Court of Errors and Appeals.

New Jersey ~~Supreme Court.~~

JOHN A. CARNIE, *Defendant in Error,* *vs.* FRANK BAEDER and PETER WILKINS, *Plaintiffs in Error.*	*In Debt.*

STATEMENT.

This suit is brought on a bond given under an act entitled "An Act for the collection of demands against ships, steamboats and other vessels," approved March 20, 1857. (Revision, 1877, p. 585.)

The yacht Germania was attached, under a claim made by the plaintiff for work done and materials furnished in the repairing, fitting and furnishing of said steamboat, and, in order to discharge the attachment, the defendants were obliged to give the bond on which the suit is brought.

The action was tried before Justice Knapp and a jury, and a verdict was given in favor of the plaintiff against the defendants for a part, but not the whole of the plaintiff's claim. The contract, as stated by the plaintiff himself, is on page 14, lines 12–30, inclusive. He says the contract was made in the City of New York, in February, 1881; that there was no change afterwards made in that bargain; that it all rested on that one bargain; that the bargain was that the plaintiff should go to work to put the yacht in complete repair as soon as possible, her engine, boilers, and all appertaining

thereto, so that she would be in perfect running order; that if the plaintiff did not put her in perfect running order there would not be a completion of the bargain on his part. The plaintiff contended that he had complied with the agreement and had put her in perfect running order. The defendants denied it.

The defendants desired the Court to instruct the jury that if there was an entire contract, as testified to by the plaintiff, and if the jury found that there was no completion of the entire contract, then there could be no recovery. The Court refused to charge that, and, on the contrary, laid down the rule that the jury might find for the plaintiff what the services and labor were reasonably worth that had been performed by him, even if the contract had not been fully completed, holding that there was no such thing as an entire contract where there was no price fixed.

Another question arose as to the right of the Legislature to impose a maritime lien upon the vessel, as they had attempted to do, this action being not an action for the value of the goods and services rendered, but on the bond given to discharge the attachment of the vessel.

Another point made was that the Act of 1857 only authorized the proceedings in question when the debt was contracted in the State of New Jersey, whereas the defendants contended, under the plaintiff's own testimony, that the contract was made in the City of New York, and that the debt was there contracted.

POINTS.

I.

Upon the exceptions which raised the question as to this being an entire contract, under the testimony of the plaintiff, defendants contend that if it was such entire contract, the refusal of the Judge to permit the question to go to the jury was error.

The Judge held that it was not an entire contract (p. 32), because the price had not been agreed upon in some definite way. Defendants contend that this is not the law.

"Part performance of an entire contract, where there "is manifestly no intention to sever, change, or in any "wise alter or modify the contract, as originally made, "furnishes no ground of recovery *pro tanto*."

"The entire performance is a condition precedent to "the payment of the price, and the courts cannot ab-"solve men from their legal engagements or make con-"tracts for them."

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"The full performance is a condition precedent to the "right to any payment upon a contract to erect a house "without any agreement in respect to the sum to be paid "or the times of payment, except that the labor was by "day's work."

Cunningham *v.* Jones, 20 N. Y., 486.

The Court says at page 488: "The contract was an "entire one and indivisible, and Burwick, the contractor, "was not entitled to recover without a full performance "on his part. It matters not that no price was fixed "upon as a compensation. The defendant, on completion "of the work, would be liable to pay what the work and "materials would be reasonably worth, having the right "to insist, however, that the contract should first be per-"formed. Instead of performance he willfully abondoned "the work in an unfinished state, leaving it on the hands "of the defendant to complete, subjecting him to the "damages necessarily arising from such a course."

In the dissenting opinion of Selden, *J.*, he quotes the case of Roberts *v.* Havelock, 3 Barn. & Adolph, 404, where the Court held that the plaintiff was entitled to recover where he refused to go on until he had been paid for what had been done, the contract being to put a ship

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which was in a damaged state in thorough repair. Lord Tenderden, *C. J.*, in that case says:

"There is nothing in the present case amounting to a "contract to do the whole repairs and make no demand "until they are completed. The plaintiff was entitled "to say that he would proceed no farther with the repairs "until he was paid what was already done."

Littledale, *J.*, in that case says:

"The plaintiff undertook this work in the same way "that shipwrights ordinarily do. It does not follow from "anything that passed that he might not stop from time "to time in the course of the work, and refuse to pro-"ceed till he was supplied with money."

Parke, *J.*, says:

"If there had been any specific contract on the part of "the plaintiff for completing the work the argument for "the defendant might have had much weight. But this "was only a general employment of the plaintiff by the "defendant in the same way as all shipwrights are em-"ployed."

The defendants suggest that the difference between the present case and that in 3 Barnwell & Adolphus, is that in the present case the plaintiff did agree to complete the work and put the yacht in thorough repair, as appears by his testimony (p. 14), when he admits that if he did not put her in perfect running order he did not complete his bargain.

The defendants suggest that the English case is not an authority against them, and, even if it were, that the case in 20 N. Y. is on all fours with the present case, and that the reasoning in that case is sound.

Mr. Smith, in his learned note to Cutter *v.* Powell (2 Smith's leading cases, 7 Am. Ed., pp. 32, 33), criticising the case in 3 Barnwell & Adolphus, says:

"——— but where no price is specified, this difficulty "does not arise, and perhaps the true and right presump-"tion is, that the parties intended the payment to keep "pace with the accrual of the benefit in which payment "is to be made. But this, of course, can only be where "the consideration is itself of an apportionable nature,

" for it is easy to put a case in which, though no price
" has been specified, yet the consideration is of so indi-
" visible a nature that it would be absurd to say that one
" part should be paid for before the remainder, as where
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" he has then received no benefit, and never will receive
" any, unless the likeness should be perfected."

Mr. Parsons, in 2 Parsons on Contracts (5 Ed.), p. 521, upon this same subject, says:

" Contracts have been held apportionable in which the
" service to be performed was specified and fixed, but the
" consideration to be paid was left to be implied by law.
" But this cannot be laid down as a general rule."

He cites the case of Roberts *v.* Havelock in a note to the above proposition, as laid down by him.

If Mr. Parsons is right, that there is no general rule, then no such rule as is contended for by the plaintiff ought to be laid down in this case, because it is certainly unjust to allow a party to recover on a contract to put an engine in complete running order, when he testifies that, if he did not put the yacht in perfect running order, then he had not completed his bargain, for, in point of fact, the engine was not put in perfect running order.

The error in this case was that the Court refused to let that question go to the jury, but took it away from them by saying that this was not an entire contract, and that they might allow on a *quantum meruit*, even although the boat had not been put in perfect running order.

As a matter of fact in this case, the defendants proved that they had to expend a large sum of money afterwards, in order to put the boat in running order, and the bills for this are annexed to the testimony. In addition to the bills and the plaintiffs' testimony, is the testimony of the mechanics who did the work, and who testified that it was work necessary to be done. This is not important, however, in this Court, because this question was practically withdrawn from the jury by the Judge under his charge.

II.

That it is a maritime lien, and that the act is unconstitutional—

"State Legislatures have no authority to create a mari-
"time lien, nor can they confer any jurisdiction upon a
"State Court to enforce such a lien by a suit or proceed-
"ing *in rem*, as is practised in the Admiralty Courts."

The Belfast, 7 Wall., 644.

See also to the same effect with reference to the statute, The Moses Taylor, 4 Wall., 411, etc., and The Hine *v.* Trevor, 4 Wall., 556, etc.

In the State of New York, under an act similar to ours, a bond was given, and the Court of Appeals held that in an action upon the bond given to obtain the release of the vessel from attachment the bond is void, it being given under the provisions of the statute, it is given in *invitum.*

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III.

The evidence in this case is clear that the contract was made in the City of New York; the plaintiff so testifies (p. 14); he says "it was made at my place of business in "West street, New York City; there was not any "change in that bargain afterwards; it all rested on that "one bargain."

The 1st section of the Act of 1857 provides (Revision, p. 586): "Whenever a debt shall be contracted by the "master, owner, agent or consignee of any ship or vessel "within this State———such debt shall be a lien upon "such ship," &c.

The Judge below took the view, that the work being done in New Jersey, the debt was contracted in New Jersey. The defendants contend that the bargain being

to put the yacht in complete running order, the bargain having been made in New York, the plaintiff alleging that he had completed that bargain and suing upon that bargain, whatever indebtedness attached was one that was contracted in New York City, and not in this State.

If this view of the defendants be correct, then the plaintiff did not bring himself within the act, and the Court should have so held.

IV.

The Court erred in refusing to instruct the jury that if they found there was an entire contract, as testified to by the plaintiff, and that the contract was not completed, then there could be no recovery in this action.

V.

The Court erred in instructing the jury as to the law of entire contracts.

VI.

The Court erred in instructing the jury in regard to plaintiff receiving the benefit of what he did for defendant, even if the contract were not completed.

VII.

The judgment of the Supreme Court should be reversed.

LEON ABBETT,

~~*Defendant's*~~ *Attorney.* of Plaintiff in Error

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In the month of February, 1881, the "Yacht Germania" was lying at the city of Hoboken, in the County of Hudson, in this State, at which time Frank Baeder, one of the owners, ordered the plaintiff below, John A. Carnie, to put the yacht in complete repair.

Carnie's shop is in West street, New York city. The order to do the work was given at the shop in New York.

Nothing was said by either party about the amount

thereto, so that she would be in perfect running order; that if the plaintiff did not put her in perfect running order there would not be a completion of the bargain on his part. The plaintiff contended that he had complied with the agreement and had put her in perfect running order. The defendants denied it.

