

that everything that the Hyatts did was known before, and that the modifications which they made in the process of manufacture were trivial, yet the fact still remains that their process was the first that was actually successful in the long attempt to make an article which should be both attractive and useful. Upon this state of facts the law as to patentability can hardly be doubted, because the history of the improvement demonstrates that, from 1855 to 1874, inventive skill of no ordinary character, and of different persons, had been most earnest and persevering in the effort to produce good celluloid.

If the plaintiff's process was of the character which, I think, the record discloses, the defendant cannot escape the charge of infringement by the circumstance that it first abnormally dries the wet pulp, whereas the plaintiff first substantially or comparatively dries it, and then, after the pulp and the camphor have been mixed, expels all the remaining moisture. By such an alteration of an important and valuable process infringement is not avoided.

The application for rehearing is refused.

THE MARY MORGAN.¹

(District Court, E. D. Pennsylvania. June 23, 1886.)

1. MARITIME LIEN—SUPPLIES AND REPAIRS—FOREIGN PORT.

A New Jersey corporation owned the steamer *Mary Morgan*, which was registered at the port of Philadelphia, and ran between there and Wilmington, Delaware, touching at Bridgeport, New Jersey, and Chester and Marcus Hook, Pennsylvania. The president, secretary, and treasurer of the company resided at Chester, where the repairs were made and supplies furnished under a contract with the president. *Held* that, as the repairs were made and the supplies furnished under a contract with the owner, the presumption was that the credit was given to him personally, and in the absence of proof of an express lien, none will be given.

2. SAME—NOTE IN PAYMENT.

When a note has been taken in payment for repairs to a vessel, and judgment had thereon, and the vessel has been taken in execution under that judgment, and sold for less than will satisfy it, there can be no lien against the vessel for the balance.

3. SAME—DEBTS CONTRACTED BY OWNER.

Semble, that implied liens for supplies and repairs to vessels have not been extended to debts contracted by the owner, saving, perhaps, in exceptional cases, where it appears that the circumstances are such as to forbid absolutely the presumption that the debt was contracted without a pledge of the vessel.

4. SAME—CORPORATION, WHEN FOREIGN.

Quere, would a corporation, chartered in one state, with a view to transacting business in another, having its property, office, and officers all there, be, in the sense involved, foreign to the latter state?

In Admiralty.

William Ward and *H. R. Edmunds*, for libellant.

Morton P. Henry, for respondents.

¹Reported by C. B. Taylor, Esq., of the Philadelphia bar.

BUTLER, J. This case is one of unusual interest. The vessel belonged to the Bridgeport Steam-boat Company, incorporated under the laws of New Jersey. It was enrolled in the collector's office at Philadelphia, and ran between Philadelphia and Wilmington, Delaware, touching at Bridgeport, New Jersey, and Chester and Marcus Hook, Pennsylvania. The debt was contracted for alterations, repairs, and supplies obtained to fit it for a voyage or voyages, from Philadelphia to Savannah and back, in the winter of 1885, while navigation on the Delaware was interfered with by ice. The debt was contracted by the president of the company, who, with the treasurer and the secretary, resided at Chester, where the work was done, and supplies furnished. The company held all its meetings (except annual meetings of stockholders) at Chester; and, so far as appears, transacted the principal part, if not all, of its business in this state. A note was given for the amount due, on which judgment was obtained in the common pleas of Delaware county, July 9, 1885. Under an execution issued on this judgment, and another issued by Mr. Bickley, the vessel was sold by the sheriff for \$5,000. The execution of Bickley, who became the purchaser, was before the libelant's in point of time; and whether the latter will be paid from the proceeds of sale is undecided. The libelant claims payment, and is now contesting the question with Bickley, in the common pleas of Delaware county.

