THE ALFRED AND EDWIN.

Case No. 190.
{7 Ben. 137.}[1]

District Court, E. D. New York. Jan., 1874.[2]

TUG AND TOW—NEGLIGENCE—NOTICE OF DANGER.

Where a canal-boat. While being towed through a channel before the ice was all out of it, struck the shore ice and sank, the master of the boat having known in advance of the danger, and the tug having refused to take pay or be responsible for damage, *held,* that there was, under the agreement, no negligence on the part of the tug in undertaking the service at a time when it was necessarily hazardous; and that on the evidence there was no negligence in the performance of the service sufficient to make the tug liable.

{Distinguished in The E. A. Packer, 22 Fed. Rep. 670.}

In admiralty. In March, 1873, the canalboat Mohawk was towed from Passaic, N. J., to port Johnson, the master of the canal-boat knowing that the ice in the channel was strong and the passage dangerous. The owners of the tug were unwilling to have her undertake the work, because of the danger. and because they did not tow for hire; and had refused to take any pay for the service, or to be responsible for damage. The trip was made safely, and the boat got a load of coal. The charterers of the canal-boat went several times to get them to tow the boat back loaded; and, finally, the owners of the tug agreed to do so on the same conditions; and the Mohawk came out from Port John son to intercept the tug on her way to Passaic, and was taken in tow. When near the mouth of Passaic river, the Mohawk struck the shore ice, was cut open and sank. Her owner libelled the tug, claiming that the injury was caused by negligence on the part of the tug. This the claimants denied, and they set up as defenses, their refusal to incur responsibility, the bad condition of the Mohawk, and the inefficient handling of her while in the tow.

Wilcox & Hobbs, for libellant.

R. T. Wild, for claimants.

BENEDICT, District Judge. Upon examination of the pleadings and proofs in this cause. I am of the opinion that the loss of the libellant's boat was not caused by any negligence on the part of the tug in her management of the tow, but arose from perils necessarily incident to an attempt to tow the boat in a channel made narrow and dangerous by ice. The nature of the service to be performed, and the character of the risks attendant upon its performance, were known at. the time when the tug was employed. Under such an employment as the evidence discloses, the tug cannot be chargeable for negligence in undertaking the service at a time when it was necessarily hazardous to the tow; and, upon the proofs, the service. when undertaken, was performed with all the regard for the safety of the tow that circumstances would permit. The libel must, accordingly, be dismissed, with costs.

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

[2] {Affirmed by circuit court in The Alfred and Edwin, opinion not now accessible. See Case No. 191.}