The defendants desired the Court to instruct the jury that if there was an entire contract, as testified to by the plaintiff, and if the jury found that there was no completion of the entire contract, then there could be no recovery. The Court refused to charge that, and, on the contrary, laid down the rule that the jury might find for the plaintiff what the services and labor were reasonably worth that had been performed by him, even if the contract had not been fully completed, holding that there was no such thing as an entire contract where there was no price fixed.

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POINTS.

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In the month of February, 1881, the "Yacht Germania" was lying at the city of Hoboken, in the County of Hudson, in this State, at which time Frank Baeder, one of the owners, ordered the plaintiff below, John A. Carnie, to put the yacht in complete repair.

Carnie's shop is in West street, New York city. The order to do the work was given at the shop in New York.

Nothing was said by either party about the amount

of work to be done, nor about the quantity or quality of materials to be used, nor the price to be paid therefor.

All the work was done and materials furnished on the boat at the city of Hoboken, in this State, between the 23rd day of February and the 1st day of May, A. D. 1881.

See bill of items, page 34, printed case.

The plaintiffs' claim, duly verified, was presented to Hon. Frederick B. Ogden, Supreme Court Commissioner, who issued his warrant against the vessel on the 17th day of May, 1881.

She was seized by the Sheriff of Hudson County on the 18th of May, 1881.

The bond to the plaintiff below (Exhibit P. 4. page 39) was executed on the same day ; on the 19th day of May the bond was approved by the Commissioner and delivered to the plaintiff, Carnie, and the vessel discharged.

The suit on the bond was brought to enforce payment of the claim.

POINTS.

By JOHN C. BESSON,

Counsel for Defendant in Error.

I.

The declaration of the plaintiff below and the matters therein stated are sufficient, &c.

The action is on a bond given under the twelfth sec-

tion of the act entitled, "An act for the collection of demands against ships, steamboats and other vessels." Approved March 29, 1857, Rev. L., p. 586.

See Gaddis et. al., vs. Howell et. al., 2 Vr., p. 313.

II.

It is not necessary that the contract for the work done or materials furnished to the vessel should be made in this State to make the debt a lien on the vessel under the statute.

The language of the act is:

"I. Whenever a debt shall be contracted by the "master, owner, agent or consignee of any ship or "vessel, within this State, for either of the following "purposes:

"1. On account of any work done or materials or "articles furnished in this State, for or towards the "building, repairing, fitting, furnishing or equipping "such ship or vessel * * * * * "such debt shall be a lien, &c."

The words, "within this State," manifestly refer to the "ship or vessel," and not to the contract.

The vessel was in this State; the work was done and the materials were furnished in this State.

III.

In this case the debt was contracted in this State.

The plaintiff below was in the city of New York when he was requested to do the work, &c., sued for.

That was not a contract, there was no consideration which would bind either party. There was no price agreed upon for anything to be done or furnished.

The contract arises out of the implied promise of the owner to pay for work actually done and materials furnished at his request.

Therefore in this case the contract was made at the time and place, when and where, the work was done.

IV.

There is no error in the charge of his Honor the Justice to the jury.

"1. Entire contracts are those the consideration of "which is entire on both sides.

"Whenever, therefore, there is a contract to pay a "gross sum for a certain and definite consideration "the contract is entire." Bouv. L. D., title Contract.

"If the part to be performed by one party consists "of several distinct and separate items and the price "to be paid by the other is apportioned to each item to "be performed, or is left to be implied by law, such a "contract will generally be held to be severable."

2. Parsons on cont., p. 517 and cases, cited in note, Beach vs. Mullin, 5 Vr., 343.

Roberts vs. Havelock, 3, B. & Ad., 404, cited in note to Cutter vs. Powell, 2, Smith's L. C., p. 32, (Seventh Am. Edition.)

2. The exception to the general rule in regard to entire contracts is correctly stated by his Honor the Justice in his charge to the jury. 2, Smith's L. C., p. 34, (Seventh Am. Edition). Farnsworth vs. Garrard, 1, Camp. 38. Parsons on contracts, p. 523, note I.

New Jersey Supreme Court.

JOHN A. CARNIE, *Defendant in Error,* *vs.* FRANK BAEDER AND PETER WILKINS, *Plaintiffs in Error.*	*In Debt.*

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New Jersey Supreme Court of the Second day of June, A. D. 1881.

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Witness,

M. BEASLEY, ESQUIRE,
Chief Justice.

BENJ. F. LEE, *Clerk.*

HUDSON COUNTY, *ss.*

Frank Baeder and Peter Wilkins, the defendants in this suit, were summoned to answer unto John A. Carnie, the plaintiff therein, of a plea that they render unto him the sum of five hundred dollars, which to him they owe and from him unjustly detain.

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And, thereupon, the said plaintiff above mentioned, by John C. Besson, his attorney, complains: For that heretofore, to wit, between the twenty-third day of February, eighteen hundred and eighty-one, and the first day of May in the same year, the plaintiff did work and furnished materials for and towards the repairing, fitting and furnishing of the steamboat called "Yacht Germania," formerly called Launch Annie Mills, at the special request of Frank Baeder one of the owners of the said boat, and thereby the said Frank Baeder became indebted to the said plaintiff in the

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sum of two hundred and forty-one dollars and nineteen cents; that said debt, being a subsisting lien against the said steamboat, according to the statute entitled "An act for the collection of demands against ships, steamboats and other vessels," approved March 20th, 1857, and the supplements thereto, the said plaintiff exhibited his claim in due form of law to Frederick B. Ogden, Esq., a Supreme Court Commissioner of New Jersey, and made application to him for a warrant to enforce his said lien against said steamboat, 10 and that thereupon the said Commissioner, on the seventeenth day of May, eighteen hundred and eighty-one, issued a warrant to the Sheriff of the County of Hudson, commanding him to attach the said steamboat, her tackle, apparel and furniture, and to keep the same safely until discharged by due course of law, to answer all such liens as should be established against her according to law, and to return said warrant to said Commissioner within ten days after such seizure; that the said Sheriff did, on the eighteenth day of May, eighteen hundred and eighty-one, attach and 20 seize the said steamboat with her tackle, apparel and furniture, and return the said warrant to said Commissioner as therein commanded; that Frank Baeder, being one of the owners of said steamboat, before any order for the sale of said boat, &c., had been made under said proceedings, applied to said Commissioner for an order to discharge the said boat; and thereupon the said defendants, to obtain such discharge, heretofore, to wit, on the eighteenth day of May, in the year of our Lord eighteen hundred and eighty-one, at the city of Hoboken, in the County of Hudson, 30 aforesaid, did make and execute under their hands and seals, and deliver to the said Commissioner a certain bond or writing obligatory, the date whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid, which said bond or writing obligatory the said plaintiff now brings here into court sealed as aforesaid, with the seals of the said defendants, and the said defendants did therein and thereby acknowledge themselves to be held and firmly bound unto the said plaintiff in the sum of four hundred and eighty-two dollars and thirty-eight cents lawful 40 money of the United States of America, to be paid to the

said plaintiff, his executors, administrators or assigns; which said bond or writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit:

That, whereas, on or about the seventeenth day of May, eighteen hundred and eight-one, a warrant was issued by Frederick B. Ogden, Esq., a Supreme Court Commissioner of the State of New Jersey, according to the provisions of an act of the Legislature entitled "An Act for the collection of demands against ships, steamboats and other vessels," approved March 20th, 1857, and the supplements thereto, against the steamboat "Yacht Germania," formerly called "Launch Annie Mills," upon the written application of John A. Carnie, for work and materials furnished in the repairing, fitting and furnishing of said steamboat "Yacht Germania," to the amount of two hundred and forty-one dollars and nineteen cents.

It was conditioned that if said Frank Baeder should well and truly pay, or cause to be paid, unto said John A. Carnie the amount of all such claims and demands as should have been exhibited, which shall be established to have been subsisting liens upon said steamboat "Yacht Germania," then the said bond or writing obligatory should be void, otherwise to remain in full force and virtue, as by the said bond or writing obligatory and the condition thereof, reference being thereunto had will more fully and at large appear.

Whereupon, the said Commissioner, after approving said bond, discharged and surrendered the said steamboat, and the plaintiff avers that the said claim for work done and materials furnished for and towards the repairing, fitting and furnishing of the said steamboat, so exhibited as aforesaid, was, at the time of the exhibition thereof as hereinbefore stated, a subsisting lien on the said steamboat "Yacht Germania," by the statute in such case made and provided.

And yet the said Frank Baeder hath not paid the said claim of the said plaintiff nor any part thereof, but hath hitherto neglected and refused and still neglects and refuses so to do;

Whereby the said bond or writing obligatory hath be-

come forfeited, and an action hath accrued to demand and have of and from the said defendants the said sum of four hundred and eighty-two dollars and thirty-eight cents, above demanded.

Yet the said defendants, although often requested, have not paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but to pay the same or any part thereof have hitherto wholly refused, and still do refuse, to the damage of the said plaintiff of three hundred
10 dollars, and, therefore, he brings his suit, &c.

JOHN C. BESSON,
Atty. for Pltff.

NEW JERSEY SUPREME COURT.

FRANK BAEDER and PETER WILKINS, *ads.* JOHN A. CARNIE.	*In Debt.*

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PLEA AND NOTICE.

And the said defendants, by Leon Abbett, their attorney, come and defend the wrong and injury when, &c., and say that they do not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiff hath above complained, and of this the said defendants put themselves upon the country, &c.

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LEON ABBETT,
Att'y def'ts.

