ful handling on the part of the barge could justly charge the latter with contributing to the collision. The evidence on this point against the barge is by no means clear or satisfactory. The time and space available for her maneuvering were both small, and almost approach the situation recognized as a situation *in extremis*, in which even erroneous handling at the moment is not deemed a fault, when the situation is brought about by the wrong of another. But it is not even clear from the testimony that the barge omitted anything she might have done, or did anything she ought not to have done, in first avoiding the Huston, though she afterwards came in contact with the Blakeley.

I must therefore charge the whole loss upon the Active, and allow a decree against her, with costs; while as to the Ocean Wave the libel should be dismissed, with costs.

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.

POPE and others *v.* CHENEY and others.

(Circuit Court, S. D. Iowa, C. D. October Term, 1884.)

REMOVAL OF CAUSE—FAILURE TO FILE TRANSCRIPT—SECOND REMOVAL.

If a party exercises his right to remove a case into a federal court, and, by filing the requisite petition and bond, deprives the state court of jurisdiction, and confers it upon the federal court, and through his own fault he fails to file the transcript in the United States court, and, after a delay of a year, procures the redocketing of the cause in the state court, and fully recognizes the jurisdiction of that court, he cannot be allowed to remove the cause again to the federal court on another ground than that first alleged, when his delay is not excused, and it is not shown that such ground did not exist at the time of the first removal.

Law. Motion to remand.

Wright, Cummins & Wright, for plaintiffs.

E. J. Goode, for defendants.

SHIRAS, J. This cause was removed from the circuit court for Polk county, Iowa, and is now before this court upon a motion to remand, filed by the defendant Cheney and intervenor Porter. The record shows that the action was commenced on the third of November, 1881, and that on the fourteenth day of October, 1882, the plaintiffs filed a petition for the removal of the case to the United States court, on the ground that plaintiffs were citizens of the state of Illinois, and the defendants citizens of Iowa, the amount in controversy being in excess of $500. On the twenty-fifth day of October, 1882, the state court approved the bond and ordered the transfer of the case to this court. The plaintiffs failed to file a transcript in this court under this petition and order, and on the thirtieth day of October, 1883, the case was redocketed in the state court on the motion of plaintiffs, and placed upon the trial calender, and several motions touching the pleadings were submitted to and passed upon by the state court. On the twenty-ninth of September, 1884, the plaintiffs filed a petition, affidavit, and bond for the removal of the cause into this court, on the ground of local prejudice, and, the state court approving the bond, thereupon the plaintiffs filed the proper transcript in this court on the twenty-first of October, 1884. The defendant and intervenor now move to remand the case to the state court upon the ground that by failing to perfect the removal of the case under the first application, and after the lapse of a year, causing the case to be redocketed in the state court, and having fully submitted the case to the jurisdiction of the state court, plaintiffs have waived or lost their right of removal to this court.

In the case of *St. Paul & C. Ry. Co.* v. *McLean*, 108 U. S. 212, S. C. 2 Sup. Ct. Rep. 498, it appeared that the defendant had removed the cause from the state to the federal court, but failed to file a transcript in the United States court on the first day of the term, it being filed on the third day. The United States circuit court, on mo-