

THE BROTHERS APAP.<sup>1</sup>

## ZACCARO v. THE BROTHERS APAP.

(District Court, E. D. New York. February 17, 1838.)

## MARITIME LIENS—ENFORCEMENT—UNSATISFIED JUDGMENT IN STATE COURT.

A judgment recovered in a state court against a master for the value of supplies furnished a vessel, and which remains unsatisfied, is no bar to the enforcement in admiralty of the lien upon the vessel for such supplies.

## In Admiralty.

John A. Anderson, for libellant.

Ullo, Ruebsamen & Hubbe, for claimants.

BENEDICT, J. This is an action *in rem* to enforce against a foreign vessel a lien for certain supplies furnished to the vessel in the port of New York. The furnishing of the supplies is proved, and there is no sufficient proof to warrant the finding that they were furnished on a personal credit alone. The only question in the case arises out of the fact that prior to instituting this proceeding the libellant brought suit against the master of the vessel in a state court for these same supplies, in which action he recovered a judgment against the master, but of which judgment he has been unable to obtain any satisfaction. The contention on the part of the claimant is that the libellant lost his lien upon the ship by suing the master as he did. I cannot agree with the claimant in this contention. Upon principle, it seems to me that in cases where a lien upon the ship arises, and also a personal liability on the part of the master and the owner as well, the creditor must be allowed to pursue each of these remedies in succession, until he obtains satisfaction of his debt. That he should be able to do this seems to me to be the reason why these several remedies are given by law. Surely the value of the rule will be largely diminished if it be held that a futile attempt to enforce the master's personal liability deprives the creditor of the benefit of the ship's liability. The case of *The Bengal*, 1 Swab. 468, and *The John and Mary*, Id. 471, are directly in point, and adverse to the contention of the claimant. Judge STORY has somewhere remarked to the same effect, but I cannot now find the case. No adjudged case in this country has been called to my attention, except the case of *The Swallow*, 1 Bond, 189, which seemshardly in point. There the creditor had elected to enforce a lien given by the state law.

Let the libellant have a decree for the amount of the bill, with interest and costs.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

## BAKER v. UNITED STATES.

*(Circuit Court, D. California. March 5, 1888.)*

## COURTS—JURISDICTION—CLAIMS AGAINST UNITED STATES—SURVEYING CONTRACTS.

The act of Congress March 3, 1887, (24 St. 505,) provides that where the amount in controversy is between \$1,000 and \$10,000 the circuit courts shall have concurrent jurisdiction with the court of claims of "all claims \* \* \* founded upon \* \* \* any law of congress, \* \* \* or upon any contract, express or implied, with the government of the United States," etc.; "claims which have heretofore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same" being excepted. The complaint upon a surveying contract set out that the surveyor general of California had approved the field-notes, and certified them, as well as the performance of the work, but that before he forwarded his report to Washington, D. C., he was instructed by the commissioner of the general land-office to proceed no further in the matter. Under the terms of the agreement, this report should have gone to the said commissioner, and, if approved by him, been then referred to the auditor for final allowance and payment. *Held*, on demurrer to complaint, that the claim had not been "heretofore rejected or reported on adversely," within the meaning of the act, and that the circuit court, sitting in California, had jurisdiction, the amount sued for being between \$1,000 and \$10,000.

At Law. On demurrer to complaint.

A. P. Van Duzer, for plaintiff.

J. C. Carey, U. S. Atty., for defendant.

SAWYER, J., (*orally*.) This is a suit on one of these surveying contracts,—a civil suit to recover the amount due on one of these contracts,—the persons connected with which are under indictment in this court for conspiring to defraud the government. The point is made and urged, that the court has no jurisdiction, for the reason that this particular claim has already been passed upon by the land department at Washington, and rejected; and that it so appears upon the face of the complaint. I do not so read it. The contract is set out in full, and in connection with the other allegations in the complaint, I think, a good cause of action is stated. The objection made to the jurisdiction is, that the case stated is not within the terms of the act, as it appears to have been considered and rejected by the proper department.

The act of March 3, 1887, conferred jurisdiction on the court of claims to hear and determine "all claims \* \* \* founded upon \* \* \* any law of congress, \* \* \* or upon any contract, express or implied, with the government of the United States," etc., provided nothing in the act shall be construed to give jurisdiction to hear and determine "claims which have heretofore been rejected, or reported on adversely by any court, department, or commission authorized to hear and determine the same." 24 St. 505. Section 3 gives concurrent jurisdiction to the circuit courts over all such claims wherein the amount claimed exceeds \$1,000, and is less than \$10,000. I am not fully satisfied what the exception as to a determination or reporting against by a department is in-