To the Plaintiff or his Attorney, John C. Besson, Esq.:

You will please take notice that on the trial of the above action the defendants will offer evidence under the above plea of the following special matter as a bar to the action:

30

First.—That the defendants employed the plaintiff to repair, refit, and to put in thorough running order the boiler and machinery of the steamboat "Yacht Germania," owned by the defendants, and that the plaintiff agreed to make all the repairs and furnish all the materials necessary to put the machinery of said steamboat in perfect running order; and that said steamboat was delivered to said plaintiff under that agreement and for that purpose. That the plaintiff had possession of said steamboat for the purpose of making such repairs about two months, when he noti-

40

fied defendants that the repairs were completed, and the steamboat was in perfect running order, and delivered the boat to the defendants. That on attempting to use said steamboat after the making of said alleged repairs, the machinery would not work properly, but the said repairs had been made in such a poor and unworkmanlike manner, and such poor materials had been used, that the machinery would not work and was entirely unfit for use, and in an unsafe and dangerous condition. That the defendants noti-
10 fied the plaintiff of the condition of said steamboat, and requested him to put said steamboat in proper running order as agreed. That the plaintiff refused and neglected to make such repairs as requested.

Second.—That by reason of the condition of said steamboat, when delivered by said plaintiff to defendants, and the poor materials used, and the unworkmanlike manner in which such repairs had been made by the plaintiff, defendants were unable to use said steamboat and were deprived
20 of the use thereof for a long time, and by reason of the refusal and neglect of the said plaintiff to put said steamboat in proper running order as agreed, when notified so to do, the defendants were obliged and compelled to lay out and expend a large sum of money, to wit, $189 $\frac{89}{100}$, in refitting, repairing and putting in perfect running order the said steamboat, and in making the repairs agreed to be made and furnishing the materials agreed to be furnished by the plaintiff.

LEON ABBETT,
30 *Att'y def'ts.*

Afterwards, to wit: On the first Tuesday of September, in the year of our Lord, one thousand eight hundred and eighty-one, at a Circuit Court holden at the Court House in Jersey City, in and for the county of Hudson, before the Hon. Manning M. Knapp, one of the Justices of the Supreme Court of the State of New Jersey, according to the form of the statute in such case made and provided, come, as
40 well as the within named John A. Carnie, plaintiff, and the

within named Frank Baeder and Peter Wilkins, defendants, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being summoned also come, who to speak the truth of the matters within contained, being chosen, tried and sworn upon their oath, say that the within mentioned writing obligatory is the deed of the said Frank Baeder and Peter Wilkins, as the said John A. Carnie, plaintiff, hath within in that behalf alleged. And the said jurors upon their oath aforesaid say, that the sum of two hundred and thirty-one dollars and 10 twenty-seven cents was due to said John A. Carnie, the within named plaintiff, upon his claim or demand, which by the provisions of the within mentioned statute, entitled "An Act for the collection of demands against ships, steamboats and other vessels," approved March 20, 1857, and the supplements thereto, was a subsisting lien upon the within mentioned vessel "Yacht Germania" at the time of the exhibition thereof as in said act provided, as the said plaintiff hath within in that behalf alleged. And they assess the damages of the said John A. Carnie on occasion of the de- 20 taining the within debt, over and above his costs and charges by him about his suit in that behalf expended, to two hundred and thirty-one dollars and twenty-seven cents, and for those costs and charges to six cents.

Therefore, &c.,

M. M. KNAPP,
J. S. C.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE LAST RESORT IN ALL CAUSES.

10	FRANK BAEDER, ET ALS., *Plaintiffs in Error,* *vs.* JOHN A. CARNIE, *Defendant in Error.*	*In Error. Assignment of Errors.*

And the said Frank Baeder and Peter Wilkins, by Leon
20 Abbett, their attorney, come and say that in the record and proceedings aforesaid, there is manifest error in this, to wit:

That the declaration aforesaid and the matters therein contained are not sufficient in law for the said John A. Carnie to have his said action against the said defendants, (plaintiffs in error).

There is also error in this, to wit:

Because the said Justice before whom the said cause was tried, at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused the motion for
30 a non-suit made by the plaintiff in error when the plaintiff (defendant in error) rested his case, which motion was made upon the ground that the proceeding was a statutory one, and an attempt to impose a maritime lien upon a vessel not being an action for the value of goods and services, but being on the bond, the party must show himself within the act.

The contract must be made in this State, whereas it was made in the State of New York.

Because the said Justice when requested to charge the jury, that "if they find there was an entire contract, as testi-
40 fied by the plaintiff, and if they find that the contract was

not completed there can be no recovery in this action," refused to charge the jury further than as follows: "In this case if this is an entire contract and the plaintiff has performed it entire on his part, that is if he has done what he was to do, put the vessel in proper running order or whatever the language of that contract was, then he is entitled to be paid, not necessarily what he charges here, because in this contract there is no specific sum agreed upon, but what his services and materials are reasonably worth."

Because the said Justice erred in instructing the jury on 10 the law of entire contracts, as follows: "An entire contract, as I understand it in the law, is one where the consideration on both sides is entire, and as applicable to this case, it means that the price should have been agreed upon in some definite way and not left to uncertainty or the implied obligation to pay, and if that is the contract, and of that there seems to be no doubt, it seems to me that it does not come within the range of entire contracts under the law."

Because the said Justice in his charge to the jury, charged 20 and instructed them as follows:

"So too, if this contract had been such as might be regarded as entire, there is an exception to the general rule that *indebitatus assumpsit* will not lie, and that is where the services are not strictly up to the fulfillment of the contract, but the party for whom the services are performed and material furnished has received and appropriated the benefit without paying such value as the party so appropriating has received from it."

Because the said Justice in his charge to the jury in re- 30 gard to the plaintiff receiving the benefit of what he did do, charged and instructed them as follows:

"It is a rule of equity and justice and forms one of the exceptions to the general rule, where the party accepts and receives so much of the work and material as the defaulting party supplies, the law will not permit him to take the benefit of that without paying for such benefit as he has actually received and appropriated."

Because that there is also an error in this:

That the judgment aforesaid was given for the defendant 40

in error and against the plaintiff in error, where as by the law of the land said judgment ought to have been given for and not against said plaintiff in error.

And the said plaintiffs in error pray that the judgment aforesaid for the errors aforesaid and for other errors in said record and proceedings may be reversed, annulled and altogether holden for naught, and that the said plaintiffs in error may be restored in all things.

LEON ABBETT,

10 *Atty. for Plff. in Error.*

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT, SEPTEMBER TERM, A. D., 1881.

JOHN A. CARNIE *vs.* FRANK BAEDER, ET AL.	*In Debt.*

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Mr. Besson appearing for plaintiff.
Mr. Abbett appearing for defendants.

Be it remembered, that at a Circuit Court held at Jersey City in and for the County of Hudson, before the Honorable Manning M. Knapp, Judge of the said Circuit Court, according to the form of the statute in such case made and provided, on the thirteenth day of September, in the year one thousand eight hundred and eighty-one, came on to be tried the several issues in the above stated cause joined between the said John A. Carnie and Frank Baeder and Peter Wilkins (*pro ut*, the same), at which day before the said Judge came as well the said John A. Carnie as the said Frank Baeder and Peter Wilkins, by their respective attorneys aforesaid, and the jurors of the jury aforesaid, whereof mention is within made being called, likewise came and were sworn to try the several issues in manner aforesaid respectively joined.

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And thereupon to maintain the said issues on his part the plaintiff offered evidence as follows:

Plaintiff offers in evidence the complaint presented to the Commissioner, Frederick B. Ogden, and the warrant issued by him, and the order of discharge, and the bond of defendants to the plaintiff dated May 18, 1881.

40

(Execution of the bond is admitted by defendants.)

[The complaint, warrant, order of discharge and bond are annexed hereto as Exhibits P^1, P^2, P^3 and P^4.]

John A. Carnie, the plaintiff, being sworn in his own behalf, testifies as follows:

10 *Direct examination*, by Mr. Besson.

I am the plaintiff; my business is boilermaker and machinist; I know the Yacht Germania; I worked on her last spring.

Q. State the circumstances of employment, and what you did.

A. I was employed by Frank Baeder to do certain repairs. She had been sunk for a long time before they 20 bought her. I was to clean her out and get her ready for steam as soon as possible; that was in February, March and April, I think, of 1881. I made and put on a new propeller wheel; had made and put in new water tanks to suit the parties, cleaned and repaired the boiler and engine, cleaned out the bottom, cleaned the ice, mud, coal, &c. out of the bottom, and such other work as I saw necessary and such as they ordered; everything I thought was required.

Q. Where was this steam yacht?

30 *A.* Sometimes in Hoboken and sometimes at Elysian Fields.

Q. Did you keep a book account where you entered what you did on this vessel?

A. Yes, sir. I have my book here; it is my book of original entry, and the only book containing this account. This book contains a correct account of what was done on this vessel and the time of the men employed and the materials furnished.

40 Mr. Besson purposes offering the book in evidence.

Cross-examined by Mr. Abbett as to the entries in the book:

Q. In whose handwriting are the entries in the book?

A. My clerk's, Robert C. Smith; he is in New York; he made these entries at my place of business, 223 West street, New York city.

Q. How does he get the facts from which to make his entries?

A. From the men who work by the day, and what they get on the job; they report to him not in writing but verbally. 10

Q. There is nothing written by anybody except what is written by your clerk upon the verbal report of the men?

A. That is all.

Q. Neither you nor he knew anything personally about it?

A. I know a great deal about the details, but I have not written anything in here, and I reported some to him.

Q. Outside of what you reported to him, personally you don't know anything about the facts except as you are told by the men? 20

A. Yes, I do, because I am with the men a great deal, and know that they have done so and so, and the men make reports, and I report articles and time and material myself.

