

cover a loss occurring, as this did, while the cargo was being brought by the carrier from East St. Louis to St. Louis under the circumstances above stated. The carrier had assumed the control and taken possession of the goods for the purposes of the voyage, and the fact that some were on one side of the river and some on the other is of no consequence.

It is also contended by defendant's counsel that the proof fails to show that the property lost or injured was insured by the libelants. The evidence touching this point is certainly secondary, the policies of insurance not having been introduced in evidence; but, with the exception of the statements made by a single witness, no objection has been raised on this ground until the present hearing. The point is purely technical, for the fact of the insurance seems to have been taken for granted throughout the litigation. If the objection now for the first time made should be sustained, a proper regard for the substantial rights and equities of the parties would require the court to permit the policies to be now introduced, and that the court can do this at any time before final decree is very clear. As there is no room for doubt as to the fact, the defendant would gain nothing by now insisting upon the best evidence, and I therefore, without a very careful consideration of the merits of the objection, overrule it. The decree of the district court is affirmed.

THE EXCELSIOR.

(District Court, S. D. New York. July 5, 1883.)

1. COLLISION—DAMAGES—DEMURRAGE.

In collision cases, damages in the nature of demurrage for detention of the vessel while repairing, which are plainly out of all proportion to the value of the vessel, should be disallowed. Only the market value for chartering, or fair net earnings as ordinarily employed, over all expenses, should be awarded for demurrage.

2. SAME—DEPRECIATION—REPAIRS.

Nothing should be allowed for permanent depreciation of the vessel repaired, when, after being repaired, the vessel is, on the whole, worth as much as before the injury.

In Admiralty.

Benedict, Taft & Benedict, for libelants.

James McKeen, for claimant.

BROWN, J. The testimony on the part of the libelants, as to the various items of damage, shows to my apprehension such palpable efforts at exaggeration as to disentitle it to such weight or confidence as it would otherwise receive. The claim that this small schooner of only 70 tons, and six years old, was worth \$7,500, and that her daily use or demurrage, without crew or expenses, was worth \$15

per day, net, or upwards of \$5,000 a year, must be deemed gross exaggerations.

I am satisfied from the evidence that \$5 per day is ample, and, in fact, more than her net market value for chartering, or her ordinary and fair net earnings, as ordinarily employed. *The Potomac*, 105 U. S. 630; *Sturgis v. Clough*, 1 Wall. 269.

As to permanent depreciation, I am also satisfied that the additions of new masts and sails in place of the old ones fully compensate for any other depreciation, which must have been slight. As in the case of *The Isaac Newton*, 4 Blatchf. 21, I am satisfied that, after all the repairs made on her, she was "in as good condition as before the injury." *Petty v. Merrill*, 9 Blatchf. 447. I cannot sustain any of the libelant's exceptions. Deducting, therefore, from \$1,790.48, the amount reported, one-half of the allowance for permanent depreciation, viz., \$125, and \$77 on account of demurrage, making \$202, which, with interest to June 20, 1883, amounts to \$256.54, there remains \$1,533.94, for which a decree may be entered.

THE VENUS.

(District Court, S. D. New York. September 10, 1883.)

1. COLLISION—DAMAGES—TOTAL LOSS.

Damages allowed for injuries to a vessel by collision cannot ordinarily exceed her value at the time of collision, *i. e.*, as for a total loss, with cost of raising, to determine her condition, or to remove her as an obstruction, where that is necessary. To recover more, where the vessel has been repaired instead of being abandoned, special circumstances must be shown proving that the excess accrued notwithstanding the exercise of good faith and ordinary prudence and good judgment in repairing.

2. SAME—DEMURRAGE.

Compensation as for demurrage while the vessel is undergoing repairs cannot exceed the clear net value of the use of the vessel, excluding all charges and expenses; and, when charged for a long and continuous period, it must bear some reasonable proportion to the value of the vessel. For a canal-boat worth \$1,350, an allowance was made of \$3 per day for 59 days.

3. SAME—EXPENSE OF RAISING—REPAIRS.

Where the owner was advised to abandon as a total loss, but repaired the vessel and claimed, besides expense of raising, \$1,028 for repairs, \$584 for demurrage, and \$300 difference between new and old, and got no estimates before repairing, nor contracted for any limit of the time for repairing, and claimed \$8 per day for a detention of 73 days, *held*, that he had not shown ordinary prudence or good judgment in repairing, and the excess of the above three items, being \$562 over the value of the boat, as a total loss, at the time of the collision, was at his own risk and charge, and should not be allowed.

4. SAME—CHARGES FOR BENEFIT OF INSURER.

Charges made for the benefit of the insurer only cannot be allowed.

Exceptions to Commissioner's Report.

Edward D. McCarthy, for libelant.

Beebe, Wilcox & Hobbs, for claimants.