The Henry M. Clark.

(*District Court, S. D. New York.* November 29, 1884.)

Collision—Damages—Repairing—Intervening Voyages.

While indemnity for the loss is the rule of compensation in collision cases, where the actual cost of repairs is relied upon as the proof of the damage, such repairs should be made at once. If made at different times, and in part, after intervening voyages calculated to aggravate the injury, a reasonable deduction made by the commissioner from the actual cost of repairs will be sustained.

In Admiralty.

Goodrich, Deady & Platt, for libelant.

More, Aplington & More, for claimants.

Brown, J. From the damages proved by the libelant, the commissioner has deducted $500, to-wit: $140 on account of labor, $100 on account of materials, and $260 on account of the voyages made between the different times of making the repairs. The last item of deduction is most strongly pressed on the attention of the court, upon the exceptions as improperly deducted. I cannot doubt from the evidence that the libelant's vessel received a strain, wrench, or twist from the effects of the collision, though the full effects of it were not apparent until afterwards. The libelant has an undoubted legal right to full compensation for the actual injury caused by the collision, and he is not under any obligation to repair his vessel; but when the repairs are sought to be made the chief proof of the actual injury caused by the collision, it must appear that the repairs were made fairly, and made, not only within a reasonable time, but under circumstances that leave no room for a reasonable belief or suspicion that the injuries caused by the collision have been aggravated by the intermediate use of the vessel. To admit without question the cost of making repairs, after indefinite navigation of the vessel in the mean time, would introduce a highly dangerous rule, and add greatly to the opportunities already existing for exaggerated claims in the repairs of damaged vessels. In the present case, two or three considerable voyages were made between the different times at which the repairs were done. These voyages were calculated to increase, to some extent, the injuries to the ship; though not, perhaps, to a large amount. On the whole, I think the amount of $260, deducted by the commissioner from the final aggregate of the repairs, is none too large. I have examined, also, the other objections raised upon each side, but do not think there are sufficient grounds for varying the commissioner's report; and his report is, therefore, confirmed.

CHRISSENGER v. DEMOCRAT.

(*Circuit Court, N. D. Iowa, E. D.* November Term, 1884.)

1. REMOVAL OF CAUSE—TIME OF APPLICATION—IOWA CODE, § 2744.
   Section 2744 of the Iowa Code defines the term at which a cause can be first tried, as that phrase is used in the act of 1875, and limits the right of removal in law actions to the first term after due and legal service has been had, even though the issues therein have not then been made up, or the cause has not been actually reached for trial. *Atlee* v. *Potter*, 4 Dill. 559, followed.
2. SAME—ACT OF 1875—"TERM."
   The words "before or at the term at which the cause could be first tried," in the act of 1875, refer to the term at which the cause could, under the provisions of the state statute, be legally brought to trial, and not the term at which the case is actually put in position for trial.
3. SAME—WHEN APPLICATION TOO LATE—HOW DETERMINED.
   The true test, in determining when the application for removal must be made, is the question whether the case belongs to a class of cases which, under the Iowa Code, are triable at the first term after service, or to the class which, by reason of some provision of the Code, cannot be forced to trial until the second term. If the case belongs to the former class, the application must be made before or at the first term, even though it may be apparent that by reason of some special fact the case may not be actually in a condition to be tried.

At Law. Motion to remand cause.

H. T. McNulty and *Robinson, Powers & Lacy*, for plaintiff.

James H. Shields and *Henderson, Hurd & Daniels*, for defendant.

SHIRAS, J. In this cause the plaintiff, a citizen of Minnesota, sues the defendant, a citizen of Iowa, for damages alleged to have been caused by a libelous publication affecting the plaintiff. The action was commenced at the April term, 1884, of the district court of Dubuque county, Iowa, the original notice being returnable on the twenty-ninth of April. On that day the defendant appeared and filed a motion for an order requiring plaintiff to file security for costs. Sections 2927 and 2928 of the Code of Iowa provide that in cases wherein the plaintiff is a non-resident of Iowa, or a foreign or private corporation, and the defendant files an affidavit showing that he has a defense to the action, the plaintiff, before any other proceeding in the cause, shall file a bond, with sureties, to be approved by the clerk, conditioned for the payment of costs; and that if the bond, when ordered, is not filed within the time fixed by the court, the cause shall be dismissed. The court granted an order requiring the plaintiff to file a cost bond within 60 days. Before the expiration of the 60 days, and before the bond had been filed, the court adjourned for the term. After the adjournment, but before the expiration of the 60 days, plaintiff filed a cost bond, which was approved by the clerk.

At the opening of the next term of the state court, the defendant filed a petition and bond for the removal of the cause to this court under the act of 1875, and procured and filed the proper transcript. The plaintiff now moves for an order remanding the case, on the