the default of the claimant, and they are liable accordingly. Todd v. The Tulchen, 2 Fed. 600. The decree of the district court is affirmed, with costs.

THE F. W. DEVOE.

(District Court, E. D. New York. June 9, 1899.)

COLLISION—NEGLIGENT NAVIGATION OF TUG ALONG PIERS.

Laws N. Y. 1897, c. 378, § 879, making it unlawful for vessels to obstruct navigation in the East and North rivers by lying outside the piers, except at their own risk of injury from vessels entering or leaving any adjacent dock or pier, does not affect the right of a vessel lying beyond the end of a pier to recover for an injury caused by a collision with it of a passing tow through the negligent navigation of the tug, which was neither entering nor leaving an adjacent dock.

This was a suit in rem to recover damages for collision.

Wilcox, Adams & Green, for libelant.
Peter S. Carter, for claimant.

THOMAS, District Judge. At about 7:15 p. m. on the 5th day of August, 1898, a scow in the tow of the claimant's tug collided with the libelant's lighter, which was lying outside of two other lighters at the end of pier 8, Brooklyn. For this no sufficient excuse is offered, and hence the negligence of the tug is established. However, the claimant answers that the lighter was lying off the end of the pier, in violation of section 879, c. 378, Laws N. Y. 1897, which provides:

"It shall not be lawful for any vessel, canalboat, barge, lighter or tug to obstruct the waters of the harbor by lying at the exterior end of wharves in the waters of the North or East rivers, except at their own risk of injury from vessels entering or leaving any adjacent dock or pier; and any vessel, canalboat, barge, lighter or tug so lying shall not be entitled to claim or demand damages for any injury caused by any vessel entering or leaving any adjacent pier."

It does not appear that the claimant's tug or tow was "entering or leaving any adjacent dock or pier," but that the tug had passed the lighter, and that several of the scows in the tow struck the same. The excuse of the master of the tug is that he had orders to go to pier 7 to pick up another scow; that in fact the order related to pier 7 New York, instead of pier 7 on the Brooklyn side; and that, to effect his mistaken purpose, it was necessary for the tug with her tow to pass near to, and along the outer end of, pier 8, to pier 7, where the scow lay. The court is disinclined to believe, from the course pursued, that the tug had any such purpose in view. It was doing nothing that indicated a purpose to enter the slip, and the accident did not happen while it was doing any act within the meaning of the statute. The claim seems to be that a tug with a tow can navigate the river along the piers, and sweep away all the vessels in its path, at the peril of the destroyed or injured shipping. Such a disregard of the safety of property will not be sanctioned by this court. Let a decree be entered for the libelant, with costs.

MEMORANDUM DECISIONS.

THE ANDREW J. WHITE.

(District Court, S. D. New York. June 29, 1899.)

COLLISION—EVIDENCE CONSIDERED.

In Admiralty. Collision.

Carpenter & Park, for libelant.
James J. Macklin, for respondent.

BROWN, District Judge. The libel charges that the libelant's canal boat, Michael E. Kiley, while lying inside the slip at the foot of Sixty-Second street, North river, was run into by a car float, which was in charge of the steam tug Andrew J. White and which had broken loose and been allowed to run into the slip and damage the libelant's boat. The damage occurred early in the morning of February 16, 1898, probably about 5 o'clock, during a storm of wind and rain.

Notwithstanding the very diligent effort of libelant's counsel to make out a case against the White and her float, I am satisfied from a careful consideration of all the circumstances and testimony that there is not satisfactory evidence that the damage was done by the White, so as to warrant a decree in the libelant's favor. All the witnesses from the tug and float testify that the float did not break loose after getting out in midriver opposite about Seventieth street, but came down in midriver or a little to the westward, nearer to the Jersey shore, and so on around the Battery, and that at no time were they anywhere near the slip at the foot of Sixty-Second street, where the libelant's boat lay. The libelant seeks to meet this testimony in part by the direct evidence of two or three persons in the slip who claimed to recognize the float and the tug White, and in part by hearsay evidence or impeaching testimony. The argument is mainly upon hypothesis; and I think imagination plays too large a part in the case. The first witness called was a woman of 70, who swore to the identity of the float by seeing distinctly names which were never upon it. The libelant claims that because the float was let loose from the tug at one time while backing from the center of the float bridge at Sixty-Eighth street, and in shifting before going down river, that the float broke loose and drifted down river in the ebb tide and was carried by the wind into the slip. This is theory only. It is contradicted by the evidence that it was not high water at Governor's Island until 3:30; and as the current runs flood in the North river at least two hours after high water or about two and one-half hours at Seventieth street, the tug could not have drifted down at that time as supposed, but on the contrary she would drift up somewhat while she was shifting, as the witnesses for the float testify. The injury to the rail of the float it seems to me is clearly shown not to have arisen from the supposed collision.

Without going further into the numerous particulars which have been most industriously argued, I am satisfied that the evidence is insufficient to warrant a decree, and the libel should, therefore, be dismissed, without costs.

ASCHE et al. v. UNITED STATES. (Circuit Court, S. D. New York. May 27, 1899.) No. 2,762. Edward Hartley, for importers. H. P. Disbecker, Asst. U. S. Atty.

TOWNSEND, District Judge. The contention herein arises over certain "feathers and down" for beds, classified for duty, under paragraph 425 of the act of 1897, as "dressed or otherwise advanced or manufactured in any manner," at 50 per cent. ad valorem, and protested as "crude or not dressed," at