lower court's finding. We concur with the district judge in the opinion that the parting of the towline was not caused by any improper movement, or undue speed, on the part of the propeller in rounding to the second time about 1:30 or 2 P. M., but that said parting of the towline was caused by the force and violence of the storm, without fault or negligence on the part of the Wilhelm or of her officers. It follows, therefore, that the decree of the court below should be affirmed, with costs of this court and the lower court to be taxed against libelants, and it is accordingly so ordered and adjudged.

THE WELLINGTON.

ROBERTSON *et al.* *v.* THE WELLINGTON.

HEWITT *v.* SAME.

(*District Court, N. D. California.* October 20, 1892.)

Nos. 10,383, 10,398.

1. SALVAGE—COMPENSATION—APPORTIONMENT BETWEEN VESSEL AND CREW.
Where the value of the salved ship is small, the salvors are entitled to a larger per cent. than where it is large; and where the value of the salving vessel, and therefore the risk, is large, the award should be greater, and the ratio of the owner's share to that of the master and crew larger, than where it is small.

2. SAME.
The steamer W., *en route* from British Columbia to San Francisco with a cargo of coal, broke her shaft, and an attempt to tow her by the steamer M. failed for lack of suitable hawsers. She was thereafter sighted 90 miles south of Cape Flattery, in a helpless condition, with a southeast gale blowing, by the steamer S. P., and, after two hours of skillful work, and some slight injuries to the master and crew of the latter, was taken in tow, and brought safely to Royal Roads, 150 miles distant, the gale continuing. The value of the salving vessel was $350,000; that of the salved vessel $100,000; her cargo, having been discharged before the libels were filed, was not considered in making the award. The salvage claim of the owners of the salving vessel was settled by agreement for $10,000. *Held*, that an award of $2,500 should be given to the master, and $100 to each of the crew who had been made a party to the libel.

In Amiralty. Libels *in rem* against the steamship Wellington by C. H. Hewitt, master, and William Robertson and others, seamen, of the San Pedro, for salvage. Decree for libelants.

H. W. Hutton and *Walter G. Holmes*, for William Robertson and others.

J. C. Bates, for C. H. Hewitt.

Andros & Frank, for the Wellington.

MORROW, District Judge. The steamer Wellington, on a voyage from Departure Bay, British Columbia, to San Francisco, with a cargo of coal, broke her shaft, and was taken in tow by the Norwegian steamer

Marie. After a time the hawsers with which the Wellington had been made fast to the Marie parted, and, as the latter vessel was in ballast, it was found extremely difficult, in the heavy seaway prevailing, to pass other and additional hawsers for the purpose of again taking the Wellington in tow. The effort was accordingly abandoned, and the Marie proceeded on her voyage. When the accident occurred to the Wellington is not disclosed by the pleadings or the testimony in the case, nor does it appear when she was taken in tow by the Marie, or how long she remained in tow of that vessel. The case before the court relates to events that occurred a day or two later, when the steamer San Pedro, on a voyage from San Francisco to Tacoma, sighted the steamer Wellington, about 90 miles south of Cape Flattery, at 1 o'clock and 20 minutes on the afternoon of November 3, 1891. A southeast gale was blowing at the time, and occasionally heavy rain squalls obscured the Wellington from the view of those on board the San Pedro. It was observed, however, that the Wellington was hove to, and, upon the San Pedro approaching nearer to her, it was discovered that she had her ensign flying union down. The Wellington was disabled, and lying in the trough of the sea, in practically a helpless condition, with the waves breaking over her. She signaled to the San Pedro to be taken in tow. The latter vessel approached the Wellington very slowly, coming up under her stern, to get a heaving line from the Wellington to the San Pedro. This was accomplished after some effort, and, after the end of the heaving line had been passed forward on the Wellington, it was bent onto a four-inch steel hawser, which was hauled on board the San Pedro by a steam winch. This steel hawser was bent onto the end of a chain cable on the Wellington. The San Pedro then started ahead slowly, but as soon as the strain of the tow came on the steel hawser it parted at or near the Wellington, and the main part was hauled on board the San Pedro. The master of the Wellington immediately signaled, "Don't abandon me," whereupon the master of the San Pedro backed his vessel, stern foremost, up to the windward of the Wellington, for the purpose of making another effort to take her in tow. In the mean time the crew of the San Pedro got up a new 14-inch Manilla hawser, which was bent onto the steel hawser, and the other end of the Manilla hawser taken on board the Wellington, and made fast. It was then about 4 o'clock. The work of securing the Wellington, which has been briefly described, had occupied about two hours. During that time the sea was rough, and the situation one of imminent danger to both vessels. The master of the San Pedro displayed courage and skill in handling his vessel, and the crew, under his direction, acted promptly and energetically. The master received some personal injuries, and it is claimed also that Robertson and Johnson, of the crew, were hurt while handling one of the hawsers, but the character or extent of these injuries has not been clearly established. The Wellington, being secured by a sufficient hawser, was towed by the San Pedro to Royal Roads, a distance of about 150 miles, where the two vessels arrived about 4 o'clock on the follow-

