THE HAXBY.

(District Court, E. D. Pennsylvania. June 27, 1899.)

No. 15.

ADMIRALTY JURISDICTION—SUIT FOR INJURY TO PIER.

A "pier," in the ordinary meaning of the word, is a projection of the land, and is to be treated as land for purposes of jurisdiction; hence a suit for an injury to a pier by a vessel, where the libel uses the word without any qualifying adjective, is not within the jurisdiction of a court of admiralty.

In Admiralty. On exceptions to libel.

John G. Johnson, for libelant.
Convers & Kirlin, for respondent.

McPHERSON, District Judge. This is an action in rem, to enforce a maritime lien. The libelant avers that the steamship was so negligently managed that she crashed into and injured a "pier" in the navigable waters of the Delaware river, thereby doing the damage complained of. The exceptions raise the question whether the case is within the admiralty jurisdiction; the point being whether the pier is to be regarded as land or as water. It is unnecessary to cite authorities in support of the proposition that the jurisdiction of admiralty to redress a tort depends upon the point in space where the injury was done. In the case now before the court the injury was done to a pier, and the only matter for consideration is whether or not this structure is, for the present purpose, a part of the land. In the sense in which the word is used in the libel, I have no doubt that it means a part of the land. The Century Dictionary defines a pier to be "a projecting quay, wharf, or other landing place"; and, without some qualifying adjective, this is the ordinary meaning of the word. It may be a solid stone structure, or an outer shell of stone or wood filled in with earth; or it may be a framework formed by fastening a platform of planks upon piles driven into the soil at the bottom of the water. In either event, it is a projection of the land, and for purposes of jurisdiction it should be so treated. It is conceivable, of course, that a pier might also be built to float upon the surface of the water; but it is then a floating pier, and needs the adjective before the description is complete. In the case now in controversy, it is not denied that the pier was an immovable, and not a floating, structure. It seems clear to me, therefore, that in legal contemplation it was land, and that the injury sued for must be redressed by the common law, and not by the admiralty. The exceptions are sustained, and the libel is dismissed.

THE FRED M. LAWRENCE et al.

(Circuit Court of Appeals, Second Circuit. May 25, 1899.)

No. 153.

ADMIRALTY—SUIT IN REM—PROCEDURE ON INSOLVENCY OF SURETY ON RELEASE BOND.

In a suit in rem for collision, where the vessel attached had been released on stipulation, on the insolvency of claimant's sureties an order was made pursuant to a rule of court requiring the claimant to furnish additional security, and, on a failure to comply with such order, the claimant's answer was stricken out, and a decree entered pro confesso for an amount of damages ascertained on a reference by a commissioner. *Held*, that the striking out of the answer and entry of the decree could not be deemed a punishment of the claimant for failure to obey the court's order, but was a proper procedure to bring to an end a proceeding in rem in which, through the fault of the claimant, the libelant had neither the res nor security.

Appeal from the District Court of the United States for the Eastern District of New York.

On September 30, 1893, a libel in rem was filed in the district court for the Eastern district of New York against the canal boat Fred M. Lawrence by the Union Marine Insurance Company to recover damages for a collision, and the vessel was attached, whereupon Elizabeth E. Hickok filed her claim as owner, and the value of the vessel was fixed by consent at $3,400. The said Hickok, Alfred Hamilton, and Edward M. Clarkson entered into a stipulation that, in case of default or contumacy on the part of the claimant or her sureties, execution for the agreed value, with interest thereon, might issue against their goods, chattels, and lands, and the vessel was released. The condition of the stipulation was, in substance, that, if the stipulators should at any time upon the interlocutory or final order or decree of the district court or appellate court, and upon notice to the proctors for the claimant, pay the money awarded by the final decree, the stipulation should be void. The claimant filed her answer on December 16, 1893. Nothing more was done in the case until April 16, 1898, when a motion was made, which was granted on June 8, 1898, that, by reason of the insolvency of the sureties, the claimant or her sureties should furnish better and sufficient security at a specified time, and, if not furnished, the answer should be deemed stricken out. This order was made by authority of rule 23 of the district court, which was made pursuant to section 913 of the Revised Statutes. Rule 23 is as follows: "In all cases of stipulations in civil and admiralty causes, any party having an interest in the subject-matter may at any time, on two days' notice, move the court on special cause shown for greater or better security; and any order made thereon may be enforced by attachment or otherwise." The order was not complied with, and on June 25th it was ordered that the answer should be deemed stricken out, and that the libel should be taken pro confesso against the claimant and her sureties, and should be referred to a commissioner to report the damages. Counsel for the claimant attended upon the reference and upon the commissioner's report, which found the damage to have been $3,266.39, and the interest thereon to be $970.65. A decree was entered that the libelant recover from the Fred M. Lawrence, the claimant, and the stipulators the amount thus found and costs, and that, unless the decree was satisfied within a specified time, the stipulators for costs and value on the part of the owner show cause within a specified time why execution should not issue against them. From this decree the claimant and the sureties have appealed, upon the ground that the district court was without authority to order that the answer should be stricken out, or that the libel should be taken pro confesso.

Philip Carpenter, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.