Has the libelant a lien? The subject of implied lien, in the admiralty, is often a difficult and perplexing one. The principles upon which the doctrine rests are well defined and easily understood. Their application, however, has been such as to create uncertainty and confusion. Impressed with the disadvantages attending such liens,—unregistered and secret,—the courts started out with a cautious and sparing application of the doctrine, limiting its operation to cases (or rather classes of cases) where the circumstances not only justify, but demand, the implication of a pledge. More recently, in apparent forgetfulness or disregard of the reasons on which this limitation was founded, its operation has been extended in some directions, and such a disposition shown to extend it in others, that the courts have come to hesitate, and occasionally disagree, respecting the true line of limitation. Liens are implied for necessary repairs and supplies, where the debt is contracted by the master in a foreign port. The implication is founded on the ship's situation and presumed necessities. The master representing the owner, with authority to pledge the ship whenever his necessities require it, the law implies a pledge, where repairs are made or supplies furnished abroad, on his order.

It will be observed that this statement confines implied liens for repairs and supplies to debts contracted by the *master*. The rule was so stated uniformly until within a recent period. Conklin, (volume 1, p. 80,) after defining it in similar terms, says:

"To guard against possible misapprehension it is proper to say that no lien is ever *implied* from contracts of the *owner*. It is only the contracts which the master enters into, in his character of master, that specifically bind the ship, or affect it by way of lien or privilege, in favor of the creditor. When the owner is present, acting on his own behalf as such, the contract is presumed to be made with him, or on his ordinary responsibility, without a view to the vessel."

In *The St. Jago de Cuba*, 9 Wheat. 410, the court says:

"The whole object of giving admiralty process and priority of payment to privileged creditors is to furnish wings and legs to get home for the benefit of all concerned. It is not in the power of any one but the ship-master—not the *owner himself*—to give these implied liens on the vessel. The law marine attaches the power of pledging or subjecting the vessel to material-men, to the office of *ship-master*. The necessities of commerce require that, when remote from his owner, he shall be able to subject the owner's property to that liability, without which it is reasonable to believe he will not be able to pursue his owner's interests. *When the owner is present the reason ceases*, and the contract is inferred to be with the owner himself, on his ordinary responsibility, without a view to the vessel."

In *Thomas v. Osborn*, 19 How. 22, the chief justice says:

"Now, if Leach is to be regarded as *owner* for the time, then, by the maritime law, the repairs and supplies furnished at his request are presumed to have been furnished upon his personal credit, unless the contrary is shown; and in that view of the subject Loring & Co. [the libelants] have not, and never had, any lien on the vessel. But if, on the contrary, Leach is to be regarded as the *master*, and as making the contract by virtue of his authority, over the bark in that character, then the repairs and supplies in a foreign port, if necessary to enable the vessel to proceed, are presumed to have been made on the credit of the vessel, unless the contrary is shown. It is immaterial that this is found in a dissenting opinion. There was no question respecting the law. The disagreement was about facts,—the relation which Leach bore to the vessel."

Justice CURTIS, speaking for the court, in the same case, said:

"It is true, it [the implied lien] does not exist in a place where the owner is present. But this doctrine cannot be safely extended to the case of an owner *pro hac vice*, in command of a vessel. Practically, his special ownership leaves the enterprise subject to the same necessities as if the master was merely master, and not the charterer."

In *The Grapeshot*, 9 Wall. 136, the rule is similarly stated.

In *The Lulu*, 10 Wall. 203, Justice CLIFFORD says:

"Viewed in any light, it is clear that the necessity for credit must be presumed, where it appears that the repairs and supply were ordered by the master alone, and were necessary."

In *The Emily Sowden*, 17 Wall. 667, the court says:

"The presumption is, in the absence of fraud, that where allowances are made to a captain in a foreign port, to pay for necessary repairs and supplies to enable his vessel to prosecute her voyage, they are made on the credit of the vessel."

In *The Mary Bell*, 1 Sawy. 135, where the master was owner also, a lien for repairs in a foreign port was implied, because, as the court