ing. He had a compound comminuted fracture of the lower bones of his leg. He must be compensated for his pain, and for his impaired capacity for labor. He is by no means helpless, or unable to make a living. Counsel for libelant press upon the consideration of the court tables, prepared by insurance agents, showing the expectancy of life at various ages,—35 years if libelant is 30, and 32 years if he is 35,—and ask that he be allowed the sum of his daily wages for this period. This would be securing for libelant compensation for a certain period when we are dealing with the most uncertain thing in the world,—human life. I have no confidence in, and less respect for, these tables made up by insurance agents, in which, of course, large allowance must be made for heavy commissions, expenses, and profit. Nor can any safe guide be had from decided cases. Circumstances in each case sway the minds of judges as well as jurors. We can compensate him for his pain. Following Mr. Justice BRADLEY in *Miller* v. *The W. G. Hewes*, 1 Woods, 367, I allow him $500. His disability is for life, but for life only. Assuming—and it is beyond the mark—that he can get for every working day $1.25, his income would be $375 per annum. This would be the income at 7 per cent. on a capital of $5,357. But, as he would be entitled to such income only for his life, a decree giving him this sum in fee would clearly be improper. In South Carolina (*Wright* v. *Jennings*, 1 Bailey, 277) the value of the life-estate as compared with the fee is as 1 to 2; that is, ½. The one-half of $5,357 is $2,678. This would be the award were the libelant rendered absolutely helpless and incapable of work. But his capacity to labor is diminished, not destroyed. Assume that it is diminished two-thirds. Allot him two-thirds of $2,678; that is, $1,786. Let a decree be entered for libelant in $2,286, and costs.

THE MASCOT.[1]

ROSE BRICK CO. *v.* THE MASCOT.

(*District Court, S. D. New York.* December 30, 1891.)

TOWAGE—OBSTRUCTION—GENERAL KNOWLEDGE OF—DEPARTURE FROM CUSTOMARY COURSE.

A tug, on taking a tow up a canal, ran the tow upon a rock which the tug claimed was an unknown obstruction, but it was shown that there was general knowledge of some obstructions there, and a customary and well-known course to go on one side of the canal, which the tug on this occasion departed from without cause. *Held*, that the tug was liable for the injury to the tow for departing from the customary course.

In Admiralty. Suit to recover damages for negligent towage. Decree for libelant.

Wilcox, Adams & Green, for libelant.

Carpenter & Mosher, for claimant.

[1] Reported by Edward G. Benedict, Esq., of the New York bar.

BROWN, J. About noon on the 11th of April, 1891, the libelant's barge Roseton, loaded with brick, in tow of the steam-tug Mascot, on a hawser, while going up the artificial canal which runs to the southward and eastward from Newtown creek, was run upon a sunken rock a little to the eastward of Stag street, and from 55 to 65 feet off from the southerly side of the canal. Subsequent examination showed that this rock was a sharp peak, rising up about 15 inches above the level of a flat rock, about 9 feet long by 8 feet wide, which was situated a few inches only below the muddy bottom of the canal. Another rock near by, but probably somewhat further off from the southerly shore, had been well known to navigators, and was removed in December previous. The claimant contends that the rock removed was the only rock known, and that the tug is not liable, because the rock on which the Mascot struck was previously wholly unknown. If I were satisfied that the tug had pursued the usual course in going up the canal, I should hold her not liable. The clear weight of evidence, however, is that all boatmen knew that it was necessary to keep upon the southerly side of the channel-way, and that when, as in this case, a schooner was moored at the bulk-head off Stag street, the usual course was to go as near to the schooner as possible. Had the Mascot pursued this usual course, the evidence leaves no doubt that the Roseton would not have been harmed. Schooners were very frequently moored there, and the Roseton, and other barges drawing quite as much water, had been frequently taken past such schooners without injury. On this trip, moreover, the tide was at high water, so that everything was most favorable. These facts, with the evidence as regards the position of the rock, satisfy me that the Roseton struck the rock because the tug did not pursue the customary course, and go near the schooner that was lying there, but went at least 10 feet off from the schooner, instead of only 3 feet, as the tug's witnesses contend. The customary practice was binding upon the Mascot. No reason for departing from it is suggested. In case of accident from obstructions while departing from the customary course, it certainly is not incumbent upon the libelant to show that the tug or other boatmen had positive knowledge of the precise reasons for the custom, or of the exact location of each particular rock or obstruction, whatever it might be. It is enough in this case that the necessity of going very near to any schooner that might be moored at the bulk-head was known; and the invariable custom of passing so near, viz., within two or three feet, or even grazing the schooner, as the witnesses testify, is sufficient evidence of the necessity, and of some obstructions that required such navigation. The defendants, in effect, confirm this by their testimony that they did go within three feet of the schooner, though I find them mistaken on this point. The general knowledge that a certain course was the proper course to take in consequence of some obstructions, and that it was the custom uniformly to adhere to that course, is sufficient to put upon the tug the risk of departing from it without reason. *The Mary N. Hogan*, 35 Fed. Rep. 554.

