provement in combined lock and handle for traveling-bags. The improvement consists in having the case for the lock long enough to fasten the handle to at each end by rings through the upright walls of the case. The handle is thus attached to the lock and by that to the bag; and the extended perpendicular walls of the case stiffen and strengthen the whole. If the invention had been of an attachment of the lock directly to the handles only, or of the extension of the top plate of the lock-case along the frame to receive the handle-rings, it would have been anticipated; but the substance of it is understood to be the single attachment of the lock and handle to the frame, and taking advantage of the walls of the case to strengthen the frame at the handles. None of the devices relied upon by the defense meet these qualities. The patent, therefore, seems to be valid.

The structure shown for an infringement appears to have all the elements of the patented invention, with the addition of a bottom plate to the lock extending beyond and fitting over the handle-rings. This adds to, but does not take the place of, the orator's arrangement. The attachment of the handles to the lock-case, and the support of the whole by the walls of the case, are retained. This taking of the invention for the purpose of adding to it is as much an infringement as if taken and used without the addition. The orator, therefore, seems to be entitled to a decree.

Let a decree be entered for the orator for an injunction and an account, with costs.

The Golden Rule.[1]

(*Circuit Court, E. D. Louisiana.* March 29, 1884.)

1. Collision.

Although the evidence shows that there was no actual collision, there is no doubt that the Golden Rule fouled in the hawser of the Arthur and broke it, and probably, in doing so, broke the ship's martingale. It was an accident likely to occur in a crowded port, and the offending vessel was liable for the damages.

2. Survey.

The costs of a survey held on the injured vessel, without order of court, or by contract between the parties, in the absence of any proof that it was a necessary result of the collision, cannot be charged as part of the damages.

Admiralty Appeal.

James McConnell and *Horace E. Upton*, for libelants.

H. H. Walsh, for claimants.

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

PARDEE, J. It appears that the bark Prince Arthur was moored in the Mississippi river at First street, in this city, and that the stern-wheel steam-boat Golden Rule attempted to land ahead, and in doing so her wheel fouled in the large hawser leading from the head of the Arthur ashore, chafing and breaking the hawser, and starting the ship's figure-head and breaking her martingale. The captain of the Prince Arthur called a board of survey, repaired his ship's figure-head and martingale, purchased a new hawser, and presented his claim to the Golden Rule for $262.33 for payment, which was refused, but $30 tendered in full payment of damages. Thereupon the owners of the Prince Arthur libeled the Golden Rule, alleging collision and damages. Thereafter the claimant tendered in court $50 and costs accrued. On reference to a commissioner to report damages the following items and sums were allowed:

For hawser,	$194 70
For martingale,	3 76
For survey,	30 00
Total,	$228 46

The district court, considering that a deduction on account of new for old should be allowed on the hawser, reduced the amount by one-third of the cost, and then confirmed the master's report, leaving the account for damages standing thus:

For hawser,	$152 36
For martingale,	3 76
For survey,	30 00
Total,	$186 12
Deduct value of old hawser left on ship and proved,	33 86
Total damages,	$152 26

For which amount judgment was given, subject to the tender of $89.25 made by claimant and paid into court.

In this court the claimant strenuously contends that there was no collision; that the hawser was rotten; that it could have been spliced; and that $30, the original tender, covered all the damages. The evidence shows no actual collision of ships, but it is immaterial. There is no doubt, under the evidence, that the Golden Rule fouled in the hawser of the Arthur and broke it, and probably, in doing so, broke the ship's martingale. It was an accident likely to occur in a crowded port, and there is nothing to determine about it except the actual damages. The evidence that the hawser was rotten is wholly inferential, based on the fact that it broke, and I think is fully met by the facts and direct evidence on the part of libelants. The evidence also shows that it could not have been spliced without weakening and shortening it, so as to render it useless to the Prince Arthur. A new

one cost in this market $228.56, and when from that amount was deducted one-third, new for old, and the proven value of the old hawser, $33.86, there ought to be no question that the damage on account of the hawser was correctly ascertained. The small amount allowed for the martingale was proved, and is not questioned. The survey does not appear to have been questioned in the district court, either in the record or in argument. No exception was taken to the master's report, except the objections that may have been urged orally before the district judge. Proctors for libelants in this court have not shown on what authority or principle such charge for damages is allowable.