Mr. Besson offers the book in evidence, and *resumes direct examination:*

30

Q. Does that book contain a correct statement of the time of your men on this vessel?

A. Yes, sir.

Q. How many days work was done upon this vessel?

A. In the three months, to the best of my knowledge, thirty or thirty-one days; it is down in the book in detail; it figures thirty-one and a quarter days; that is right; at three dollars per day; the price per day was not agreed upon; my price then was three dolars per day; that is what I charged everybody; some men in my business 40

charge more; I paid out money for materials which were out of my line of business; these bills which I produce are the bills I paid; I think there are one or two small bills that I have not got here; these are the majority of them; I paid all this batch of bills; everything charged in these bills was used on that vessel; this bill of items is taken from my books of account, and is a correct copy of the charges against this vessel; the total amount is $241.19; that is the amount I claim is due me for labor and materials
10 furnished on this vessel.

Cross-examined by Mr. Abbett:

Mr. Baeder called at my place of business in West street, New York City, and made this arrangement, about in February, '81; there was no change in that bargain afterwards; it all rested on that one bargain.

Q. State what Baeder said to you and what you said to Baeder that made this bargain?

20 *A.* I can tell the substance of it; that I should go to work and put that yacht in complete repair as quick as possible; her engine, boiler, and all appertaining thereto.

Q. So that she would be in perfect running order?

A. Yes, sir.

Q. That was the bargain?

A. Yes, sir.

Q. If you did not put her in perfect running order then you did not complete the bargain, did you?

A. Of course not.

30 *Q.* Then the only question is whether you did or did not do that?

A. That is it. If I did not put her in complete running order it does not follow that I was not to receive pay for what I did do.

Q. You think that if you make an agreement with a man to give him a steamboat that will run, and put it in condition so it will run, that if you fix it so that you can make steam but will not run, will not operate, that you are entitled to some pay?

40 *A.* Yes, I think so.

Q. You know that Baeder complained that she would not run?

A. He talked something about that she didn't perform, but he didn't know nothing about it.

Q. Did you work on the boat yourself?

A. Yes, I scraped out about a shovelful of ice and snow and threw it on the dock. I fired up the boiler once.

Q. You made two or three attempts to put the boiler in satisfactory condition after the complaints had been made?

A, The boiler was always in good condition. 10

Q. How about the engine?

A. The engine was not.

Q. Wasn't there two or three different attempts to put the engine in conditlon so it would work after complaints had been made to you that it did not?

A. No.

Q. What work did you do besides throwing dirt out?

A That's about all I did, personally. Two of my men did the other work; one was Houghtailing, the other Carnie. The repairs on the boiler would cost about $10; 20 repairs to smoke stack, &c., about $15; about $25 or $30 would cover expense of boiler. The great amount of work was on the engine and pipes. I have paid several bills for the parties: Smith's bill of $23.75 to connect hydrant on dock to fill the boiler; Bowes' Bros. bill, $33.86, for tanks, &c., Delamater's bill, $15.30; a coppersmith's bill; a bill for felting the boiler, $16. I gave them the benefit of all the discounts. This is what makes my bill seem so high; the parties wouldn't buy themselves but asked me to buy.

Q. You say it would take fairly 31¼ days to put that en- 30 gine and boiler in order?

A. That's the time of my men aboard that boat; a day's work is nine hours; if a workman leaves 223 West street at 7 a. m., goes up to the upper end of the Elysian fields and gets back to 223 West street at 5 o'clock, he can't do more than 4 or 5 hours' work a day on the boat; a man would be 4 or 5 hours on the way necessarily; this boat had lain at the bottom of the Hudson River; street dirt had been dumped into her and sunk; she was raised with this dirt in her and brought to Hoboken, then I got to work on her and it took 40

the best part of the work I done in February to get her cleaned out, 9 or 10 days, I think, to dig out dirt, ice and snow; she is about 30 feet long; I charge $3 a day for my men there; I did'nt employ laborers because I preferred to have men there who knew what they were about; I was there pretty much every day, 10 or 15 minutes some days; I lived 3 or 4 blocks away.

Q. What were the repairs?

A. Principally at pipes; new propeller wheel, couplings,
10 condensing apparatus.

Q. Do you think 22 days could be legitimately employed at that?

A. Yes, when you consider 4 or 5 hours a day's work; the engine was taken apart, examined and cleaned, and put in working order; where they make such engines a new one could be built in three weeks.

Re direct by Mr. Besson:

A. I went to this trade in '33 and have been at it ever
20 since. I am a practical mechanic. When I went to this vessel I noticed the amount of work the men did; they done fair work for the weather; a great part of the weather was not fit for men to work at all. It would take six men three weeks to build an engine like that in places where they get up that kind of engine.

Plaintiff rest.

30 Defendant moves to non-suit the plaintiff on the ground that this being a statutory proceeding and an attempt to impose a maratime lien upon a vessel, not being an action for the value of services and goods, but being on the bond under the act the party must show himself within the act. If the plaintiff were defeated here he could sue for work and materials. That to recover under the act the contract must be made in this State, whereas it was made in the City of New York.

40 Motion denied.

To this ruling of the Court refusing to grant a non-suit, a bill of exceptions is prayed by the defendants, and is allowed and sealed acordingly.

M. M. KNAPP. [L. S.]
J. S. C.

Edward Langford, a witnesss, being sworn on behalf of defendants, testifies:

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I am an engineer and machinist; licensed as engineer; had been an engineer and machinist 26 years; I am running the Yacht Germania, leisure hours, Sundays and evenings.

Q. State what you know about the repairs made to this yacht by Mr. Carnie, and subsequently by others, and her condition, and the tests made?

A. Mr. Baeder sent word to me to look at the boat; I was on the Harbor Master's boat; I looked at her; I went out with her one Sunday, and was afraid she would blow up; I went back; I told them I could'nt do anything with her; they said she had just been overhauled by Mr. Carnie, and they told me to see Mr. Carnie; I saw him; he came and looked at the boat and said he would send a man; no man came; a day or two after that I met Mr. Carnie, and he said he would not do anything to her till he got paid. At that time she was not in running order; it was not safe to go on her and run her; she might explode or blow some of the tubes out. I so informed Mr. Baeder. I sent for Michael J. Russell, one of Mr. Davis' partners, machinists; he came and did everything that was necessary that I told him to do; the repairs were necessary to put her in safe running condition; after they were done I could run it with safety. When I first saw her there was about seven inches of mud in the legs of the boiler; thick, hard mud; it took me four hours to get her clean. Carnie had got through when I first saw the boat. I could'nt see anything he had done to her; certainly nothing to warrant a charge of 31¼ days work, or anything like it.

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Cross-examined by Mr. Besson:

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Q. What did Russell do to the boat?

A. He drilled some holes in the boiler, put some new pipe into her, and some new globe valves on; altered the safety valve. The engine I had been running was the link motion, high and low pressure; this is the same now. I had it altered from low pressure; sometimes I work it low sometimes high pressure; I have worked it low pressure 50 or 60 times; high pressure for the last month. When I first saw the engine it wanted overhauling, and wanted a new piston, a new valve, an arm on cross-head, centre
10 straps and bearings all taken out and cleaned; new coupling on the shaft. I saw the engine taken apart and then I saw these things wanted to be done. I worked 7 years in a machine shop, from I was 13 years old till I was 20. Mr. Carnie told me he would not work on the boat till he had got paid for what he had done.

Michaal J. Russell, produced on behalf of the defendant being sworn testifies as follows:

20

I am one of the firm of Davis & Co., machinists, Jersey City; this shown me is our bill for repairs done on the steam Yacht Germania, $189.89. I can't tell when I was first called upon to look at this boat.

Q. Tell us what was the condition of the boat; the necessity for r pairs?

Question objected to as immaterial.

30 Admitted and exception entered.

A. I went to Hoboken to examine her as well as I could late in the evening. I found the piston in very bad order; the valve in the same condition, blown through, and from the looks of things that night I formed my opinion that she required a general overhauling. That was about a week before May 16th. But when we come to take things apart then we could see more into her. It required new pistons, new rings, the valve required fastening up, the valve seat
40 required scraping, the steam chest required planing, at the

fork end of the connecting rod it had a flaw on it; the coupling was a universal coupling, and made a great deal of noise and clattering. I notified the engineer, and he told me to go on and fix it. I couldn't tell at that time in what condition the boiler was. The engine might run with safety, it might do no injury unless the flaw gave way in the fork end of the connecting rod. The engine was not in any condition to run; the repairs, alterations and changes which I afterwards made were necessary to put her in running condition. I was directed to do those things which was necessary to put her in that condition. Our bill is for that.

Q. [By Court]: Was the work you done a change of any work that had been recently done?

A. I couldn't tell that.

Defendant offers the bill in evidence.

Objected to as irrelevant. Admitted and exception entered.

The bill is annexed hereto as Exhibit D[1].

Cross-examined by Mr. Besson:

I never saw her before the time I speak of; I don't know her condition when Carnie took charge of her. It was a vertical engine, low pressure, when I took hold of her; when I left her it was high and low, will work either way. I worked it both ways when I tried it on the trial trip. I handled her myself on the trip part of the time and sometimes the engineer did. I think the first time we went on the trial trip she was not changed; I think the next time we went I changed her. I had put in a three way valve. I don't think there was a three way valve in her before, but I am not sure. I put a new one in her. That is what changed her pressure. I did not try the engine when I first went there; it might perform; there is no doubt the engine would turn.

