THE AVID.

Case No. 678.

{3 Ben. 434.}[1]

District Court, E. D. New York. Oct, 1869.

COLLISION AT PIER—ICE—MOORING—COSTS.

1. A bark and a barge were both moored alongside a pier. The bark's long-boat was hanging under her counter, close down to the water, from lines run from the stern, there being no davits. A floe of ice came into the slip, and parted the barge's lines, and drove her against the long-boat, and crushed it: *Held,* That the barge was in fault, in not being properly moored;

2. That the bark was in fault, in reference to the position of the boat;

3. That the damages must be divided;

4. That costs would not be allowed for depositions which were illegible.

{Cited in The Mary Patten, Case No. 9,223.}

In admiralty.

BENEDICT, District Judge. This action is brought to recover for the destruction of the long-boat of the bark Algiers, by being crushed by the barge Avid, during the night of the 14th of February, 1869. The bark and the barge were both moored alongside pier 28, in the East river. The long-boat was hanging under the bark's counter, close down by the water, the ropes running from the stern, there being no davits. While in this position, the ice came into the slip, during the night, with sufficient force to part the barge's fastenings, and drive her ahead upon the long-boat, thus doing the injury complained of.

It is manifest that the long-boat was swung in an improper and dangerous place, where it was greatly exposed to injury from neighboring vessels. For this reason, the bark must be held in fault The Phoenix, {Case No. 11,111.}

The remaining question is, whether there was fault on the part of the barge, in regard to her fastenings, which should render her also responsible for the accident.

On the part of the bark, it is proved by the mate, that he went on board the barge, on hearing the crash; that he then examined the barge; that he found the stern line had parted; and that he, at the time, complained to the master of the barge, that his line was not sufficient to hold his vessel. The master of the bark, also, is called, who does not appear, however, to have examined the lines of the

barge until morning, when he saw the stern line that had parted.

On the part of the barge, no witness is called but the claimant himself, who swears that the barge was made securely fast to the pier, by stem and stern lines, and a seven-inch breast line; that a floe of ice came in the slip, which parted the stern line and the bow line, and pulled off the cavil, to which the breast line was fastened, and thus his barge was driven into the long-boat. He further says, that he hove his boat back by the windlass. But in the answer, which is sworn to by this same claimant, it is expressly stated, that but one line parted, "leaving two lines still secured to the pier; that in a few moments the barge sprung back to her lines, and it was then discovered that the long-boat had been smashed." The account given in the answer thus differing from the account given upon the stand, a doubt is raised as to the sufficiency of the barge's fasts, which is further strengthened by the fact that no vessel broke adrift, except this barge, and that the barge herself received no injury from the pressure of the ice. In this posture of the evidence, it must be held that the claimant has failed to show that the drifting of the barge was caused by the overwhelming power of the ice, and not from any carelessness or neglect in her fastenings, and that the barge is also chargeable with fault.

There being, then, fault found on both sides, the damages will be apportioned.

In taxing the costs, the clerk will strike from the libellant's bill of costs the fees for the depositions, because of their extreme illegibility, as presented to the court. A reference may, be had, to prove the amount of the damage, unless the parties can agree on the sum.

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