

The Patapsco

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Appeal No. : 80 U.S. 329

Appellant : The Patapsco

Judgement :

The Patapsco - 80 U.S. 329 (1871)

U.S. Supreme Court The Patapsco, 80 U.S. 13 Wall. 329 329 (1871)

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80 U.S. (13 Wall.) 329

APPEAL FROM THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Supplies furnished to a ship in a foreign port and necessary to enable her to complete her voyage, and actually so used by her, constitute a lien, unless it can be inferred that the master had funds or the owners had credit -- a presumption difficult to make when the owner is greatly embarrassed, and is raising money in the port where the vessel is, by mortgage of other vessels owned by him. The lien

is of a high character, and when once to be inferred is removed only by proof which actually displaces it. Entries in a journal, and in a ledger, charging apparently the owners, rather than the vessel -- proof of the form of entry in the day book not appearing, owing to its being dispensed with by the materialman -- *held* not sufficient to displace the lien.

Boyce, a coal dealer in Baltimore, filed a libel against the steamer *Patapsco* in the district court at New York to recover a demand for six separate supplies of coal furnished between the 3d of February and the 26th of March, 1866, to the steamer. One Borland intervened as claimant. The question was whether the coal had been furnished on the credit of the vessel or on that of her owners only.

The facts, as the court assumed them from the weight of the evidence, itself somewhat inconsistent, were thus:

The Commercial Steamboat Company, a corporation of Rhode Island, owned and chartered certain steamers, the *Kingfisher &c.*, and used them as a line of steamers from New York to Baltimore. The *Patapsco* was chartered by the company to run on the line, and registered at New York in the individual name of one Bacon, president of the company; though the company controlled her. The company had an agent at Baltimore, and the course of dealing was as follows:

When the steamers would arrive at Baltimore, their engineers would inform this agent of the amount of coal they needed for their different vessels. Thereupon the agent would fill up a printed circular directed to Boyce, requesting him to furnish "with invoice," *to that steamer, by name*

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(in this case the *Patapsco*), so many tons of coal, saying nothing about charging anybody. Boyce would then fill up a printed order to his clerk, directing him to furnish the coal *to the steamer named*. On receipt of this latter order, the coal would be delivered on board the steamer. At the end of a month a bill would be made of all the deliverances to all the boats. The object of making out a general bill at the end of each month, it appeared, was to avoid a multiplication of bills, and

for the sake of convenience.

The entries in the libellant's *journal* were thus -- one example showing all:

BALTIMORE, March, 1866

COMMERCIAL ST'B'T Co.:

80 tons Geo. C'k, st'r Kingfisher, \$7 . . . \$ 560

25 " " " " Patapsco, 7 . . . 175

80 " " " " Kingfisher, 7 . . . 560

42 " " " " Patapsco, 7 . . . 294

\$ 1,589

And in his *ledger* they were thus:

COMMERCIAL ST'B'T CO. DR.

1866

Jan'y 30th To coal ac. \$ 2,896.36

" " " bituminous ac. 2,963.60

Feb. " " coal ac. 790

Feb. " bituminous ac. 2,416.10

Mar. " coal ac. 1,550

" " bituminous ac. 1,589

April " coal ac. 1,462.50

" " bituminous ac. 65

May 16 " cash 39.10

\$13,761.66

CR.

Feb. 5th. By cash \$ 3,000

" 9th. " " 1,000

" 15th. " " 1,849.96

Mar. 30th. " coal ac. 73.50

May 5th. " cash 136

June 30th. " " 3,008.41

" " " balance. 4,693.79

\$13,761.66

DR.

To balance. \$ 4,693.79

The form of entries in the libellant's *day book* did not appear, the claimant waiving the production of it, and the bills rendered to the company were not produced.

The coal was sold at the lowest price, and it was necessary for the *Patapsco* to make her trips and was used by her in making them. The agent of the steamship company stated that

"the coal bought for the *Patapsco* was ordered for this steamer expressly, but on account of the Commercial Steamship Company, the same as all coal was ordered and bought for the several steamers constituting the line."

" *The owners or charterers,* ' he added, ' *were not known in the transaction,* but the steamer was supposed to belong to the Commercial Steamboat Company by the parties who furnished the coal."

During the whole time that this coal was furnished, the steamboat company was in an embarrassed state. And on the 3d of February, on which day the *first* item of the coal for which the steamer was libeled, was furnished, the steamship company executed six promissory notes for \$7,500 each -- \$45,000 in all -- to the Baltimore & Ohio Railroad Company; following them immediately, and by the 6th, by mortgages on three of their steamers to secure payment. And it owed a balance of \$25,800 to the Neptune Steamboat Company on the 1st February, 1866, so much remaining due for money laid out, paid, or advanced in the preceding year.

