

LAWRENCE and others v. MORRISANIA STEAM-BOAT CO.

(District Court, E. D. New York. October 24, 1881.)

I. REPAIRS TO VESSEL—CONTRACT—PERFORMANCE.

L. & Co., shipwrights, made an offer, by letter, to the M. Steam-boat Co. to repair one of their steam-boats, which was accepted, and L. & Co. proceeded to do the work. Payments on account were made while the work was in progress, and a note for the balance of the bill given. Payment of the note at maturity was refused on the ground that the contract had not been fully performed. L. & Co. filed a libel to recover the balance claimed to be due, and the company in their answer set up a special agreement to make the boat stiff and strong as new, and remedy the defect which made her "cranky," and non-performance thereof. *Held*, that the special agreement was not found by the testimony; that the written contract in the letter was the only one by which to determine the right of the parties; and, the terms of that having been performed, the libellants were entitled to be paid the balance due.

In Admiralty.

Scudder & Carter, for libellant.

T. C. Cronin, for libellee.

BENEDICT, D. J. Upon the testimony there is little room to doubt that the libellant is entitled to recover the portion of his bill for work done upon the defendant's steam-boat, Shady Side, that remains unpaid. The letter of the libellant, dated April 10, 1880, contains a statement of the work he offered to do. The defendants, by their letter of April 14, 1880, accepted the libellant's offer as made. These two letters constitute a written contract by which alone the rights of the parties must be determined. These letters contain nothing in the shape of a warranty on the part of the libellant that the alteration he proposed to make in the boat's hull would make her stiff, and remedy the existing defect in her build, and for that reason it must be held that the special agreement set up in the answer has not been proved. This view of the matter in controversy renders it unnecessary to pass upon the conflicting testimony given in respect to conversations and negotiations had prior to the reduction of the contract to writing. It should, however, be said that the acts of the parties subsequent to the acceptance of the libellant's offer are in harmony with the view I have adopted, and confirm me in the opinion that the libellant has performed his contract and is entitled to be paid the sum claimed in the libel.

Let a decree be entered to that effect.

TWO HUNDRED AND SEVENTY-FIVE TONS OF MINERAL PHOSPHATES.

(District Court, E. D. New York. November 7, 1881.)

1. MARITIME LIENS.

Upon the arrival of the vessel the phosphates in question were seized by the marshal, by virtue of process issued against the property in a possessory action, and sold at auction as it lay. *Held*, that the purchaser had a reasonable time for unloading, but that for any longer detention the master was entitled to demurrage; and that the claim for demurrage constituted a lien upon the property.

In Admiralty.

Goodrich, Deady & Platt, for libellant.

Dan. Marvin, for claimants.

BENEDICT, D. J. This is an action *in rem* to enforce a lien, claimed by the libellant upon a quantity of mineral phosphates lately on board the brig *Dauntless*, for delay in removing the same from the vessel aforesaid. The facts are somewhat peculiar:

The brig *Dauntless* arrived in the port of New York, from Brazil, laden with the phosphates in question, and was entered at the custom-house on the thirtieth day of July, 1881. Upon her arrival the property was seized by the marshal of this district, by virtue of process issued against it in an action of possession brought by one James C. Jewett, who claimed to be the owner of the property, and that it was wrongfully detained by the master of the brig. In that action the property in question was thereafter sold by the marshal as it lay in the vessel. The terms of sale were as follows: "Cargo of the *Dauntless* to be sold as it is on board, and as 275 tons in weight, and this number of tons to be paid for to the marshal; weight to be determined by the weigh-master's return, and purchaser to pay for any tons over 275 tons; and the marshal will refund the sum per ton for weight short of 275 tons. Bids to be for the ton of 2,240 pounds. The weigh-masters to be appointed by the marshal. Terms, 20 per cent. on day of sale, and the balance to make up the amount of 275 tons weight within three days after and before delivery of any cargo." The sale took place on Wednesday, the eighth day of September. The claimants bid off the phosphates, and paid the 20 per cent. on the spot. On the 13th they paid the balance of the purchase money, and on that day removed 50 tons from the vessel. The discharging continued until the twentieth of September, when all was removed. The master of the vessel claimed demurrage for the detention of his vessel after the eleventh of September, and, being refused, brings this action against the property to recover for such detention.

Upon the trial the claimants endeavored to show an express agreement between them and the master to allow them eight days in which to remove the property, but the testimony has not satisfied me of the