

THE LOCAL JUDGE:—By a charterparty bearing date 16th March, 1904, reciting that the ships (except one, the "Paddy Miles") were then in the possession of the Donnelly Contracting Co. . . . under a former lease then expired, the Dunbar Co. leased to the Donnelly Co. the said ships, and the Donnelly Co. agreed to hire the same, at a fixed rental, for a specified term. And the charterparty then provided that "during the life of this agreement the Donnelly Co. promises to immediately replace parts when broken, and make repairs, and do all things necessary to maintain the property in a condition equal to that in which it was actually received by the Donnelly Co." This clause brings the case within *Anglin v. Henderson*, 21 U. C. R. 27.

A further clause provided that "the Donnelly Company agrees to pay promptly all bills for towing, supplies, wages, dry docking, and repairs whatsoever, incident to the use and maintenance of the property hereby leased, and to do all things necessary to protect this property, or any part of it, from liens or incumbrances."

The evidence shews that the supplies were furnished to the ships on the order of the foreman of the Donnelly Co.; and there is no evidence to shew that this foreman was master of any of the ships or was in any service or employment which would constitute him the master and agent or representative of the Dunbar Co., so as to render them or their ships liable for the supplies furnished; and plaintiffs' statement of claim effectually negatives any agency by alleging that "the said supplies were furnished to the said ships at the request and by the direction of the Donnelly Construction Co." They appear to have been used by that company in the construction of a breakwater in Cleveland harbour, and the order for these supplies seems to have been given by the foreman of the construction works. . . .

[Reference to *Mitcheson v. Oliver*, 5 E. & B. 419, 1 Jur. N. S. 900; The "Grapeshot," 9 Wall. 129.]

This order of the company's foreman cannot give plaintiffs a maritime lien on defendants' ships.

But another point was argued. . . . Defendants' vessels were under a charterparty to the Donnelly Co., and it appears from the accounts put in that the supplies ordered by the company's foreman were charged against the ships; and plaintiffs contend that being so charged they have a maritime lien on defendants' ships. . . .