

Case No. 7,091.

{4 Blatchf. 21.}¹

THE ISAAC NEWTON.

Circuit Court, S. D. New York.

April 15, 1857.

COLLISION—REPAIRS TO VESSEL—DETENTION—DAMAGES.

1. Where, in a collision case, a commissioner allowed, as damages, \$800, for the difference between the value of the libellant's vessel after she was repaired and her value before the injury, this court, on all the facts, disallowed the

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item, holding that she was, after being repaired, in as good a condition as before the injury.

{Cited in *The St. John*, Case No. 12,224; *Petty v. Merrill*, Id. 11,050; *The Excelsior*, 17 Fed. 925.}

2. Where an item of \$465, and interest on it, was allowed by the commissioner, for loss of the earnings of the vessel during her detention for repairs, upon the mere opinion of her master and mate, the claimant introducing no testimony on the point: *Held*, that such opinion was incompetent evidence. But, as the expense of sending the report back would probably equal, if not exceed, any abatement in the amount, the court allowed the item to stand, deducting the interest on it.

This case came up on exceptions to the report of a commissioner as to the damages in a case of collision brought into this court by appeal from the district court. {See Case No. 7,092.}

NELSON, Circuit Justice. One of the exceptions is to the allowance of an item of \$800, for the difference between the value of the libellants' vessel after she was repaired and her value before the injury. This item is founded on the evidence of the master and the mate, and is a matter of opinion, resting upon no fact stated, except that the vessel leaked more after the repairs than before the damage occurred. The shipmaster who repaired her, states that she was thoroughly repaired, and was put in as good a condition as before the injury. The work was done under the direction of the master of the vessel, and, from the sum expended in making the repairs, at his instance, it would be somewhat strange if the depreciated value should be as large as he states. The whole value of the vessel before the injury, at the highest estimate, was \$2,500; the amount of repairs was \$1,831.81. After this amount of expenditure, I am inclined to agree with the shipmaster, that she must have been in as good a condition as before the injury, and shall accordingly disallow the claim of \$800.

The item of \$465 for loss of the earnings of the vessel during her detention, thirty-one days, for the repairs, is also objected to. The evidence of this rests upon the opinion of the master and the mate, which strictly was incompetent to establish the fact. They may have been competent witnesses to prove this item of loss, if they knew what the price at the time was, in the port of New York, for the charter of a vessel of this description; otherwise, not. That was a fact which might have been ascertained on inquiry, as readily as the price of many commodities in the market for sale. The mere opinion or judgment of the witness himself is but conjectural and speculative. I would reject the evidence altogether, and send the report back, if it were not that the expense attending this mode of correcting the error would probably equal, if not exceed, any abatement in the amount. Besides, it was open to the claimants to have corrected the estimate by witnesses on their part, which was omitted. I shall, therefore, allow the item to stand, striking out the interest. The interest to be deducted is \$208; the depreciation to be deducted is \$800; making a total of \$1,008; which, taken from the amount reported, \$3,566.06, leaves \$2,558.06, for which a decree must be entered.

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