Q. From the examination you made could you tell what work Carnie had done on the engine?

A. I could not say that there was anything done to make a first-class job.

Q. If the engine had stood without being worked after it was cleaned or if it had been worked, wouldn't it get dirty again ?

A. It might have got a little rusty ; the shaft was all rusty ; it looked as if it had been in the salt water for some time ; the shaft generally gets rusty in boats like this.

Q. It might have been cleaned up and got rusty again in
10 a week ?

A. I don't think it would have eaten in so deep as this was ; this was rusted so I had to put it through the lathe. I put a new piston in ; new rings ; the old piston was pretty well gone ; the rings was all gone and wanted new ones. The old one was in as good condition as it could be put in ; you might have spent perhaps $10 or $15 on it and made a little better job of it ; the rings was too slack for the piston and the cylinder.

Q. Taking the rings and the piston so far as the work-
20 manship goes, was it in order ?

A. It was not in order ; the piston was too light ; it had been turned up two or three times, likely.

Q. Would you put in a new piston and call it repairing ?

A. Yes, it was repairing an old engine.

Q. Was the old piston in as good condition as the old piston could be put in ?

A. No, it would take about fifteen dollars to put it in condition. I would have taken it to the shop and skinned it up, and skinned the rings ; that might have made it tight
30 for a while but it would not make a first-class job ; you could not make a first-class job with the old piston. I put in a new valve ; that was necessary. The steam chest required facing up. The coupling was too slack. I put in a new coupling ; the old one could not have been repaired so as to make a good job of it. In the fork end of the connecting rod was a flaw that went through about a third of the way, it looked to me as if it had not been properly welded ; it looked as if it had been broken and repaired in some shop ; the flaw may have been in it for some time ; I
40 did not test it, but did not consider it safe.

Q. You don't know what work was done on the boat by Carnie, before you looked at it?

A. I do not.

Q. So you cannot tell whether his work was done well or not?

A. I cannot. I don't know whether he overhauled the engine or not.

Q. [By Mr. Abbett]—You do know that whoever did that work hadn't made a good job of it?

A. Yes. 10

Q. [By Mr. Abbett]—And it required your additional work to make a good job of it?

A. Yes, to make it a first-class job.

Isaac J. Palmer, called on behalf of the defendants, being sworn, testifies:

I live at 115 Washington street, Hoboken. I am a ship carpenter and caulker. I hauled this yacht out and done 20 considerable work on her myself. I seen Carnie's men there off and on. Before they began work I done some general repairs; I put a new house-top on her, put seats all round her, and put some new planking in her; my men cleaned her out after she came to the dock. I don't know what was done before she came to the dock; she was half full of water when she came to me; there had been nothing done to her. I seen Carnie's men cleaning round the pipes; it was in the Spring, and we kept making dirt all the time, and brushed her out every day, but, as a gene- 30 ral thing, I had a man that scraped her out and cleaned her out with soap and soda. I know Carnie's two men were there a good while; they would come and go, but there wasn't a great deal of work done.

Q. Didn't they go off repeatedly and stay away a large portion of the time?

A. Yes, sir; during the whole time they were there they spent half of their time in my shanty, and not working on the boat, but by the fire enjoying themselves. I went on the trial trip when Carnie's men were through. I took her 40

from the dock down to the club-house, about a mile and a half; there was about twenty-five men on board her on the Sunday we made the trial trip; she thumped, and the engineer said he would screw her up, but she thumped pretty bad all day, and threw the mud all over us. I did not stay on that trip; I got off about two o'clock; I thought I was there long enough; I was satisfied to go home. I have had some experience with this kind of boat. This boat did not work properly; I did not consider the
10 machinery in good order. I spoke to the men while they were in my shanty. I said to them: Boys you ought not to be in here; they said, our times goes on.

Cross-examined:

One of the men was, I believe, Mr. Carnie's son. They begun to come into my shanty from the time they commenced work there; I think it was along the first of April, sometime; I don't think it was in February; they came in-
20 to my place every day during the time the boat laid on the ways; every day and some days they would stop there all day in the shanty and not do a hand's turn on the boat. It was very bad weather during a part of the time; I had a fire in my shanty.

Q. Didn't they come in there to warm themselves occasionally when the weather was bad?

A. My men don't. I have known them to stop in all day several times; I think more than half a dozen times. I don't know how many days she lay there at the Elysian Fields; I
30 don't know what was done on her after she left the dock there. I don't remember the day the boat came there; it was on a Sunday. I have seen Mr. Carnie there 3 or 4 times; he catched his men in my shanty 2 or 3 times and gave them hail Columbia for it. No work for the boat was done in my shanty. The propeller wheel had a key fitted on it in the blacksmith shop. I do not profess to be an expert as an engineer; I know the engine thumped; she didn't work right; she thumped in the bearings; one of Carnie's men was running the engine; while I was on her we went
40 over to Barclay street, down round the harbor, round to

Hoboken and I got out at Fifth street; that was her trial trip.

Defendant rests.

Jacob Houghtailing, a witness produced on behalf of the plaintiff, being sworn, testifies as follows:

My business is engineering; ship work and steam shipping. I worked for Mr. Carnie last February, March and 10 April on this yacht at the Elysian Fields, Hoboken. I don't know how many days we worked on her; we went to work there the latter part of February, I think.

Q. How much of the time that you spent in the Elysian Fields did you spend in the carpenter shop?

A. I would go in there when my hands would get cold to warm them; that would take probably 10 or 15 minutes, sometimes; then I would go to work again.

Q. Did you ever spend a whole day there?

A. No; I was to work all the time except when I want- 20 ed to warm my hands; it was such pinching cold weather we had to do it; we couldn't stand it all the time.

Q. What did you do to the engine and boiler?

A. We done general repairs, whatever Mr. Carnie ordered done; put in new pipe, new wheel, new exhaust pipes, new steam pipes, fixed the pipes all inside, took the brass work all out of them, filed them up and put her all together again; I took the valve out of her and set that all in new.

Q. How long have you been engaged in this business? 30

A. Thirty-two years.

Q. What kind of work was done on this engine?

A. We done the best work we knowed, me and Billy Carnie; we done the best we could aboard of her and she was in good running order. I run her out two voyages for them and they pronounced her all right.

Q. Who did?

A. The owner of that boat; he pronounced her all right; he said he was well pleased with her; that was on the second trial trip. On the first trial trip she didn't work as good 40

as I wanted her to and then when we come in I went to work and overhauled her again, and I took her out again and she worked satisfactorily to everybody; one of the owners standing on the deck, said, tell Mr. Carnie I am well satisfied with this boat; that was coming down the river from Guttenberg. I had charge of her at that time.

Q. What was your opinion of her as an engineer?

A. My opinion was that she was all right with an ordinary head of steam, but if you undertake to drive her
10 with a big head of steam and force the water out of her you will get rid of the water very quick, but take 89 or 90 pounds of steam, she wont throw water out a bit, but put on 200 pounds and you will have no water there in a few minutes. I worked her all day from 6 in the morning till about 5 at night.

Q. Did you have any difficulty with the engine that day?

A. No; she thumped a little because my brasses were slack, but if I had stopped her and drove the keys in then you would not have heard any thumping at all, but I didn't
20 want to do it; I hadn't keyed her up to a certain point.

Cross-examined:

Q. Do you ever drink?

A. I take a glass of beer when I feel like it.

Q. Didn't you during the time you were at the Elysian Fields drink considerable?

A. It was awful cold weather and if we felt like taking a drink we took it, but we did our work like men. I froze
30 my toes while working on the Germania on the dry dock; I think that was the forepart of March. My hands got so cold I had to go and warm them, and dinner times I used to thaw my grub out to eat it. It was only during the first two weeks that I was there that I would have to go in and warm myself; before I got through, warm, decent weather come.

Q. There was only 2½ days work done in February, and only 7 days charged for the month of March—you didn't freeze your toes in April?

40 *A.* I didn't go in there to warm my toes in April.

Q. A witness says you were in there every day—nearly the whole time—is he correct about that?

A. No, sir.

Q. You say this defendant told you on the second trial trip that he was entirely satisfied, and the boat was working in splendid order?

A. No, sir; he told Mr. Carnie he was perfectly well satisfied with the boat—well satisfied with the way everything worked.

Q. Didn't you hear Captain Norton say we dare not go any further than the Fields; that the boiler would blow up? 10

A. No, sir; she thumped a little, but it was because I had not drove the keys up.

Q, You admit she was not right on the first trial?

A. Yes; but we fixed her all right; but the second time she was all right; she didn't thump a bit.

Adjourned to the fifteenth inst., at 10 a. m.

20

September fifteenth—pursuant to adjournment.

