

in which that benefit may be obtained, depend upon principles of law and circumstances so various, that it is always indispensably necessary carefully to attend to those particulars by which its very substance may be materially affected. For all the purposes of the present inquiry, however, liens may be regarded as of two kinds; such as are sustained by the principles of common law or of equity upon the peculiar circumstances of the case; or such as arise out of positive legislative enactment; but all liens are essentially different from that priority of satisfaction, the right to which is given by Act of Congress to the United States. *The United States v. Fisher*, 2 *Cran.* 358; *Conrad v. The Atlantic Insurance Company*, 1 *Peters*, 386.

A lien given by the common law for the benefit of trade, and the like, such as that by which a factor may hold the goods of his principal, or that by which an innkeeper may detain the goods of his guest, &c., until he is paid, is always associated with possession. *It begins and ends with possession; for it is only upon property in the possession, and while it actually con- **543**
tinues in the possession of such a creditor, that any such lien attaches. *Jacobs v. Latour*, 15 *Com. Law Rep.* 388. If the possession be lost, or be suffered to remain ever so long unproductive it cannot be regained, or made beneficial by any judicial proceeding; because such a lien is only a mode of enforcing satisfaction by the mere passive holding of the creditor, and thus preventing the debtor from deriving any benefit from his own until he renders justice where it is due. It is a sort of *distringas* to which certain creditors may have recourse without the previous sanction of a Court of justice. But the principles upon which this lien is founded, can afford no illustration or support to that claimed by this plaintiff.

The specific lien of a mortgage arises out of the express and special nature of the contract of mortgage itself; and, owing to its peculiar nature falls almost exclusively within the jurisdiction of a Court of equity. But the doctrines in relation to this species of lien, it is evident, can have no bearing upon this case.

Under the civil and maritime law there are many instances of what is called privileged creditors, whose claims are allowed to operate as a lien upon certain property which has been erected, saved, or benefited by their labor. By a lien of this kind, the ship herself is bound to the material men by whom she has been repaired, to the seamen by whom she has been navigated on the high seas, &c. And such creditors may obtain the benefit of their lien by proceeding against the ship alone, without naming any person as defendant, or the holder. But however analogous this suit may appear to be to a proceeding *in rem* in the admiralty, the principles of the civil or maritime law, by which the lien of a privileged creditor is governed, can have no relation to this case.