The survey was not by order of any court, nor by contract between the parties. It was *ex parte*, although the agent of the Golden Rule had notice. It was not admissible in evidence, and determined no fact in the case. It was not necessary in the light of actual facts of the alleged collision or of the injuries resulting. If the survey was a necessary result of the injuries inflicted on the Prince Arthur, such fact should have been proved in the case. As the record stands, the expense of holding it ought not to be charged to the claimant, and I think the judgment of the district court should be reduced by that amount. If the claimant had objected to that item in any of the proceedings before reaching this court, I have no doubt it would have been either established by proof and authority, or been disallowed by the court; and for this reason, while I reduce the amount of the decree given by the district court, I do not think all the costs of appeal should be thrown on the libelants.

A decree will be entered in favor of libelants for $122.56, with 5 per cent. interest thereon from March 13, 1880, and for costs of the district court, subject to the tender of $9.25 made June 14, 1882; the costs of this court, including cost of transcript, to be equally paid by the parties.

FISH *v.* ONE HUNDRED AND FIFTY TONS OF BROWN STONE.

(*District Court, S. D. New York.* April 16, 1884.)

1 DEMURRAGE—REASONABLE TIME—USAGE.

Where goods are taken on freight consigned to a consignee at a particular wharf, and there is either no bill of lading, or the time for delivery is not specified, and there is no contract on the subject, *held*, that the obligation in respect to delivery is that each party shall use reasonable diligence in performing his part to effect the delivery; and that in the absence of any special usage of the port or of the trade neither will be liable to the other for any detention of the vessel arising from any cause over which he has no control, and for which he is not in fault.

2. SAME—STIPULATION TO PROTECT VESSEL.

If the vessel would guard against detentions not arising from the fault of the consignee, she must protect herself by stipulating for a given period for the discharge after arrival, or for dispatch. Where no such precautions are taken the consignee is not liable for detention, if not in fault.

3. SAME—CASE STATED.

Where the canal-boat J. B. A. took on board, at a port in Connecticut, a cargo of brown stone, deliverable at Sixty-third street pier, New York, and on arrival there was obliged to wait seven days for her turn to get a berth to deliver the cargo, through the accumulation of other vessels arriving before her, and Sixty-third street pier was known to the libelant to be usually crowded and a bad place, and the usage in the brown-stone trade was for the carrier to take the risk of such detention, *held*, that the consignee was not in fault, and that the libelant was not entitled to recover demurrage, both on that ground and on the ground of the usages of the trade.

Demurrage.

J. A. Hyland, for libelant.

Henry Gildersleeve, for claimants.

BROWN, J. This libel was filed to recover $337 freight, $40 extra charges, and 7 days' demurrage, at the rate of $15 a day, on the delivery of 150 tons of brown stone, consigned to Morris & Cahill, at the Sixty-third street pier, this city. The stone was shipped by the Middlesex Quarry Company, at Portland, Connecticut, on board the libelant's canal-boat J. B. Arnold, deliverable to the consignees at the Sixty-third street pier, New York. The boat arrived near the pier on the sixth of December, 1881, and gave immediate notice to the consignees of her readiness to discharge. There were numerous other vessels waiting their turn to get to the pier, and the Arnold was not able to get near enough to commence discharging until the 13th, when her discharge was commenced across another boat, which lay inside of her, and was finished on the noon of the 16th. The consignees, Morris & Cahill, are stone cutters, who had a yard near Sixty-third street pier. On the arrival of the Arnold they desired her captain to unload the stone directly upon their trucks, instead of upon the docks, agreeing to pay him for doing so $10 per day—the customary extra price. The claimants do not dispute the items claimed for freight and four days' extra pay; the claim for demurrage is the only matter litigated in this suit.