William Carnie, a witness produced on behalf of the plaintiff, being sworn, testifies as follows:

I reside in New York; I am a machinist; have worked at that trade 20 years. I work for the plaintiff. I worked on this Yacht Germania in February, March and April, foot of Fourth street, Hoboken; account of time I worked on her was kept in the shop every night when I went over; I never gave in any more time than I worked there. In February I worked there alone; Houghtailing worked with me afterwards. I worked on her at the Elysian Fields; don't remember the number of days; the weather was very cold, and I suppose we spent an hour and a half a day in the carpenter's shanty, just to go in and warm ourselves and come out again; that was in the coldest weather; the the longest time any one day we spent in there was an hour and a half, from that down to fifteen minutes; the weather blowed, snowed and rained; it was necessary we 30 40

should warm ourselves in order to work; the boat was open; we put a new wheel on her, put new condenser pipes outside of her; there was nothing to keep the weather from us. We took her machinery apart and cleaned it; took the mud out of her; kept the shavings out of her from the carpenter that worked there. We done what I call a good job. I didn't go on the first trial trip; I did on the second one. I saw the engine work that day; she worked in a proper manner; she worked all right; we worked her
10 nearly all that day; we took her to the coal dock and got steam on her; we filled her up with salt water; we blowed that water out and cleaned her out, and then went and got Croton water into her; we had to fill her with salt water to get her round the dock; we couldn't get any water then; we blowed that out and took in Croton; then we took the trial trip up to Guttenberg, and that man (pointing), the defendant, pronounced her all right. They have had different engineers aboard of her that could not run her, so I was told; she was to be used by a boat club, and that gen-
20 tleman I pointed to was a member, I think.

Cross-examined:

I worked alone on this boat between Fourth and Fifth streets, Hoboken; Houghtailing worked on her there after she came from the ways at Elysian Fields; that was sometime in April. The work at Elysian Fields was in March and part of April; I don't know which month we did the most work in. I know it was very cold weather; it was
30 quite cold in April, the first part so that we had to go and warm ourselves. Mr. Palmer was mistaken when he said we spent most of our time in his shanty; some days I didn't see him round there at all; some days not over twenty minutes; the boat was not so big but I could see if he was round there; could not see into his shanty from the boat; could not tell whether he was in his shanty without going into it. It took us an hour and a half to go from our shop to the Elysian Fields, and the same time to return. I don't know the day Houhtailing went to work on her. I
40 was laid off a while the weather was so cold, and the next

thing I knowed I was ordered to go to Elysian Fields on this boat. I think it was in April I was laid off for 3 or 4 days because the weather was so cold I couldn't work. Houghtailing worked there when I did at Elysian Fields.

Q. Weren't you and Houghtailing drinking hard during the time you were over there?

A. No, sir; dinner time I might go and take a drink; that is the only time I recollect taking a drink. I swear positive I was not off over an hour and a half any day. The second trial trip was in the middle of a week in 10 April; latter part of April; the engineer, Mr. Houghtailing, Mr. Carnie and Mr. Aitken was on that trip, and a young man that steered her, and the former owner of the yacht. We was all done with her on the second trial trip. There was some little leakages in the pipe made good between the first and second trips. I was not on the first trial trip. On the second trip Mr. Aikens said everything was all right—he was satisffed.

Q. Did not you hear Captain Norton say the boat was not safe, and he would not stay in her? 20

A. No.

Q. What did you do on the trip?

A. I cleaned the boiler out and got steam up again; I rinsed her out; there was no thumping on that trip; no foaming.

John Carnie recalled, testifies:

I visited the boat almost every day while the work was 30 going on, and I considered they always done a fair day's work under the circumstances; it was extreme cold weather; it was necessary for them to warm themselves in order to be able to work at all.

Q. At the time you received orders to go to work on this boat, what were you directed to do?

A. Clean her out, do what repairs was necessary, and put her in working order. I was on the second trial trip, so was Houghtailing, William Carnie, Mr. Aiken, the pilot, one or two boys, and the former owner. The boat 40

was to be used by a boat club. Mr. Aiken acted and talked as if he was a member of the club; he gave me a great many orders about the work while it was going on; he gave orders to other parties about work, and told them to charge it all to Mr. Carnie, and Mr. Carnie was to pay the bills. Aikens got his orders generally from Baeder. I heard Baeder give him directions. While the work was going on I heard Baeder tell Aiken to have a place fixed to put a keg of beer, and to have it fixed as he, Aikens, 10 thought it ought to be. Aikens done as he pleased about the boat, and had everything done as he wanted it; he gave orders to men to send their bills to me. I said to him, why don't you attend to the bills? He said he couldn't be bothered paying those bills, for he didn't know where he was going to get his money from, but that I would get my money. I thought the boat was finished on the first trial trip, but I arranged for a second and told Aikens, and sent word to Baeder of the second trial trip, and told them to invite their friends. When I asked Baeder for my 20 money, he said he would see about it in a few days. After that trip I left the boat at their club house between Fourth and Fifth streets, Hoboken.

Cross-examined:

There were two trial trips, I was on both; there was a little pounding in the engine on the last trip. I did not do anything after that trip to the boat, but that was attended to after it got home; my engineer told me it was done and I paid him for it.

30 *Q.* You were on only two trial trips?

A. Two, I was on.

Q. You do remember there was a pounding of the engine which had not been rectified when you left the boat?

A. I know that.

Q. Your statement is that you were told afterwards by one of your workmen that it had been rectified afterwards?

A. Yes. I don't remember the date of the trial trips; the "pilot" item in the bill will show the dates. I see by my book the last trial trip was April 27th, the one before 40 that was about the 16th or 18th of April. On the 10th of

May and on the 13th I sent these letters you show me to Mr. Baeder. About the 12th of May I got this one you show me.

Defendant offers in evidence letters dated May 10th, 12th, 13th and 13th, and they are hereto annexed as D^2, D^3, D^4 and D^5.

Q. Were you ever on the boat after the second trial trip April 27th.

A. Yes, I was on the boat with the engineer of the Annie L., Mr. Langford, to see what he wanted done, and that was before I wrote the letter of May 10th. I refused to do anything further until they paid me. I did not make the additional repairs which he asked for. 10

Mr. Besson desires to show statements and admissions of Mr. Aitken concerning the working of the engine on the trial trip.

Defendant ojects on the ground that it is immaterial. Mr. Aitken has not been shown to be the agent of defendants to permit his statements to bind them. 20

The offer is over-ruled and plaintiff prays an exception may be allowed.

Jacob Houghtailing, recalled by plaintiff, testifies as follows :

On the last trial trip there was a little pounding of the engine, but I remedied that afterward by driving the keys in on the crank pin. I knew she was slack, that she was not keyed up properly ; I knew that before we started. I keyed her up after we got back from the trial trip, and then she was all right, I believe, so far as I know. 30

Plaintiff re-rests.

Joseph Norton, a witness sworn on behalf of defendants, testifies as follows :

I am captain of the tug boat William N. Beach ; have 40

been captain of tug boats 12 years; I know when an engine is in good running order; I was on the first and second trial trips of this boat; the first trial trip she worked bad; on the next trial trip we got up as far as the Elysian Fields; the water was foaming in the boiler, the pipes was leaking and the engine was pounding. I said to Mr. Aitken or Mr. Baeden, I says this boat isn't safe I'll turn her round and go back; so I went back.

Q. (By Court) What did the want of safety consist in; because the boiler was foaming?

A. Yes, sir.

Q. (By Court) What was the cause of that?

A. There was mud and grease in the boiler.

Q. (By Court) It was not anything in the construction of the boiler?

A. No.

Q. What was the pounding caused by?

A. In the crank pin. I didn't go back to look, but I could hear it.

Q. Was the boat in perfect running order?

A. No, sir; she was not.

Q. Was she in safe running order?

A. No, sir.

Cross-examined:

Q. What occasioned the pounding?

A. I don't know anything about that; I am not an engineer, I am a captain.

Q. If it was simply a loose bearing, there would be nothing dangerous in that, would there?

A. No.

Q. You don't know whether this was a loose bearing, or what occasioned it?

A. No; I know there was a pounding.

Q. What was there about it that made it unsafe?

A. The foaming in the boiler. I didn't want to interfere with the engineer's business, but I rang the bell to steam her down, and there was no water in the boiler. I know there was plenty of water when we started. This was on the second trial trip.

Q. Tell us why you thought it unsafe?

A. Because I didn't want to get blowed up.

Q. Why did you think the boat unsafe?

A. Because she was foaming.

Q. Any other reason?

A. No, only the joints of the pipes leaked.

Q. What occasioned the foaming?

A. A dirty boiler; that's the only reason I know of.

Q. [By Court]—Does oil in the boiler have anything to do with foaming? 10

A. Yes, sir.

Q. [By Court]—Is it a common thing for new boilers to foam?

A. Yes, and after having repairs done to them.

Q. Was Mr. Carnie on the second trial trip?

A. No, he was not, but he was on the first; he got aboard at the club house; Carnie's man was the engineer on the second trip; the man that was on the stand.

Closed. 20

WHEREUPON THE JUDGE CHARGED THE JURY AS FOLLOWS:

The plaintiff brings his suit in what is called *indebitatus assumpsit*, upon a *quantum meruit* for work and materials furnished to the defendants. He seeks to be paid what they were reasonably worth. The defendants say he has no right to recover in that form, or at all, because this they say was an entire special contract, and that the contract is open and has not been performed; that he cannot abandon the 30 contract and sue for what his services and materials may be reasonably worth. Such is the general rule of law. If you make a contract with a man to do a certain thing for a certain price, unless you agree to pay him portions of the price as the work progresses, entire performance of the work is precedent to the right of recovery, and if he fails to perform his work according to the express agreement, as a general rule, he has no right of recovery at all. There are circumstances that are exceptional, and either vary the rule or make it inapplicable. In this case if this is an entire 40

contract, and the plaintiff has performed it entire on his part, that is, if he has done what he was to do, put the vessel in proper running order, or whatever the language of that contract was, than he is entitled to be paid. Not necessarily what he charges here, because in this contract there is no specific sum agreed upon, but what his services and materials are reasonably worth.

