

THE CITY OF CHESTER.

District Court, E. D. New York. December 27, 1881.

COLLISION—UNAVOIDABLE ACCIDENT.

Where a steam-boat and a tug and tow were approaching each other on nearly opposite courses, and they came together with their starboard bows, caused by the change in the direction of the tug, which could not be kept steady with her tow in the ebb tide, the libel against the steam-boat was dismissed.

Owen & Gray, for libellant.

Shipman, Barlow, Larocque & Choate, for claimant.

BENEDICT, D. J. The controlling facts of this case, as they appear to be disclosed by the testimony, are these: The two vessels were approaching each other on nearly opposite courses, the City of Chester being upon the port of the Beard. This is proved by witnesses from both vessels. Several of the libellant's witnesses say that the Chester was on their port, and testimony to the same effect is produced by the claimant. The vessels came together with the starboard bow of the Chester to the starboard bow of the Beard, and the blow was glancing. The cause of the collision was, therefore, necessarily a change on the part of the Chester towards Brooklyn, or a change on the part of the Beard towards New York. The libel states that the Chester made no change until the vessels were within a short distance, but asserts that when within a short distance she attempted to go between the Beard and Brooklyn. This latter assertion is not borne out by the testimony. The weight of the evidence is that the City of Chester did not change towards Brooklyn, but that the Beard did change towards New York. There is testimony from the libellant's witnesses that the Beard, with a canal-boat on her port side, could not be kept steady in the ebb tide, and the accident was doubtless caused by a swing of the Beard towards New York

when the vessels were too near each other to give the pilot time to counteract it.

For a collision so caused the Chester is not in fault, and the libel must be dismissed, with costs.

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