

THE OCEAN EXPRESS.

District Court, S. D. New York. November 3, 1884.

1. PILOTAGE—LIBEL FOR FEES—DUTY OF PILOT.

Upon a claim of fees for pilotage against a vessel which had left before the pilot arrived, *held*, that it was the duty of the pilot to be on hand at high water, and that, in his absence at that time, the vessel was justified in departing without him, and the libel was therefore dismissed.

2. ADMIRALTY PRACTICE—COSTS.

Costs disallowed where the libel is dismissed upon grounds not pleaded.

In Admiralty.

Beebe, Wilcox & Hobbs, for libelant.

Jas. K. Hill, Wing & Shoudy, for claimants.

BROWN, J. I think it was the duty of the pilot, the libelant, to be on hand at high water on the morning of February 15th, when the Ocean Express was to be piloted to sea. His own testimony, aside from his statement of the hour of the time to sail,—8 o'clock,—tends to confirm this view, which is sustained by the evidence of the captain and the draught of the vessel. The libelant's testimony would seem to indicate that he considerably mistook the hour of high water, which was, in fact, a little before six. The vessel, with her deep draught and in Newtown creek, was not bound to wait for him, and upon this ground I think the libel must be dismissed. But as this particular defense was not set up in the answer, the dismissal must be without costs.

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