

Case No. 7,327.
[8 Ben. 211.]¹

THE J. M. WELSH.

District Court, E. D. New York.

July, 1875.

TOWAGE CONTRACT—LIEN.

The libellant A., proprietor of a line of tow-boats, filed libels to recover for towage services against each of 23 canal boats owned by E. & McM. One suit was tried as a test case. The evidence showed that an agreement was made by A. to tow all the boats of E. & McM. between Troy and New York during the season of navigation in a certain year, for a fixed sum per trip; and it appeared that the boats were not towed singly, but in fleets, sometimes with the boats of other parties, and sometimes by themselves, and that the contract was broken before the end of the season agreed for, and suit on the contract was begun by A. in a state court. *Held*, that under the terms of the contract there was no lien in rem upon the boat, the service being rendered in reliance upon the personal credit of E. & McM., and the libel must be dismissed.

[Cited in *The Advance*, 60 Fed. 768.]

In admiralty.

J. J. Allen, for libellant.

E. D. McCarthy, for claimants.

BENEDICT, District Judge. The terms of the contract under which the libellant Austin claims to have towed the vessel proceeded against show beyond dispute that the libellant relied solely upon the personal credit of Easton & McMahan, and not upon the credit of the boats towed.

The contract is inconsistent with the idea of a lien, and shows that a lien upon the boats was not within the contemplation of the parties. For services rendered under such a contract, and upon an exclusively personal credit, no lien exists. The libel is accordingly dismissed with costs.

¹ [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.]