BLATCHFORD, Circuit Judge. Having found substantially the foregoing facts, the district court held that it was not negligence to allow the between-deck beams of the vessel to be uncovered by a deck, or to use such beams for the stowage of loose planks for a temporary purpose, or to leave the ends of the loose deals unsupported at the place where the libelant fell; that the deals were not so placed as to justify the libelant in believing that he was proceeding upon a deck; and that the libelant used the deals for a purpose for which they were not intended, without necessity, and with fair notice, from the manner in which they lay, that they were not intended to be so used. In these views I concur, and it is not necessary further to enlarge upon them. The libel must be dismissed, with costs in both courts.

STEBBINS *et al.* *v.* FIVE MUD-SCOWS.

(*District Court, S. D. New York.* April 1, 1892.)

1. SALVAGE—ELEMENTS OF—PREVENTION OF DAMAGE TO PROPERTY OF OTHERS.
When a vessel has gone adrift through negligence, and is drifting towards other vessels, which she is likely to injure, the saving of her owners from liability to pay any such damage as was likely to arise, and which the owners would be called on to pay, should be taken into account in determining the amount of a salvage award.
2. SAME—AWARD.
Seven hundred and fifty dollars salvage awarded a tug worth $15,000 for picking up five scows worth $30,000, which had negligently got adrift in the Harlem river, and were liable, by collisions, to injure other property.

In Admiralty. Libel for salvage.
Wilcox, Adams & Green, for libelant.
A. A. Wray, for claimant.

BROWN, District Judge. On May 26, 1891, five loaded mud-scows broke adrift from the bulk-head where they were moored, between 115th and 116th streets, Harlem river, between 6 o'clock and 7 P. M., and went drifting upwards with the slow current at the beginning of the flood-tide. Some little time afterwards, estimated by two or three of the witnesses to be half an hour, a powerful steam-tug, the Archibald Watt, going up the river to lay up for the night, discovered the scows adrift between 117th and 118th streets, made fast to them, and towed them back to the bulk-head at 114th street, where they were tied up a little after 9 P. M. The scows were worth $6,000 each, in all $30,000; the Watt, $15,000. No special difficulty or danger attended the work, excepting that the channel of the river was very narrow; the scows were more or less kinked up, and very heavy; and the handling of them was attended with some danger to vessels going up and down the river in so narrow a channel. The small tug Curtis was going up the Harlem at the same time with the Watt; her pilot saw the scows adrift and made

for them; but as the Watt reached them first, the Curtis made no claim to assist. She was a much smaller tug than the Watt, and could not, I think, have handled the five scows together. Had the scows not been picked up by the Watt, I think there is no doubt that they would have come in collision with the United States steamer Azalia, worth $90,000, which ran some 40 feet beyond the end of the long projecting wharf at the end of 119th street. Further above, the scows would also have been likely either to run upon Negro rocks off 122d street, or upon the yachts above. It is not probable, however, that from merely grounding without collision, the scows would have suffered any great damage. For the claimants it is said upon the authority of *The Baker*, 25 Fed. Rep. 771, that the risk of inflicting loss on others is not to be taken as an element in fixing a salvage allowance. That is undoubtedly true, but it is not applicable here. The observations of the court in that case had reference to the existing facts, namely, that the danger of communicating fire to other vessels from the fire on board the vessel saved, was a danger not arising through any fault of the latter vessel. The owners of the saved vessel could not, therefore, have been called on to pay any such damage to others. In the present case, the presumption is to the contrary. It is impossible to suppose that five barges could break adrift from a bulk-head in the Harlem river in mild weather at the beginning of the flood-tide, which was so weak as not to drift them above two blocks in nearly half an hour, except under very insufficient and negligent mooring; and the scows and their owners would have been liable, therefore, for any damage inflicted on other persons through breaking adrift. The rescue of the scows, therefore, saved the owners from any such damage as they might have been called upon to pay; and anything thus saved is as much a pecuniary benefit to the owners of the scows as the saving of any damage to the scows themselves. It is not the loss to other persons that is considered, but the saving to the owners themselves. Although this saving is not a matter of precise calculation, yet as collision was a very certain danger, it is one of the elements which under such circumstances is proper, I think, to be taken into account. In view of all the circumstances, I think that a salvage allowance at the rate of $150 per scow or $750 for the five scows, will be a reasonable award; one-third of which should go to the officers and men, in proportion to their wages; and two-thirds to the tug. A decree may be entered accordingly, with costs.

THE INIZIATIVA.

JARVIS *et al. v.* THE INIZIATIVA.

(*District Court, S. D. New York.* April 12, 1892.)

1. SHIPPING—NEGLIGENCE—CAPSIZING OF LIGHTER—UNAUTHORIZED LOADING.
The crew of a partially loaded lighter received word from the ship which was loading her that the work would not be continued at night, and accordingly they did not return after supper. In their absence the loading of the lighter was completed by the crew of the ship in the evening, and then she was left without watch, in an exposed situation, where she afterwards capsized, from some cause not explained. *Held*, that the ship was liable.
2. SAME—BAILMENTS—LIGHTERMAN NOT AGENT OF CONSIGNEE—DELIVERY OF CARGO—WHEN NOT LEGAL.
A lighterman taking from the consignee of cargo an order on the ship for 100 tons for transportation is not the consignee's agent. The ship acts at her own risk in loading the lighter in the absence of the lighter's crew, without their knowledge or authority, and the cargo so put aboard without authority is not in law received by the lighterman, nor is he accountable for it as a bailee to its owner. *Held*, therefore, that in the above case he could not recover its value.

In Admiralty. Libel for negligently upsetting a lighter.
Hyland & Zabriskie, for libelants.
Ullo & Ruebsamen, for claimants.

BROWN, District Judge. At about half past 5 o'clock in the morning of October 8, 1891, the libelants' lighter Overton, fully loaded with about 98 tons of sulphur, and made fast alongside the steamship Iniziativa at the Mediterranean pier, Brooklyn, broke her lines, capsized, and sank. The libel was filed to recover damages for the loss of boat and cargo, on the ground that they were upset by the negligence of the Iniziativa.

The libelants were engaged in the lighterage business in the harbor of New York. The consignees of the sulphur gave them an order on the steamship for 100 tons, the capacity of the lighter Overton, to be taken to Gowanus creek. The lighter arrived alongside the Iniziativa in the afternoon of October 7th, and up to a little before 6 P. M. had taken on board 35 tons; namely, 20 tons, which filled the hold, and 15 tons on deck. The loading was done by hoisting the sulphur out of the ship upon a platform erected upon her rail, where the sulphur was weighed by a weigher employed by the consignees, and after being weighed upon the platform, was shot down upon the lighter below.

The bill of lading provided that the sulphur "was to be discharged into lighters which consignee is to furnish as requested by ship, and delivery to be taken day and night as ship delivers." One of the printed clauses of the bill of lading also provided that the consignee was bound to be—

"Ready to receive the goods from the ship's side simultaneously with the ship being ready to unload, either on the wharf, or into lighters, provided with a sufficient number of men to receive and stow the goods; and in default thereof the master was authorized to enter the goods at the customhouse, and