

RUDDIMAN v. A SCOW PLATFORM.¹

(District Court, S. D. New York. March 30, 1889.)

WHARFAGE—LIEN—FLOATING SCOW-PLATFORM.

A floating structure, designed to be moored along-side a wharf, so that carts containing refuse to be dumped into boats, can be driven over it from the wharf, is not a vessel within the meaning of the maritime law, and no lien for wharfage attaches to it under that law

In Admiralty. Action for wharfage.

James R. Angel, for libellant.

Wilcox, Adams & Macklin, for respondent.

BROWN, J. The libellant sues for wharfage of a scow platform along-side his dock walk, at One Hundred and Thirty-Eighth street, Harlem river, from November, 1886, to November, 1887. No lien under the state law can be claimed, as no specification of claim has been filed, and more than a year has elapsed. To admit of a maritime lien, the scow structure must be a "vessel," within the meaning of the maritime law. I am of opinion that the structure in question, though afloat, is not such a vessel, because it was not designed or used for the purpose of navigation, nor engaged in the uses of commerce, nor in the transportation of persons or cargo; and to be a "vessel" it must meet some of these tests. The structure in question consisted of a box, about 35 or 40 feet square, having one or two tons of stones in the bottom to keep it from tipping over, with a thin floor over the box about 3½ feet above the water-line, on the top of which is a frame-work supporting a strong upper floor about 10 feet above, with a projecting gangway at the top. It was designed to be moored along-side a wharf, so that horses with carts could be driven over it from the wharf, with dirt or other refuse to be dumped into boats lying along-side. This was its only use and design. The structure was mainly stationary, and rarely moved. But it was capable of being towed from one wharf to another, though not without some difficulty, from its clumsy structure; and but few wharves were adapted to its use. It had no motive power, no rudder, no sails. The case approaches, doubtless, that of *The Hezekiah Baldwin*,—a floating elevator,—which was held to be a vessel. 8 Ben. 556. But in that case not only was the structure designed for the uses of commerce, but it was her constant business to move from place to place, as a vessel, in her peculiar work; in both respects differing from the present case. This structure, though, as I have said, capable of being moved, was designed to be comparatively permanent. By its nature, build, design, and use, it belonged, I think, to that considerable class of cases, such as dry-docks, floating saloons, bath-houses, floating bethels, floating boat-houses, and floating

¹ Reported by Edward G. Benedict, Esq., of the New York bar.

bridges, all of which have been held not to be vessels within the maritime law. *Cope v. Vallette Dry-Dock Co.*, 119 U. S. 625, 7 Sup. Ct. Rep. 336, 10 Fed. Rep. 142; *Woodruff v. One Covered Scow*, 30 Fed. Rep. 269; *Tome v. Four Cribbs of Lumber*, Taney, 533; *The Hendrick Hudson*, 3 Ben. 419; *Snyder v. A Floating Dry-Dock*, 22 Fed. Rep. 685; *Jones v. Coal Barges*, 3 Wall. Jr. 53; *Disbrow v. The Walsh Bros.*, 36 Fed. Rep. 607. The libel is dismissed, but, in default of jurisdiction, without costs.

PHILADELPHIA & R. R. Co. *et al.* v. THE MAYOR, ETC., OF NEW YORK.¹

(District Court, S. D. New York. March 1, 1889.)

WHARVES—MUNICIPAL CORPORATIONS—DEPARTMENT OF DOCKS.

The New York municipality is liable for damage caused to a vessel-owner by the failure of the department of docks as its agent to keep in proper repair one of the city's wharves, on Blackwell's island, though its use is devoted solely to the department of charities and corrections.

In Admiralty.

R. D. Benedict, for libelant.

Henry R. Beekman, for respondent.

BROWN, J. Section 6, subd. 2, of the act of 1871, c. 574, gives the department of docks exclusive charge and control of the wharf property belonging to the corporation, including all wharves thereon now owned by the corporation, "the said department to have exclusive charge and control of the repairing, building, and maintaining and protecting said property." This specific provision makes it the duty of the department of docks to maintain and keep in repair the wharf on the east side of Blackwell's island, although the use of the dock is solely for the benefit of the department of charities and corrections, and, like all other property appropriated to the use of that department, is in its general "custody and keeping." The title to the property is still in the city. There are many cases in which the city has been held liable for failure to keep the docks in proper repair since, as well as before, the act of 1871. *Kennedy v. Mayor*, 73 N. Y. 365; *Heissenbuttel v. Mayor*, 30 Fed. Rep. 456; *Macaulley v. Mayor*, 67 N. Y. 602, and cases there cited. These decisions could only proceed upon the view that the department of docks was regarded as the agent of the municipality in performing the various duties devolved upon it by the act of 1871. In the case first cited the court say: "The city was charged with the duty of keeping the dock in a safe condition." The wharf, in this case, was not, indeed, for the use of the general pub-

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