

THE TALISMAN.

District Court, E. D. Pennsylvania. February 16, 1885.

PILOTAGE—REFUSAL TO ACCEPT—ACTION BY PILOT TO RECOVER.

To justify recovery of a claim for pilotage by a pilot whom a vessel has refused to receive, the court must be fully satisfied that the respondent refused or neglected to take such pilot, as provided by the statute.

In Admiralty.

On April 12, 1883, in the night-time, the bark *Talisman*, bound for Philadelphia, while off the Whistling Buoy, Delaware bay, signaled for a pilot, and such signal was answered by the *Henry Cope*, which followed her up the bay, and overtook her as she was about to anchor. The pilot tendered his services, and being told by the master that he intended to wait till daylight and see if there were any tugboats about, went off and did not return. Subsequently he sued for pilotage fees.

Curtis Tilton and Henry Flanders, for libellant.

H. G. Ward, M. P. Henry, J. Rodman Paul, and C. M. Hough, for respondent.

PER CURIAM. TO justify recovery of the claim the court must be fully satisfied that the respondent *refused*, or *neglected*, to take a pilot, as provided by the statute. While it is true that the liability imposed by the statute for such refusal or neglect is not, technically, a penalty,—as the courts have decided,—its operation and effect, When applied, is so far in the nature of a penalty that it should not be applied except in cases of willful refusal or neglect. Did the respondent willfully—that is to say, purposely or intentionally—refuse or neglect in this instance? If he did not absolutely refuse the services tendered, he certainly neglected to avail himself of them; and I do

not see, therefore, how he can escape liability. It seems quite plain that he intended, from the start, to avoid taking a pilot if he could find a tug. He appears to have been laboring under the misapprehension that no obligation to take a pilot rested on him after reaching the point where he anchored. What he said to the pilot is consistent with this view, and seems to be inconsistent with any other. A decree must be entered for the libelant, with costs.

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