On the 2d of April, 1866, nine days after the last item of coal furnished to the *Patapsco*, the registered owner, Bacon, executed a bill of sale of her to Borland, already mentioned as the claimant in the case, to secure to him a debt of \$10,500. And on the 10th following, the company failed entirely, the failure being followed by attachments to a very large amount, much of it like the \$25,800 already mentioned for money lent or debts due prior to the 3d February, 1866, and the result being a general break up of the company in which the creditors got but a small portion of their claims from the whole effects of the corporation.

It was in virtue of his bill of sale above mentioned that Borland contested the libellant's claim.

The district court dismissed the libel; holding that there was no credit to the vessel. The circuit court, on appeal, held that there was, and reversed the decree. From this reversal Borland appealed to this Court.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

Whether the coal was furnished on the credit of the vessel, or of the owners, is the only point of inquiry in this case. The case itself is not without its embarrassments, for the evidence, in some of its aspects, is not consistent with either theory, but the weight of it, in our opinion, enables us to assert the lien against the ship.

It is undisputed that the *Patapsco* was in a foreign port, and that the coal was ordered for her, specifically by name, and delivered to the officers in charge of her. It is equally free from dispute that the supply of coal was necessary -- indeed, indispensable -- to enable her to make her voyage at all. In such a case, the inference is, that the credit was given to the vessel, unless it can be inferred that the master had funds, or the owners had credit, and that the materialman knew of this, or knew such facts as should have put him on inquiry. [[Footnote 1](#)] There is no reason to suppose that the master had funds, or the owners of the line credit, nor that the libellant was guilty of laches. On the contrary, it is in proof that the company which owned the line of steamships was, at the date of these transactions, hopelessly insolvent, and were borrowing large sums of money on a mortgage of their steamers, away from home, and in the very city where the libellant resided. It would be strange if the libellant

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did not know this condition of things, and, in the absence of proof on the subject, it is a reasonable inference that he did. If he had this knowledge it would be a violent presumption to suppose that he relied on the credit of the company at all for the supplies which he furnished. The company running the steamers was a distant corporation, of no established name, and without personal liability in case the

enterprise recently undertaken should prove a failure, and it is hard to believe that a large and intelligent coal merchant in Baltimore, in dealing with this corporation, intended to renounce his claim against the steamers in case he was not paid. It is very clear that there was no credit to the company at the time of sale, because the coal was sold for cash at the lowest market price. And when the libellant waived his privilege of cash on delivery, and put the coal on board the steamship, the presumption of law would be that he thereby gave credit to the steamship, and not to the owners thereof, inasmuch as the supplies were furnished in a foreign port.

If the credit was to the vessel there, is a lien, and the burden of displacing it is on the claimant. He must show, affirmatively, that the credit was given to the company to the exclusion of a credit to the vessel. This he seeks to do by the form of charge in the libellant's journal and ledger. If it be conceded that these entries tend to support this position, they are far from being conclusive evidence on the subject. Entries in books are always explainable, and the truth of the transaction can be shown independent of them. The form of charge in any book of original entries does not appear, as the day book was not called for by the claimants, nor are the "invoices" which the libellant was directed to furnish with the coal produced. But, from the form of entry in the journal itself (where the amount furnished to each vessel is set opposite to its name), we are led to the conclusion that the day book entries which are thus journalized were debited to each steamer by name. If this be so, the journal entries are not inconsistent with the idea of the credit being given on the security of the ship. More

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especially is this apparent when it is proven that the reason why monthly accounts were made out to the steamboat company in bulk was for the sake of convenience, and to save a useless accumulation of bills. There is nothing besides this journal entry to indicate that the coal was furnished on the personal credit of the company; and, as the other facts in the case are in favor of a charge direct to the steamship, we do not think the legal inference of credit to the ship is removed.

The lien of materialmen for supplies in a foreign port is of so high a character that, in the case of *The St. Jago de Cuba*, [[Footnote 2](#)] it was protected, along with that of seamen's wages, against a forfeiture which had accrued to the United States, and the recent decisions in this Court have had the effect to place this lien on a more substantial footing than some previous cases seem to have left it. [[Footnote 3](#)]

On the whole, while we concede that the case is not free from difficulty, we are not disposed to disturb the decree of the circuit court, in any particular. It is accordingly

Affirmed.

[[Footnote 1](#)]

[The Lulu](#), 10 Wall. 192.

[[Footnote 2](#)]

[22 U. S. 9](#) Wheat. 409.

[[Footnote 3](#)]

[The Grapeshot](#), 9 Wall. 129; [The Lulu](#), 10 Wall. 192; [The Kalorama](#), 10 Wall. 204.