

THE WALLACE.¹
COMFORT *v.* THE WALLACE.

District Court, E. D. New York.

November 9, 1887.

PILOTS—NEGLIGENCE—SWASH CHANNEL—SHIP TOUCHING BOTTOM—ICE IN
MAIN CHANNEL.

Libelant, a pilot, took a ship to sea through the Swash Channel. On the passage she touched bottom, and damaged her keel, and in this action by the pilot for his pilotage fees the vessel set up the said damage, and alleged it to have been caused by the pilot's negligence. The evidence showed that the Vessel was in the channel, the depth of water in which exceeded her draught, when she encountered a heavy and unusual wave which lifted her, and caused her to strike; that the reason of her not taking the main channel was the presence in the latter of ice; and that libelant, before starting, had been warned by the owner not to take the ship through ice. *Held*, that no negligence on the part of the pilot was shown, and that he was entitled to his pilotage fees.

Carpenter & Mosher, for libelant.

Wing, Shoudy & Putnam, for claimant.

BENEDICT, J. This is an action by a pilot to recover his pilotage for taking to sea the ship Wallace, in February, 1885. The pilot took the ship through the Swash Channel, and, while passing through the channel, the ship touched the bottom, and damaged her false keel to the extent of about \$200. The defense set up is that "the libelant, in whose sole charge the boat was, directed her course through the Swash Channel in so negligent and improper a manner as to cause her to touch bottom." The negligence here charged is not keeping the vessel in the channel while proceeding through the Swash. This charge is wholly unsupported by evidence. The negligence contended for in the brief of the claimant is in "attempting to take the ship through the Swash Channel." The answer does not permit such a contention, but, if it did, the contention must fail. It is proved that the Swash Channel, although narrower than the Main Channel, has the deeper water, and is constantly used by vessels coming to and departing from New York; that, when this ship went through, the depth of water exceeded her draught; that the cause of the ship's touching bottom was a heavy and unusual wave, which was encountered while in the channel, by which the ship was lifted so as to cause her to strike bottom; that when the pilot reached the Swash Channel there were large quantities of ice in the Main Channel, and before starting the pilot had been warned by the owner not to take the ship through the ice, because her bottom was of soft wood. These circumstances relieve the pilot of the charge of negligence. Attempting to take the Swash Channel under any circumstances is not to be held negligence, and I am not willing so to hold.

The libelant must have a decree for the amount of his pilotage, with interest and costs.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.