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 alongside 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 libelant.

Wilcox, Adams & Macklin, for respondent.

BROWN, J. The libelant sues for wharfage of a scow platform alongside 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 waterline, on the top of which is a framework supporting a strong upper floor about 10 feet above, with a projecting gangway at the top. It was designed to be moored alongside 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 alongside. 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, bathhouses, floating bethels, floating boathouses, and floating

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 Cribs of Lumber*, Taney, 533; *The Hendrick Hudson*, 3 Ben. 419; *Snyder* v. *A Floating Dry-Dock*, 22 Fed. Rep. 685; *Jones* v. *Coal Bsarges*, 3 Wall. Jr. 53; *Disbrow* v. *The Walsh Bros.*, 36 Fed. Rep. 607. The libel is dismissed, but, in default of jurisdiction, without costs.

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