

THE GEORGE H. DENTZ.

District Court, E. D. New York. June 26, 1882.

INEVITABLE ACCIDENT—ADOPTING DANGEROUS COURSE.

Where the pilot of a vessel, without necessity, adopts a dangerous course, and fails in his purpose, he must bear the responsibility.

W. W. Goodrich, for libellant.

Carpenter & Mosher, for the insurance company,
co-libellant.

E. G. Davis, for claimant of the tug.

BENEDICT, D. J. I am of the opinion that upon the evidence it cannot be held that the tug proceeded against has excused herself for moving so near the South Brother island, in Long Island sound, with her tow, that the libellant's boat brought up on the rocks. The only excuse attempted to be proved is the breaking of the propeller's rudder chain. The positive evidence in regard to the breaking of the chain seems sufficient to prove that the chain did break; but when it broke is not so clear. The failure, at the time of the accident, to mention the breaking of the chain, the circumstances under which the pilot in charge of the propeller left her, and the omission to mention the breaking of the chain in the answer as originally filed, nor until a second answer was compelled by exceptions, have led me to the conclusion that the breaking of the rudder chain was not the cause of the accident. I have not overlooked the testimony of the pilot as to his mention of the chain at the time of the accident, but plainly he did not state what he says he did; or if he did, then the statement was not true, for at that time the chain was not broken. The real cause of the tow's hitting the rocks, no doubt, was a misconception on the part of the pilot of the

propeller in respect to his location. But the same result follows from the testimony of the pilot of the tug; for, according to the pilot, he met a sailing vessel which crowded him into a tight place, and compelled him to port his wheel, and brought him south-west of the passage between the Brothers, so that a sharp sheer was necessary in order to regain his proper position. In making this sheer his rudder chain broke, and before he could repair his chain he was too near the rocks to clear them. This statement shows that the pilot held on his course, porting his helm for the sailing-vessel, in force of the passage between the Brothers, when he should have stopped. By holding on and porting, he placed himself in a position, according to his own statement, where, if his rudder chain happened to break, he must go ashore; and such an accident 576 is not infrequent, as the testimony shows. There was no necessity for him to take this risk. The maneuver was dangerous, as the result proved. Having without necessity adopted a dangerous course, and having failed, he must bear the responsibility.

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