

THE ETRURIA.

(District Court, S. D. New York. March 23, 1898.)

COLLISION—MAKING BERTH—SMALL BOATS TO GIVE WAY ON NOTICE.

When large vessels in making a berth must necessarily swing with the tide against the ends of the piers below, it is the duty of small boats to move temporarily from the ends of such piers on reasonable notice, and to make use of such means as are offered or may be available to them to do so, or take the risk of damage from contact. The libellant's boat not being moved after notice and the offer of help, the libel for damage was dismissed.

This was a libel in rem by the New York Central & Hudson River Railroad Company against the steamship Etruria to recover damages resulting from a collision between the steamship and a barge belonging to libellant.

James J. Macklin, for libellant.

Lord, Day & Lord, for claimant.

BROWN, District Judge. The necessary use by great steamers of the ends of adjacent piers for a few moments while making a berth, must be allowed equally with the rights of other craft to the use of the ends of the piers as a place for temporary mooring. These uses are attended with some danger, and the obligations of reasonable prudence and care rest upon each alike. The large steamers cannot make a berth against the strong ebb tide without swinging against two piers below the slip they intend to enter. Smaller craft, which are unable to withstand even the gentle pressure of such great steamers as the Etruria, a steamer of 8,000 tons displacement, must therefore, on reasonable notice, give way temporarily during the short period required for the large steamer to make her berth, or take the risk of damage. The testimony of Capt. Watson shows a practice compatible with every legal requirement; namely, to give timely notice to any craft lying at the end of the piers and likely to be endangered by the berthing of the incoming steamer, and to supply a tug, if desired, to remove such craft temporarily and take them back again as soon as the steamer is berthed.

The evidence shows that this practice was pursued in this case. About an hour before the Etruria arrived notice was sent to piers 38 and 39, a tug being employed for that purpose; and again half an hour before her arrival. The libellant's barge had been consigned to the slip between piers 38 and 39. Finding the slip full, she was obliged to moor temporarily at the end of pier 38, outside of two other barges; and shortly after mooring, a small lighter wedged in from below, between her and the boat next inside. The barge arrived there after the first notice of the Etruria's coming had been given. The tug that brought her there went into the slip for the purpose of removing two of the boats there in order to make room for the libellant's barge; and about 15 minutes afterwards, when the tug was ready to come out with the boats, she found the entrance closed by the presence of the Etruria, and not long afterwards the

barge was somewhat injured by the swinging of the *Etruria* against her.

The pilot of the tug that gave the notices, saw a tug and barge come to pier 38 not long before the *Etruria* arrived, and immediately went to give the barge notice. He says that the tug was still lashed to her; and that in reply to his notice to the man on the barge he was told to go to h—l. He testifies also that one barge dropped astern from the end of that pier. The man in charge of the barge denies receiving any such notice; but he admits that he was told by the captain of another tug who was passing, that he was in a dangerous place there, and should move on account of the *Etruria*, and that he himself as the *Etruria* came nearer, recognized the danger. He says that he slackened his lines; but that his barge would not drop astern for the reason that the lower end of his boat was canted to the westward by the lighter wedged in from below, and that the ebb tide pressed the lighter's bow so strongly against the inside boat that the barge would not move astern.

There is no indication of any inattention or lack of suitable care and skill on the part of the *Etruria*. I think the barge had timely and sufficient notice of the need of giving way briefly for the berthing of the *Etruria*, and had means to do so. At the time the notice was given, her own tug was alongside and could have removed her without difficulty. And later, when the *Etruria* approached and outside cautions were given, the bargeman apparently could still have called upon his own tug, which was in the slip close by, to remove him temporarily. He seems to have chosen to remain and take the chances of dropping astern until too late.

The libel is dismissed.

THE NEW YORK.

(District Court, S. D. New York. February 17, 1898.)

COLLISION IN SLIP—CANAL BOAT IMPALED ON PROPELLER—WARPING—NOTICE.

While the steamer *New York* was being carefully warped across the slip where she had been moored, a canal boat was found to be impaled upon one of the steamer's propeller blades, and was freed by some backward turning of the propeller; *held* (1) that upon the contradictory testimony the damage did not arise from any careless or improper handling of the steamer, but from the incautious movements of the canal boat; (2) that the warping of the steamer was not naturally calculated to do damage, and that no prior notice of intent to move her was necessary.

This was a libel in rem by James I. Collins against the steamship *New York* to recover for damages occasioned to a canal boat and cargo by becoming impaled on the steamship's propeller in her slip.

Carpenter & Park, for libelant.

Robinson, Biddle & Ward, for claimant.

BROWN, District Judge. On the 16th day of September, 1896, between 3 and 4 o'clock in the afternoon, when the large twin screw steamship *New York*, 564 feet long, was being pulled sideways across the slip from pier 15 towards pier 14 North river, bow in, it was