ing day. The gale prevailed during the night. The Wellington had on board about 2,000 tons of coal, and steered badly. She sheered first to one quarter and then to the other. Her steering gear was out of order, and when she was anchored at Royal Roads it was discovered that she had a slight list to starboard.

Capt. Hewitt, the master of the San Pedro, testified that the Wellington was about 20 miles from land, and drifting to the north, when he took her in tow, and it was his opinion that, if he had not rendered her that assistance, she would have foundered during the night. There is no controversy as to the character of the service rendered the Wellington by the San Pedro. It is admitted that it was a salvage service. The question is as to the award to be made in favor of the master and crew of the San Pedro. The owners of the latter vessel have settled their claim with the owner of the Wellington for $10,000, but the master and crew of the San Pedro have not been compensated for their services. The value of the Wellington was about $100,000. Her cargo of coal was discharged before the libels were filed, and cannot, therefore, be considered in making the award. The reference that is made to the failure of the steamer Marie to tow the Wellington indicates that the principal difficulty in that effort was in the lack of a sufficient towline. The Wellington was certainly deficient in this particular, and such was probably the condition of the Marie, while the San Pedro had a large, new hawser, suitable for towing purposes. The Wellington was undoubtedly in a critical condition, and in danger of being lost. She carried fore and aft sails, but they were not sufficient to put her in steerage way, or even get her out of the trough of the sea. Her rescue must be attributed largely to the power and equipment of the San Pedro, under the direction of a skillful master. The San Pedro was a powerful vessel of 3,000 tons register, valued at $350,000.

It is claimed on behalf of libelants that the salvage award should be at least one third of the value of the Wellington, and that the master and crew of the San Pedro should be allowed the difference between that sum and $10,000, the amount already paid to the owners of the San Pedro. This method of calculation would result in an award to the libelants of about $23,000. The claimant contends, on the other hand, that, while the libelants are entitled to some compensation, the services rendered, taken in connection with the other circumstances in the case, do not call for any such allowance. Numerous cases are cited on both sides, showing a wide range in the judgments of the courts in making such awards, but no uniform rule has been found, directing the court to an absolutely certain and satisfactory result in every case.

The salvage service rendered by the Zambesi to the Charles Wetmore near the mouth of the Columbia river in December, 1891, (51 Fed. Rep. 449,) was, in some respects, similar to the services rendered in this case. The situation of the Wetmore was apparently quite as serious as that of the Wellington. The Wetmore had been disabled by the loss of her rudder plates. An attempt to rig a drag or jury rudder composed

