

Case No. 201.

THE ALIDA.

{3 Ben. 580.}¹

District Court, E. D. New York.

Dec., 1869.

COLLISION IN NEW YORK HARBOR—TOW-BOAT—VESSEL AT ANCHOR—SUDDEN GALE.

A tow-boat, with thirty canal-boats, four barges, and a sloop in tow, was bound down the North river, with an ebb tide. In passing a large steamer, which lay at anchor, the hawser tier struck the steamer, and two of the canal-boats were sunk. The defence set up was, that a sudden squall of wind struck the steamer, as the tow was passing at a proper distance, and drove her into the tow: *Held*, That the defence had not been made out, but that the collision was occasioned by lack of precaution on the part of the pilot of the tow-boat.

[In admiralty. Libels for collision. Decrees for libellants.]

T. E. Stillman, for libellants.

O. Van Santvoord, for claimants.

BENEDICT, District Judge. These two actions, which have been tried together, were brought to recover the amount of the injury caused to the cargoes of two canal-boats, the Emma Davis, and the William Burr, by a collision, which occurred in the North river, on the 16th of September, 1869, between the steamship Borussia, and the steamboat Alida and her tow, of which the canal-boats named formed a part. It is not contended by either party, that the collision was caused by any fault on the part of the canal-boats. The sole question is, whether it was caused by negligence on the part of the Alida, which was, at the time, towing the boats. The tow of the Alida consisted of two barges on each side, and a hawser tow of thirty canal-boats, arranged in six tiers of five boats each—astern of which, were a sloop and two barges, on a stern hawser some 220 fathoms long. The tow was bound down the North river, upon an ebb tide, and the Borussia, a large sea-going propeller, was lying at anchor, near the middle of the river, off the dock of the Hamburg steamers.

As the Alida and her tow came down to the Borussia, she determined to pass to the eastward of the steamer—that is, between the steamer and the New York shore—and she did, herself, so pass in safety; but, in passing, her hawser tow came in contact with the bows of the steamer, and the canal-boats Emma Davis and William Burr brought up heavily upon the Borussia, and her chain, and were so injured that their cargoes were totally destroyed. The defence of the Alida, as now made, is that the collision was occasioned by an event purely fortuitous, namely, a sudden squall of wind, which struck the Borussia, as the Alida was passing at a proper distance, and drove her to the eastward and into the tow.

In support of, and in opposition to, this defence, a mass of testimony has been taken, which is noticeable for its bold and inexplicable contradictions. It has all received my best

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attention, aided by the careful briefs of the respective advocates, and it has failed to satisfy my mind that the disaster was caused as claimed by the defence. On the contrary, I can entertain no doubt, after weighing the evidence with care, that, if that precaution had been exercised by the pilot of the *Alida*, which the circumstances required, and which the law imposed upon him, he would have avoided the vessel at anchor, and the collision would not have occurred. I must, accordingly, hold, that the collision was occasioned by the fault of the *Alida*, in not avoiding the *Borussia*, as she was bound to do.

I content myself with this announcement of the result of my examination and comparison of the testimony, not deeming it necessary to spread out, in a lengthy opinion, the various portions of this mass of evidence, which have led me to the conclusion arrived at, as all of it, I am glad to believe, will be placed before the appellate court, and my error, if I have fallen into one, then corrected.

The decrees will, therefore, be in favor of the libellants, with orders of reference to ascertain the amount of damage.

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