

stood. The rule laid down in *Worth v. Lioness* was followed and approved by Judge ACHESON in this court in the case of *The Hudson*, 8 Fed. Rep. 167.

In the present case the respondents have not undertaken to show that the vessel was prevented from returning to Cincinnati, or that any reason existed which required the discharge of the crew at Pittsburgh. While even that might not relieve the respondents, in the absence of an express contract, from the obligation to return the libelants to Cincinnati, yet it makes the present case stronger against the respondents than either of the cases cited. The respondents in this case assumed they had the right to terminate the service at Pittsburgh because they saw fit to do so. One difference between this case and the cases cited, is that in this case the boat was about to begin her return trip from a foreign to her home port at the time the libelants were hired, and they were discharged at her home port. I am unable to see, though, how that alters or affects the rule laid down in the cited cases. As to those of the libelants whose homes were in Cincinnati, the voyage was to a foreign port. The boat was engaged in the coal trade between Pittsburgh and Cincinnati, and was plying back and forth, as the stage of water permitted. The libelants had a right to assume, in the absence of an express agreement or statement to the contrary, that she would return to Cincinnati. Such being the case, they are entitled to be returned to Cincinnati. They are each, with the exception of Michael Hawkins, entitled to be paid the cost of a railroad ticket to Cincinnati, which, as the undisputed testimony shows, at the date of their discharge, was, by the cheapest route, \$8.50; and, as they could have reached Cincinnati by rail within 24 hours from the time of discharge, they are entitled to one day's wages each, at the rate of \$40 per month, and are entitled to a decree accordingly, with costs. The libel must be dismissed as to Michael Hawkins.

THE SARAH CULLEN.¹

KNICKERBOCKER STEAM TOWAGE CO. v. THE SARAH CULLEN.

(District Court, S. D. New York. March 30, 1891.)

MARITIME LIEN—TOWAGE—CREDIT OF THIRD PERSON—ESTOPPEL.

Libelant rendered towage service to a vessel without express employment by her master, or agreement to pay. Libelant was afterwards informed that the R. Ice Company was to pay for the towage, and thereafter, for the above and subsequent towage services, rendered bills to such ice company, which were paid in part. No notice was given to the vessel owner that the ship was expected to pay for the towage until the failure of the ice company, six months after the first voyage. *Held*, that the service was not rendered on the credit of the vessel, and, under the circumstances of its dealings with the vessel, libelant was equitably estopped from subsequently demanding from her payment of the towage.

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

In Admiralty. Suit to enforce lien for towage.

Owen, Gray & Sturges, for claimant.

Wing, Shoudy & Putnam, (*Mr. Burlingham*, of counsel,) for libellant.

BROWN, J. Upon all the evidence I am of the opinion that the libel for towage should not in this case be sustained. The vessel was chartered, in effect, to the Ridgewood Ice Company, to bring ice from the Kennebec river to New York, towage to be paid by the charterers. When the schooner arrived at the Kennebec river, she was taken by the libellant's tugs to the place of loading, without any express employment by the captain, or agreement to pay. Before her return, as must be inferred from the evidence, the libellant was informed that the Ridgewood Ice Company was to pay the towage, which was equivalent to notice that the vessel was not to pay it. The towage bills were sent accordingly by the libellant to the Ridgewood Company for various voyages, and a part was paid by that company. No notice was ever given to the master or to the owners that the ship was held or expected to pay for the towage until after the failure of the Ridgewood Ice Company, and the appointment of a receiver in the latter part of October, some six months after the first voyage. Had any demand of payment been made of the vessel at the time of her departure from Kennebec on the first voyage, or even afterwards, upon her return on the second voyage; or had any notice been given her that the prior towage was unpaid, there would have been perhaps sufficient grounds for inferring an implied contract to pay at least for the three subsequent towages. But the master had no knowledge of the alleged local custom. He had never agreed to pay any towage, and had no reason to suppose at the time the service was rendered, or afterwards, that these towages were not provided by the Ridgewood Company according to its agreement, until after its failure. The circumstances seem to me to import the libellant's acceptance of the Ridgewood Company as its debtor from the first, and its only debtor; and that would simply be according to that company the same privilege that by usage belonged to the stockholders in the libellant's company, which covered a considerable part of the libellant's towage business. I find, therefore, that the service was not rendered upon the credit of the vessel, but on the credit of the Ridgewood Ice Company; and that, if the libellant might originally have claimed a lien for towage, its subsequent dealings with the Ridgewood Company, and failure to make any demand of the ship, or give notice of any claim on her during the six months while the towage was collectible from the Ridgewood Company, are such laches, and naturally were so misleading, as to constitute an equitable estoppel against the present demand. The libel should therefore be dismissed, with costs.

ROGERS v. VAN NORTWICK *et al.*

(Circuit Court, E. D. Wisconsin. March 28, 1891.)

1. REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.

To an action claiming the rightful ownership of certain shares of stock in a resident corporation, which are in the name of non-resident stockholders, the corporation is an essential party, and there is no separable controversy.

2. SAME.

There being no separable controversy, the cause is not removable, under Act Cong. March 3, 1887, (24 St. c. 873, p. 552, § 2, cl. 3,) as amended by Act Aug. 13, 1888, (25 St. c. 866, p. 434,) providing for removal when the controversy is wholly between citizens of different states.

3. SAME—TIMELY APPLICATION.

Where the petition for removal was filed by some of the defendants after answer, and after their time to answer had expired, but before the expiration of the time, and before answer by the others, the application by the answering defendants was too late, and the others are subjected to their disability.

On Motion to Remand.

The complainant, a citizen of Wisconsin, filed his bill in a state court against one John Van Nortwick, a citizen of Illinois, and the Green Bay & Mississippi Land Company, a corporation under the laws of Wisconsin, claiming the rightful ownership of certain shares of stock in the defendant company, in the name of and claimed to be owned by John Van Nortwick, and prayed judgment decreeing such ownership, and a transfer to the plaintiff of such stock. Upon service of process, the corporation defendant answered to the bill, disclaiming interest in the controversy, and submitting to the judgment of the court. Process was not served upon John Van Nortwick, who died testate soon after institution of the suit. Upon probate of his will, William M. and John S. Van Nortwick were appointed and qualified as executors of the will, the provisions of which are not disclosed in the record. Thereafter, by order of the court, the suit was continued against the executors, and against the widow and children of the deceased, all citizens of Illinois, as heirs at law. A supplemental bill was filed accordingly, and process issued thereon was personally served within this district upon the defendants John S. and William M. Van Nortwick, individually and as executors. They duly answered to the bill within the time limited by law. An order was made for service of process by publication upon the non-resident defendants, and publication had. After answer by John S. and William Van Nortwick, and after expiration of their time to answer, but before the expiration of the time to answer under the order of publication, and before answer by the other non-resident defendants, upon the joint petition of all the heirs at law of the deceased, an order was made for the removal of the cause into this court. Upon the docketing of the cause here, the plaintiff moves to remand.

Lyman E. Barnes, for plaintiff.

John Goodland, for defendants.