

\$6,500 or \$7,000, although he had alleged it in the libel to be but \$5,500. It must be assumed for present purposes that she was worth only \$1,750. It would serve no useful purpose to enter upon any recapitulation or analysis of his testimony, and that of his witnesses, before the commissioner. It suffices to say that we are unable to consider his misstatements, and those of several of the witnesses produced by him; as venial errors which can be reconciled with integrity of purpose by attributing them to honest, but mistaken, estimates in matters of opinion. In deciding questions of costs, courts frequently apportion them so as to cause the costs of one part of the suit to fall upon one party, and those relating to another part to fall upon the other. It is the practice of courts of equity and admiralty, where the conduct of the successful party has been improper, to deny him costs, and in some cases to impose them upon him. *Harvey v. Mount*, 8 Beav. 439; *Purrow v. Rees*, 4 Beav. 25; *The Marinin*, 28 Fed. Rep. 667. If all the testimony taken before the commissioner had related only to the question of the value of the barge, we should have no hesitation in charging the libellant with the taxable costs of the respondent upon the reference. As it is, we think it just and salutary that he be disallowed his costs of the reference. We are not reviewing as an appellate court a question of discretion, but are hearing an appeal which is a new trial, and must therefore deal with questions of costs as though they were original questions. The decree is reversed, and the cause remitted, with instructions to decree in conformity with this opinion.

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THE IVANHOE v. THE CUTLER.<sup>1</sup>

THE MASCOT v. SAME.

(District Court, E. D. Pennsylvania. February 9, 1892.)

**SALVAGE—PUMPING CHARGES.**

An ordinary pumping charge, made by a tug for pumping out, during the time between the night and day tides, a sinking barge, that had been run up in front of the flats above Philadelphia, will be allowed when the tug could not run the barge sufficiently high on the flats for safety at the night tide, and continuous pumping by the tug was necessary to keep the barge afloat.

In Admiralty. Libel by the tugs Ivanhoe and Mascot against the barge Cutter and her cargo to recover compensation for pumping services. Decree for \$262.20.

*John F. Lewis*, for libellants.

*J. G. Lamb and Thos. Hart, Jr.*, for respondent.

BUTLER, District Judge. On July 16, 1890, the respondent, while lying at Port Richmond, on the Delaware, sustained an injury, which

<sup>1</sup>Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

produced a serious leak and subjected her to the danger of sinking. The tug *Ivanhoe*, being near by, went to her assistance, and by vigorous pumping kept her afloat. The only apparent means of saving her was by continuance of the pumping until the tide arose, and then running her on the flats, higher up the river. Later in the evening other tugs came to her aid, but she was left in charge of the *Ivanhoe*, with the understanding that the latter would put her on the flats at high tide—about midnight. When this time came, however, the *Ivanhoe* deemed it unwise if not impracticable to move her in the night without assistance. The injury was found to be so serious and the leak so great as to make it necessary to continue pumping while she was being moved. The *Ivanhoe* could not tow and pump at the same time, and no assistance was at hand. Even with assistance, however, it is doubtful whether it would have been wise to attempt placing her on the flats at night. The pumping was therefore continued until next morning by the *Ivanhoe*, when the *Mascot* came to her aid and kept it up until the tide arose in the afternoon. The barge was then run upon the flats—one of the tugs pulling and the other pumping. The charge is for the time occupied in pumping, alone, at the ordinary price per hour. The only defense stated in the answer is, in substance, that the barge should have been placed on the flats at night, and the necessity for further pumping avoided.

It is admitted as I understand, that the sum charged is not excessive, if the continued pumping until the next afternoon was necessary. It does not seem, indeed to be seriously contended that the barge could have been moved with safety earlier than she was, without assistance. I deem it entirely clear that the *Ivanhoe* alone could not have moved her; and it is doubtful whether she could have done so safely at night, even with assistance. The claim must therefore be allowed—which with interest amounts to \$262.20. A decree may be prepared accordingly.

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THE JOHN KING.

HAMILTON *et al.* v. THE JOHN KING *et al.*

(Circuit Court of Appeals, Second Circuit. December 14, 1891.

**1. COLLISION—MUTUAL FAULT—EVIDENCE.**

A propeller, when passing up North river opposite Eighteenth street, New York city, observed a ferry-boat leaving her slip at Twenty-Third street, sounded two blasts of her whistle to the ferry-boat, indicating her intention to cross the bows of the ferry-boat, as required by rule 1 of the supervising inspectors, and put her helm somewhat to the starboard, and, after running a short distance under her starboard helm, sounded two more blasts to the ferry-boat. The ferry-boat did not hear any of the signals of the propeller, the last of which was given when the vessels were about a quarter of a mile distant, and therefore did not respond to them as required by rule 2 of the inspectors, but, at the same time with the last signal of the propeller, blew one blast, indicating her purpose to pass to the right of the propeller. Neither vessel changed her course after the giving of these signals, un-