

it seems clear that a lien upon the vessel was created by the doing of the repairs in question.

As to the other defense, that the work was done in an unskillful manner, the weight of evidence is in favor of the libelants. It cannot be inferred that the lead was improperly fastened, from the fact that part was twisted off by the yacht's getting aground; nor does the present condition of the lead removed from the vessel warrant the conclusion that the work was unskillfully done, in the face of positive testimony to the contrary. Moreover, the objection that the work was unskillfully done was not made until a late day.

Under such proofs the decree must be for the libelants for the amount of the bill, with interest to the date of the decree, and the costs.

THE COMFORT.¹

(Circuit Court, E. D. New York. July 8, 1885.)

LIEN FOR REPAIRS—NON-RESIDENT OWNER—PRESUMPTION.

The decision of the district court in the same case (*ante*, 158) affirmed.

Admiralty Appeal.

Wilcox, Adams & Macklin, for libelant and appellee.

Roger M. Sherman, for claimant and appellant.

BLATCHFORD, Justice. 1. The district judge states in his opinion that as to the defense set up in the answer, that the work was done in an unskillful manner, he is of opinion that the weight of the evidence is in favor of the libelants. I am of the same opinion.

2. The yacht, at the time the repairs were made, was owned by a non-resident of the state of New York. Therefore, the presumption arose, the repairs being made in New York, and being necessary, and made at the request of the owner, through his authorized agent, that they were made on the credit of the vessel as well as on that of her owner. *The Emily Souder*, 17 Wall. 666, 670, 671. This presumption is not displaced by the fact that the libelants did not know at the time who the owner was, or that he was a non-resident. They were entitled to the benefit of the lien which the actual *status* of the vessel gave, in the absence of evidence that they waived or supplanted the lien. It was not necessary that anything should have been said about a lien. The libelants charged the repairs to the vessel. Nothing that occurred between the libelants and the agent of the owner amounted to a waiver of the lien; nor did the giving of 90 days' time in which to pay for the repairs.

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

3. The answer admits that the libelants did the work, and that whatever contract there was was with them. They dealt with the agent of the owner under the name of C. & R. Poillon.

4. The marshal's costs, as taxed at \$100, and with the taxation affirmed by the district judge, were paid by the claimant, as the decree states. They are not embraced in the appeal.

The libelants are entitled to a decree to the same effect with that of the district court, with costs in this court.

THE GRATITUDE.¹

(District Court, E. D. New York. July 13, 1885.)

TUG AND TOW—STRANDING—NEGLIGENCE IN PROCEEDING IN FOG.

A tug was held liable for the stranding of a boat in its tow, caused by the negligence of the master in proceeding in a fog on a course based upon a mere guess of the pilot as to their position, and in not anchoring.

In Admiralty.

Carpenter & Mosher, for libelant.

Jas. K. Hill, Wing & Shoudy, for claimant.

BENEDICT, J. Under the circumstances disclosed by the evidence, the immediate cause of the stranding of the libelant's boat upon the Negro Head rocks inside of Branford reef, upon Long Island Sound, is the conclusion arrived at by the master, when waked by the pilot, that it was proper to proceed in the fog rather than to anchor. If the master had then anchored, instead of proceeding, no disaster would have followed. The master knew that the pilot had hauled up to east, and was proceeding upon the idea that he had passed Branford reef. He also knew, or was bound to know, that the pilot had hauled up without knowing the distance run, and had acted upon the belief that he had passed Branford reef, when he had no facts upon which to found such a belief. In hauling up to east the pilot had acted upon a mere guess, as the master knew. Between proceeding in the fog upon a course based upon a mere guess of the pilot, and anchoring, by which safety would have been made sure, the master chose the former. To make such an election under the circumstances was, in my opinion, negligence, and renders the tug liable for the injuries caused the tow by the stranding that ensued.

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.