direction to state an account. The account returned by the master should report the items objected to and whether they were allowed, and the testimony or reasons justifying his decision. To such a report the party could make specific exceptions, and such general objections as those stated might well be treated as frivolous.

As the record stands this Court cannot know what items of the libellant's account were allowed or disallowed or excepted to; we cannot say that other credits should have been allowed, because we do not know whether they were allowed or not.

For anything that appears on the face of this record, the judgment of the district and circuit courts are correct. The libellant proved his demand for work and materials furnished by the books and accounts kept by his clerks, and the court

may well have considered this better evidence than the opinions of experts, taken *ex parte* to undervalue the work and count the tree nails, after the sheeting was replaced and the repairs covered with paint. It is not enough for the appellant merely to raise a doubt on conflicting testimony that the judgment of the court below may possibly be erroneous. But in this case he has not succeeded even in raising a doubt.

The judgment of the court below is assumed to be correct till the contrary is made to appear. It is not sufficient to produce a record from which it does not appear whether it is right or wrong.

The objection that the libellant should have joined some unknown partner as a party to this libel has no foundation whatever.

The contract is proved to have been made and the work executed by the libellant. There is no evidence that he had a partner in any way interested in the profits of the contract, and if he had, it was not necessary to make him a party, as appeared by the case of *Law v. Cross,* decided at last term. *See* 66 U. S. 1 Black 533.

Let the judgment of the circuit court be affirmed.