of a lot of rope and chains had failed to be of any use. The vessel could not be steered. She was in about six or seven fathoms of water, and was drifting slowly but surely towards the shore, only four or five miles distant, when, after considerable effort, she was taken in tow by the Zambesi. The Wetmore and her cargo were valued at $409,219.09. The Zambesi was valued at $220,000. The court allowed a salvage compensation of $20,000,—a little less than 5 per centum of the value of the Wetmore and her cargo,—and distributed this award as follows: To the crew, $5,000; to the master, $5,000; to the mate, $1,000; to the pilot, $2,000; and to the owners of the Zambesi, $7,000. The master and crew were allowed one half of the total salvage compensation, or less than 2½ per centum of the value of the salved property, but this per-centum allowance would not, of course, produce the same result in the case at bar, since the Wellington is only valued, as before stated, at $100,000. Manifestly, a proper allowance, where the value of the salved property is small, would be a larger per centum for like services than where the value of the property is much greater. Then, again, the proportion of the allowance to the master and crew, as compared to the whole award, does not necessarily furnish a sufficient standard of compensation. The skill and services of the master, the labor of the crew, the risk to the salving steamer, and its value, are all elements to be considered according to their degree. In the present case, the San Pedro was valued at $350,000, while the Zambesi, in the case cited, was valued at $220,000. It requires no argument to show that, in the risk of these two vessels in a salvage service, the San Pedro would be entitled to a larger compensation than the Zambesi, and a larger proportion as compared with the allowance made to the master and crew. It follows from these considerations that each case should be determined by the weight and value of all the attending circumstances, and this appears to be about the only general rule sanctioned by authority for the exercise of the judicial discretion. I will, therefore, in view of all the circumstances attending this case, allow the master of the San Pedro the sum of $2,500, and to the members of the crew who have been made parties to the pending libel $100 each. A decree will be entered accordingly.

RANGER v. CHAMPION COTTON-PRESS CO. *et al.*

(*Circuit Court, D. South Carolina.* July 25, 1892.)

CORPORATIONS—APPOINTMENT OF RECEIVERS—RIGHTS OF STOCKHOLDER.

Where a bill by one stockholder against the corporation and the other stockholders charges that the president refuses to account for money intrusted to him for the interests of the company, or to allow any inspection of the books by complainant, and an affidavit filed with the bill charges that the president is insolvent, and since the inauguration of the suit has mortgaged all his real estate with intent to defeat the claim of the company, there being no allegation of fraud on the part of the other stockholders, but rather a distinct intimation that the president is sustained by them, and the solvency of the corporation being unquestioned, the court will not, before the time for answer has expired, grant a motion for the appointment of a receiver, and thereby take the corporation out of the control of the large majority of the stockholders.

In Equity. Bill by Louis Ranger, a stockholder, against the Champion Cotton-Press Company and all other stockholders. Heard on motion for the appointment of a receiver. Denied.

Mitchell & Smith and *Smythe & Lee*, for the motion.

J. N. Nathans, *Lord & Burke*, and *Bryan & Bryan*, opposed.

SIMONTON, District Judge. This is a motion for the appointment of a receiver. The time for answering has not yet expired, and no answers are in. The motion, therefore, is on the bill and affidavits. The suit is brought by Louis Ranger, the holder and owner of 20 shares in the Champion Cotton-Press Company, against that corporation and all the other stockholders. The capital stock of the company is subdivided into 120 shares. The corporation purchased some time ago 19 of these, and has recently acquired title to 20 more. The defendants to this bill represent 61 shares. The bill charges abuse of his authority on the part of B. F. McCabe, the president, refusal on his part to account for some $25,000 intrusted to him by the company to be used in the promotion of its interests, the application of this money to his own use, and his repeated and obstinate refusal to give complainant an inspection of the books of the company, or any information whatever of its affairs. The affidavit with the bill charges that McCabe is insolvent, and that since the inauguration of this suit he has been mortgaging—has in fact mortgaged—all of his real estate, with manifest intent to defeat the claim of the company. There is no allegation of fraud or fraudulent collusion on the part of the other stockholders, and there is a distinct intimation in the bill that McCabe, as president, is sustained by the other stockholders. Upon these allegations is based the motion for a receiver. The solvency of the corporation is unquestionable. So far as appears, there are no creditors.

At this stage of the case we deal with the allegations of the bill as if they were true. They present a grave condition of things, and without doubt, even with the qualifying statements of Mr. McCabe's affidavit, there does seem reason for great apprehension in the mind of the complainant. But this motion is, in effect, to take the control of this company out of