An entire contract, as I understand it in the law, is generally where the consideration on both sides is entire, and
10 as applicable to this case it means that the price should have been agreed upon in some definite way and not left to uncertainty or upon the implied obligation to pay, and if that is the contract, and of that there seems to be no doubt, it seems to me it does not come within the range of entire contracts in the meaning of the law. So, too, if this contract had been such as might be regarded as entire, there is an exception to the general rule that *indebitatus assumpsit* will not lie, and that is where the services are not strictly up to the fulfillment of the contract, but the party for
20 whom the services were performed and materials furnished has received and appropriated the benefit to himself, he cannot hold that benefit without paying such value as the party so apropriating has received from it. It is a rule of equity and justice and forms one of the exceptions to the general rule. Where the party accepts and receives so much of the work and materials as the defaulting party supplies the law will not permit him to take the benefit of that without paying for such benefit as he has actually received and appropriated. Now, then, if defendants so appropriated work and
30 material the case is before you on this question—what benefit in labor and material did the defendant receive by reason of the services of the plaintiff? To ascertain that you will look at the value of the specific articles that he furnished to the defendants in their boat; look also at the time that plaintiff's men were actually employed in performing meritorious services upon the property of the defendants, not the time they were out of their master's shop, but the time they were performing meritorious services for the defendants. Defendants are to pay for the good they got.
40 In determining that you are not bound by the books of the

plaintiff, you have a right to look at the character of the work they did to determine what time they ought to have spent on it. What did they do? Many of the items are charged for specifically. There is over a hundred dollars charged for time on the engine and boiler. The question has been asked, what they did? They say they took the engine apart and cleaned it. What they did to the boiler does not appear quite clearly; they added some articles to it for which there are specific charges. We have no direct evidence of the condition of the engine and boiler at the time when the plaintiff took hold of it, but he took it apart and put it together again, he says, and put it in working order. Now, what amount of time should be allowed him for that, and at what rate? The result to be reached is this—the value in money of the benefit that the defendant actually derived from the work of the plaintiff and the materials furnished. When you have found that, that with interest on it, will be your verdict.

Defendant's counsel requests the Court to instruct the jury that if they find there was an entire contract as testitified to by the plaintiff, and if they find the contract was not completed there can be no recover in this action.

The Court refuses to so charge, further than as charged, to which refusal defendant prays an exception may be allowed, which exception is allowed and sealed accordingly.

M. M. KNAPP, [L. S.]
J. S. C.

Defendant also prays an exception may be allowed to so much of the charge of the Court as instructs the jury as to the law of entire contracts, which exception is allowed and sealed accordingly.

M. M. KNAPP, [L. S.]
J. S. C.

And also to what the Court said in regard to plaintiff receiving the benefit of what he did do for defendants, even if the contract was not completed. The defendant prays an exception, which exception is allowed and sealed accordingly.

M. M. KNAPP, [L. S.]
J. S. C.

EXHIBIT P 1.

To Hon. Frederick B. Ogden, *Supreme Court Commissioner:*

John A. Carnie

10 *vs.*

The Steamboat "Yacht Germania," formerly called "Launch Annie Mills."

The plaintiff above named respectfully shows that he did work and furnished materials for and towards the repairing, 20 fitting and furnishing of the steamboat called "Yacht Germania," formerly called "Launch Annie Mills," now lying in the Hudson River at Hoboken, in the County of Hudson, at the request of Frank Baeder, owner of said boat.

That said work was done and said materials furnished by said plaintiff in repairing, furnishing and fitting said boat for Frank Baeder in the County of Hudson aforesaid. And the said plaintiff claims that there is due to him from said Frank Baeder on said account, the sum of two hundred and 30 forty-one dollars and nineteen cents.

And the items of account composing said debt are as follows:

1881			
Feb. 24,	2½ days work on boiler and engine	$7	50
"	Ferriages		18
March 28,	7 days work on boiler and engine at $3.00	21	00
"	Ferriages and fares	1	10
April 30,	21¾ days work on boiler and engine at $3.00	65	25
"	Ferriages and car fares	1	32
40 "	New steam gauge and steam pipe	3	26

April 30,	Safety valve, ball lever and fittings	$3 25	
"	Repairs water gauge, gauge-glass and washers	2 10	
"	New gauge cock	1 00	
"	Cotton waste and cotton lamp wick	80	
"	Emery cloth	40	
"	Lard oil, kerosene oil and lamp	1 04	
"	Oil filler and squirt can	80	
"	4 half in. bolts and washers and 1 lb. red lead cement	39	
"	2 brass condenser flange nipples	3 00	10
"	Boxing propeller wheel, fitting key and steel set screw	6 00	
"	12 inch screw wrench and 12 inch file	1 85	
"	1 lb. copper slips 60c, 1 lb. hemp packing 30c	90	
"	Filler collar and set screw for rudder	4 20	
"	Flagstaff brace and bolts	1 10	
"	Smoke stack and umbrella	4 10	
"	Fire tools	1 70	
"	Oil cup with cock for cylinder cover	2 00	
"	Repairing condenser strainer	60	20
"	2½ ft. 1¼ in. pipe 26c, one ¾ in. union 25c	51	
"	2 ¾ elbows 20c, 1 ¾ in. tee 7c	27	
"	1 1¼ in. coupling 19c, 2 lbs. benings 12c	31	
"	1 ½ in. extra nipple 15c, 2 ¾ in. plugs, 12c	27	
"	8 ½ in. washers 8c, 2 ½ in. nipples 18c	26	
"	John A. Carnie, time and expenses	54	
"	Propeller wheel	15 30	
"	Copper condenser, &c	14 30	
"	Hose and couplings	23 75	
"	Coal and water	1 00	
"	Felting boiler and pipes	16 00	30
"	2 lead tanks	33 84	
	Total	$241 19	

The plaintiff above named therefore prays that a warrant may be issued against the said Steamboat "Yachat Germania," formerly called "Launch Annie Mills," her tackle, apparel and furniture, to enforce the lien of such debt, and to collect the amount thereof, pursuant to the provisions of the Act of the Legislature entitled, "An Act for the col- 40

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John A. Carnie

10 *vs.*

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"	1 lb. copper slips 60c, 1 lb. hemp packing 30c	90	
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"	Hose and couplings	23 75	
"	Coal and water	1 00	
"	Felting boiler and pipes	16 00	30
"	2 lead tanks	33 84	
	Total	$241 19	

The plaintiff above named therefore prays that a warrant may be issued against the said Steamboat "Yachat Germania," formerly called "Launch Annie Mills," her tackle, apparel and furniture, to enforce the lien of such debt, and to collect the amount thereof, pursuant to the provisions of the Act of the Legislature entitled, "An Act for the col- 40

lection of demands against ships, steamboats and other vessels, approved March 20, 1857," and the supplements thereto.

Dated May 16th, 1881.

JOHN A. CARNIE.

STATE OF NEW JERSEY, }
HUDSON COUNTY, } *ss:*

John A. Carnie, of the City of Hoboken, County of Hudson and State of New Jersey, being duly sworn according to law, on his oath, saith: That he is the plaintiff named in the foregoing application, and that the statements therein set forth are true; that the sum of two hundred and forty-one dollars and nineteen cents claimed in such account is justly due to him over and above all payments and discounts.

JOHN A. CARNIE.

Sworn and subscribed before me this 16th day of May, A. D. 1881, at Hoboken, N. J.

GEORGE J. DUCKER,
Notary Public, N. J.

STATE OF NEW JERSEY, }
HUDSON COUNTY, } *ss:*

Robert C. Smith, of the City of New York, in the County and State of New York, of full age, being duly sworn according to law, on his oath, says, he is acquainted with John A. Carnie, the above named plaintiff; that he, this deponent, knows of his own knowledge that said John A. Carnie did the work and furnished the materials mentioned in the foregoing claim in repairing, fitting and furnishing the steamboat therein mentioned called "Yacht Germania;" that said work was done and materials furnished between the 18th day of February, A. D. 1881, and the 1st day of May, A. D. 1881; and deponent further says that he is not interested in the said claim.

ROB'T C. SMITH.

Sworn and subscribed before me this 16th day of May, A. D. 1881, at Hoboken, N. J.

GEORGE J. DUCKER,
Notary Public, N. J.

EXHIBIT P 2.

STATE OF NEW JERSEY.

FREDERICK B. OGDEN, a Supreme Court Commissioner of the State of New Jersey, to the Sheriff or any constable of the County of Hudson in said State, greeting:

Whereas, application has this day been made to me to issue a warrant, as directed by the act of the Legislature entitled "An act for the collection of demands against ships, steamboats and other vessels," approved March 20, 1857, and the supplements thereto; and it appearing by written application of John A. Carnie, verified by his own oath and by the affidavit of Robert C. Smith, a disinterested witness, that said John A. Carnie did work and furnished materials in the repairing and furnishing of the steamboat "Yacht Germania," formerly called "Launch Annie Mills," within this State, to the amount of two hundred and forty-one dollars and nineteen cents, at the request of Frank Baeder, one of the owners thereof, which sum is now due, and I being satisfied thereof, do hereby, in the name of the State of New Jersey, commend you to attach, seize and safely keep the said steamboat "Yacht Germania," her tackel, apparel and furniture, to answer all such liens as shall be established against her according to law. And that you make your return to me of this warrant with your proceedings thereon within ten days after such seizure.

Given under my hand and seal this seventeenth day of May, A. D. eighteen hundred and eighty-one.

FRED'K B. OGDEN, [L. S.]
Sup. Ct. Commr. of New Jersey,

JOHN C. BESSON, *Atty.*

New Jersey State Library

(Sheriff's Return.)

