

THE WAVERLY AND THE ANGLIA.<sup>1</sup>

*District Court, E. D. New York.*

April 14, 1890.

COLLISION—PRACTICE—JOINT-DEFENDANTS—CROSS-LIBEL—COSTS.

The owners of the steam-ship A. libeled the steam-ship W. for damages by collision. The W., by petition under the fifty-ninth rule, made certain tugs co-defendants with herself in this suit, and also brought a cross-suit against the A. and the tugs, jointly. The A. was represented by one proctor; the tugs all appeared by another proctor. On the trial the W. was declared solely in fault for the collision. *Held*, that the tugs, and also the A., were entitled to tax against the W. a single bill of costs in each action.

In Admiralty. On appeal from taxation of costs.

*Wheeler, Corlis & Godkin*, for the Waverly.

*Wing, Shoudy & Putnam*, for the Anglia.

*R. D. Benedict*, for the A. C. Cheney and the Goodwin.

BENEDICT, J. These cases come before the court on a question of costs. The facts are these: The first libel was filed by the owners of the steam-ship Anglia against the steam-ship Waverly to recover for the injury to the Anglia in a collision with the Waverly. Into this suit, upon a petition filed by the Waverly under the fifty-ninth admiralty rule, two tugs that were towing the Anglia at the time of the collision were brought as parties defendant. They were owned by different claimants, and interposed separate defenses. A libel was also filed in behalf of the owner of the steam-ship Waverly against the steam-ship Anglia, and the two tugs that had her in tow, to recover damages sustained by the Waverly in the same collision. The causes were heard together. The result was that the Waverly was found solely in fault for the collision. The libel of the Anglia against the Waverly was therefore sustained, and the petition of the Waverly against the tugs, brought into this action, was dismissed. In the second action, the libel of the Waverly against the Anglia and the two tugs, in which each vessel had interposed a separate defense, was dismissed. The two tugs were represented by a single proctor; who now seeks to recover a single bill of costs against the Waverly in the first action, and also a single bill of

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costs against the *Waverly* in the second action. The *Anglia* also seeks to tax a bill of costs in each action against the *Waverly*.

As to the first action I am unable to see any ground upon which to refuse costs to the tugs. Having defended successfully a proceeding taken against them, they are entitled to recover their costs against somebody. Certainly they cannot recover costs of the *Anglia*, for she at no time asked a decree against them, and took no proceeding against them. Their costs must therefore necessarily be paid by the *Waverly*, upon whose petition it was that they were brought into the case and compelled to defend. In the action brought by the *Waverly* the proceeding was directly against the *Anglia* and the two tugs. Each of the vessels proceeded against interposed a separate defense, the owners of the respective vessels not being the same. The tugs, being successful in their defense, are, of course, entitled to recover their costs against the *Waverly*, as is also the *Anglia*. The case of *The American Eagle*, (not reported,) to which reference was made, upon examination, is found to differ from the present case. In this case no ground is seen upon which costs can be refused to the tugs as well as to the *Anglia*, and, that being so, such costs must be paid by the unsuccessful party, namely, the *Waverly*.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.