Decree for the libelant, with costs.

THE PROTOS.[1]

CANNON *v.* THE PROTOS.

(Circuit Court, E. D. Pennsylvania. December 11, 1891.)

1. INJURY TO EMPLOYE—NEGLIGENCE.
   To leave a small trimming hole in the lower deck of a vessel, a short distance from the main hatch, open and unguarded, when the vessel was unloading, and the between-decks, where it was to be expected the stevedores discharging the cargo would necessarily go, was dark and unlighted, is negligence, for which the ship is liable. *The Helios*, 12 Fed. Rep. 732, followed.
2. SAME—CONTRIBUTORY NEGLIGENCE.
   A stevedore engaged in unloading a vessel went between-decks to get his overalls and change his clothes preparatory to going to work in the lower hold. The between-decks was dark, and he fell through a "feeding hole." It was the ship's duty to keep the "feeding hole" closed. *Held*, he was justified in believing the hole closed, and was not guilty of contributory negligence.
3. SAME—LIABILITY OF VESSEL.
   A vessel is responsible for an injury happening to a shoveler employed by the stevedore that she employed to unload the vessel, when such injury occurs through her own unsafe condition.

In Admiralty. Appeal by respondent below, the steam-ship Protos, from a decree of the district court awarding $1,250 as damages for injury to person of libelant, Frank Cannon, incurred while unloading the cargo. Affirmed.

John Q. Lane, for appellant.

John F. Lewis and *John T. Murphy*, for appellee.

ACHESON, J. After a careful consideration of all the proofs, I am entirely satisfied with the conclusions of the district court, both as respects the facts and the law of the case. I find the facts to be as follows:

1. The libelant was a laborer under a head stevedore, who was employed by the master of the steam-ship Protos to unload her cargo of china-clay at the port of Philadelphia. The libelant was engaged on the vessel, as a shoveler, at this work, on Saturday, February 9, 1889; and, the discharge of the cargo not being completed on that day, he was told to return the next Monday morning.

2. When he quit work on Saturday, he left his overalls in the between-decks. Returning on Monday morning, the libelant, about 7 o'clock, went down the ladder of the main hatchway, used for storing and discharging of cargo, and got off at the between-decks, to get his overalls, and make the usual change of clothing preparatory to going down into the lower hold, where the clay yet to be discharged was; and, while thus engaged in getting on his overalls and changing his clothes, he fell through a small feeding or trimming hole down into the lower hold, breaking his arm, and otherwise injuring himself.

3. Feeding or trimming holes are used for trimming the cargo as it settles down. The one through which the libelant fell was about 3½ feet long by 2 feet wide, was about 20 feet in from the main hatchway,

[1] Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.