Before Frederick B. Ogden, *Supreme Court Commissioner:*

John A. Carnie, *vs.* 10 Yacht Germania.	*Warrant.*

By virtue of the annexed warrant I have seized the Yacht Germania, her machinery and furniture.

Dated May 18th, 1881.

JOHN J. TOFFEY,
Sheriff.
C. J. CRONAN,
Under Sheriff.

20

I return the within writ executed, having seized and taken the Yacht Germania as within I am commanded.

May 18th, 1881.

Discharged and released by order of Commissioner.

May 19th, 1881.

JOHN J. TOFFEY,
Sheriff.
C. J. CRONAN,
Under Sheriff.

30 Sheriff's fees, $6.22.

40

EXHIBIT P 3.

Before FREDERICK B. OGDEN, ESQ., *Supreme Court Commissioner.*

JOHN A. CARNIE, *vs.* YACHT GERMANIA.	*On Warrant, &c.*

10

Whereas, application for an order to discharge the warrant issued in the above entitled cause according to the provisions of an act of the Legislature entitled "An act for the collection of demands against ships, steamboats and other vessels," approved March 20th, 1857, and the supplements thereto, has been made to me by William S. Stuhr, attorney of Frank Baeder, a person interested in said steamboat "Yacht Germania," and it appearing that a sufficient bond has been executed and delivered to me. 20

I do hereby, on this 19th day of May, A. D. 1881, order that said steamboat "Yacht Germania" be discharged from said warrant.

FREDERICK B. OGDEN,
Sup. Ct. Commissioner.

30

EXHIBIT P 4.

KNOW ALL MEN BY THESE PRESENTS, That we, Frank Baeder and Peter Wilkins, both of the city of Hoboken, County of Hudson and State of New Jersey, are held and firmly bound unto John A. Carnie, of the same place, in the sum of four hundred and eighty-two $\frac{38}{100}$ dollars lawful money of the United States of America, to be paid to the said John A. Carnie, executors, administrators or assigns: For which payment, well and truly to be made, we bind 40

ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with my seal, dated the eighteenth day of May, one thousand eight hundred and eighty-one.

The condition of this obligation is such that whereas, on or about the seventeenth day of May, eighteen hundred and eighty-one, a warrant was issued by Frederick B. Ogden, Esq., a Supreme Court Commissioner of the State of New Jersey, according to the provisions of an Act of the Legis-
10 lature entitled "An Act for the collection of demands against ships, steamboats and other vessels," approved March 20, 1857, and the supplements thereto, against the steamboat "Yacht Germania," formerly called "Launch Annie Mills," upon the written application of one John A. Carnie for work and materials furnished in the repairing, fitting and furnishing of said steamboat "Yacht Germania," to the amount of two hundred and forty-one dollars and nineteen cents.

Now, this indenture witnesseth, that if said Frank
20 Baeder shall well and truly pay or cause to be paid unto said John A. Carnie the amount of all such claims and demands as shall have been exhibited which shall be established to have been subsisting liens upon said Steamboat "Yacht Germania," then this obligation to be void, otherwise to remain in full force and virtue.

FRANK BAEDER, [L. S.]
PETER WILKINS. [L. S.]

Signed, sealed and delivered in the presence of
30 WILLIAM S. STUHR.

[Endorsed.]

Approved.
Dated May 19, 1881.
FREDK. B. OGDEN,
Sup. Ct. Commr.

EXHIBIT D 2.

HOBOKEN, May 10th, '81.

MR. BAEDER:

Dear Sir—Please send me check for my bill against Yacht Germania. I did expect check before this.

JOHN A. CARNIE.

10

The engineer of the Annie L. wants some alterations done to the engine of the Germania.

J. A. C.

EXHIBIT D 3.

NEW YORK, May 12, 1881.

MR. JOHN A. CARNIE, 223 West street: 20

Dear Sir—In reply to your favor of the 10th inst., which was only received late yesterday evening, I beg to say that your bill for repairs of the Launch Germania will be promptly settled the moment that the repairs are finished, which, as yet, is not the case.

Yours, &c.

F. BAEDER.

30

EXHIBIT D 4.

HOBOKEN, May 13th, 1881.

FRANK BAEDER:

Dear Sir—If my claim is not paid by 2 p. m. on the 14th inst. I will attach the yacht by 4 p. m., same day.

Yours, &c.,

J. A. CARNIE. 40

EXHIBIT D 5.

New York, May 13, 1881.

Mr. John A. Carnie, 223 West street:

Dear Sir—I am in receipt of your letter of this day, contents noted.

Regarding the payment of your bill, I can only repeat
10 what I said in my letter to you yesterday, that your claim against the Launch "Germania" will be promptly settled as soon as the repairs are completed, which, as yet, is not the case.

If satisfactory, I propose to have a survey, you to appoint a man and the owner of the "Germania" another, who shall pronounce whether or not the repairs have been properly done.

You may communicate your decision to Mr. Aug. Aitken.

20 Yours, &c.,

Signed, F. BAEDER.

EXHIBIT D 1.

JERSEY CITY, June 1, 1881.

M Steam Launch Germania :

To M. DAVIES & CO., DR.

Practical Engineers, Machinists and Blacksmiths.

Terms: Net cash. No. 40 Morris street. 10

May 16,	To 5 hours on board, 35c	$1 75	
17,	10 hours vice on board, 35c	3 50	
	11 hours vice on piston, 35c	3 85	
	patterns for valve, piston, valve stem bracket, piston and rings	8 76	
18,	2⅝ set steel screws, 15c	30	
	8 hours forge new fork on rod, 80c	6 40	
	10 lbs. iron, 7c	70	
	2 hours lathe on piston rings, 50c	1 00	20
	10 hours vice crank and couplings, 35c	3 50	
19,	16 lbs casting	64	
	4 hours lathe on crank, 50c	2 00	
	3 hours vice on fork, 35c	1 05	
	2 hours vice on con. brasses, 35c	70	
	8 hours lathe on piston rings, 50c	4 00	
	3 hours lathe on piston rod, 50c	1 50	
	7 hours vice on valve stem and brass ret.	2 45	
20,	18 lbs. castings, 4c	72	
	4 hours vice on fork end, 35c	1 40	
	3 hours plaining valve, 50c	1 50	30
	9 hours lathe on piston, 50c	4 50	
21,	10 hours lathe on coupling	6 00	
	1 hour plaining valve	50	
	4 hours plaining crank shaft and valve	2 00	
23,	4 hours forge on valve stem, 80c	3 20	
	4 lbs. iron, 6c	24	
	2 hours drill on coupling, 50c	1 00	
	6 hours vice on coupling, 35c	2 10	
	3 hours drilling and tapping bracket, 50c.	1 05	
	7 hours lathe on valve stems, 50c	3 50	40

May 23,	To	5 hours plainer on valve, 50c	$2 50
		5 hours plainer on stem bracket, 50c	2 50
		2 hours drill on piston, 50c	1 00
		4 hours vice on brass, 35c	1 40
		6 hours plainer on valve stem, 50c	3 00
24,		1 hours forge on nut for valve	80
		1 hours forge on follower bolt	80
		13 hours vice on piston rings and bracket 35c	4 55
25,		3 hours on valve stem and bracket, 35c	1 05
		10 hours on vice con., 35c	3 50
26,		4 hours forge on keys for couplings, 80c	3 20
		6 hours vice on valve stem and bracket, 35c	2 10
		4 hours vice on crank, 35c	1 40
		4 hours lathe on crank shaft, 50c	2 00
		10 hours on board, 35c	3 50
		Car fare	20
27,		4 bolts for coupling, ⅝x3, 12c	48
		2 hours lathe on coupling, 50c	1 00
		16 hours on board, 35c	5 60
		Car fare	20
		10 hours on board, 35c	3 50
		1 hour vice on key and coupling	35
28,		2 hours vice on fork connecting rod, 35c	70
		10 hours on board	3 50
		10 hours on board	3 50
		4 hours vice on fork, 35c	1 40
		5 hours lathe on coupling and cylinder cover, 50c	2 50
30,		2 hours forge on tools, 80c	1 60
		10 hours on board, 35c	3 50
		4½ hours on board, 35c	1 57
31,		20 hours on board, 35c	7 00
		Making couplings	80
		Material	25
		Making piston and follower, 80c.; material, 25c	1 05
		Making valve, stem bracket, $1.05 ; material, 15c	1 20
		Making slide valve	1 50
June 1,		20 hours on board, 2 men, 35c	7 00
2,		20 hours on board, 2 men, 35c	7 00

June 3,	To 2 hours on stay for pump, 35c.....	$0 70	
	15 ft. 1¼ pipe, 30c., $4.50; 2 1¼ T, 25c., 50c; 1 1¼ couplings, 15c.....	5 15	
	2 1¼ reducers, 22c., 44c.; 7 1¼ ells, 20c., $1.40; 7 1¼ nip., 16c., $1.12.....	2 96	
	3 1¼ union, 75c., $2.25; 2 1¼ valves, $3.60, $7.20.....	9 45	
	1 1¼ throttle valve, $8; 2 1¼ plugs, 12c., 24c	8 24	
	8 ft. ½ pipe, 10c., 80c; 2½ ells, 6c., 12c.; 2 ½ union, 30c., 60c.....	1 52	
	2 ½ nipples, 8c., 16c.; 1 lb. sheet lead, 10c.	26	10
		$186 79	
	Fare.....	1 00	
11,	6 hours on board, 35c.....	2 10	
		$189 89	

EDWARD LANGFORD,

En. 20

Paid June 17th, 1881.

M. DAVIES & CO.