Case No. 17,187.

WARNER ET AL. V. THE RALPH POST.

{N. Y. Times, Oct. 8, 1862.}

District Court, S. D. New York. July, 1862.

ADMIRALTY—NOTICE OF FILING ANSWERS.

{If libelant's proctor negotiates the postponement of the trial, he cannot thereafter allege ignorance of the fact that the answer was on file.}

This was a motion {by J. L. Warner and others} to set aside a default. The libel was filed July 19, 1861. The answer was filed May 3, 1862. The default was taken July 9 and Aug. 13. The stipulations for costs and value were canceled. The libelants' proctor alleged that he had no notice of the filing of the answer, and that the respondents' proceedings were, accordingly, irregular, under rule 88. It appeared, however, that the cause was on the calendar for May and June terms, and that libelants' proctor attended court in May, and got the consent of the respondents' proctor to put it off for the term. There was great discrepancy in the affidavits on the motion.

Mr. Seymour, for libelants.

Beebe, Dean & Donohue, for claimants.

HELD BY THE COURT: That the 88th rule does not require that knowledge of the filing of the answer should be imparted by formal notice in writing. His negotiating the postponement of the trial concludes him from alleging ignorance of the fact that the answer was on file. That on the proofs, the laches lies with the libelants, and not with respondents. Motion denied.