taking an ice cargo, and that unsafety of berth led directly to all the subsequent loss. I overrule all the respondent's exceptions.

The libelants excepted to the assessor's ruling that the damages are to be ascertained by valuing the vessel before receiving injury and deducting her value in her damaged condition. I think this exception must be sustained. The rule is restitution,—the cost of repairs. The Catherine v. Dickinson, 17 How. 174. Fortunately the assessor has reported the damages made up according to that rule, and it is not necessary to recommit the case. The other exception of libelants is overruled.

The total, according to Schedule B of the report here approved, is $11,673.55, one half of which is $5,836.77, and for the proportion and amount, with interest from the date of filing the libel, a decree is ordered.

Question is made respecting costs. In admiralty, costs are under the control of the court, and do not necessarily follow the rule in cases at law or suits in equity. They are denied in whole or in part to the prevailing party, and sometimes are even allowed to the losing party, as, on a view of all the particulars of a case, seems to be proper. In this case, the reasoning of Lowell, J., in The Mary Patten, 2 Low. 196, 199, is cogent:

"If the loss is all suffered by one vessel, and her owner brings his libel, he will recover half his damages; and there is no reason why he should not, in general, recover his full costs. It is the ordinary case of a prevailing party recovering less than he asks for, and if there has been no tender or offer of amends, and no equity peculiar to the individual case, it is according to the sound and reasonable law of all courts that he should recover costs."

The criticism of this reasoning, found in The Pennsylvania, 15 Fed. Rep. 814, does not, in my view, impair its force; nor can I regard the case of The America, 92 U. S. 432, as a binding authority on this point. The question in that case received no discussion, and the citations at the conclusion of the opinion are of cases affirming the rule of apportionment of damages where there is mutual fault. In no one of those cases is any reference made to this subject of costs.

Decree, $5,836.77, and interest from date of filing libel, and costs.

Charles P. Stetson, for Union Ice Co.

Charles T. Russell, Jr., and Clarence Hale, for appellants.

Before COLT, Circuit Judge, and NELSON and CARPENTER, District Judges.

PER CURIAM. We are satisfied with the findings of fact and the conclusions of law reached by the learned district judge in this case, as expressed in his opinion, and the judgment of the district court is therefore affirmed.

THE RICHARD S. GARRETT.[1]

McCALDIN et al. v. THE RICHARD S. GARRETT.

(District Court, S. D. New York. April 1, 1893.)

SALVAGE—POSSIBILITY OF DAMAGE—PROBABLE LOSS TO BE CONSIDERED.

Where a tug in New York harbor was, in consequence of a collision, abandoned by her crew, and left with her engines still backing, and was immediately boarded by another tug, her steam shut off, and herself taken to a place of safety, the service lasting some three hours, and no other vessel being immediately at hand to render it, and the evidence left it doubtful whether, if assistance had not been so rendered, she would have sunk, at a damage of $1,500 to $2,000, or backed ashore at half that damage,

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

the court, while inclining to think that she would not have sunk, yet did not wholly exclude that contingency in fixing the award, and held that $350 should be allowed the salving tug, $50 to her master, who shut off the steam of the disabled vessel, and $75 to another tug, which rendered assistance in pumping.

In Admiralty. Libel by James McCaldin and others against the steam tug Richard S. Garrett to recover salvage. Decree for libelants.

Carpenter & Mosher, for libelants.
Stewart & Macklin, for claimants.

BROWN, District Judge. This libel was filed to recover salvage compensation for services in picking up the Garrett within a few minutes after she had been abandoned by her crew in a supposed sinking condition, following a collision about 1 P. M. on the 29th of April, 1892, in front of the South Ferry slip, from 200 to 300 feet off the shore.

Owing to a burst in the steam pipe caused by the collision, the engineer had left her immediately with her engines still backing. The McCaldin came up alongside a few minutes afterwards, and after two or three attempts succeeded in making fast; and then her captain, at some personal risk, succeeded in shutting off her steam from the engines. She was then taken to the shoal water a little below Ft. William by Governor's island, and after being pumped out with the aid of the Garfield, another tug belonging to the libelants, she was towed to Jersey City. The whole service was about three hours.

The amount to be allowed for a salvage service must be in proportion, among other things, to the *probable loss*, in case the service had not been rendered. That question, aside from the wide differences in the estimated value of the Garrett, presents some doubt in the present case. From the evidence it appears that the Garrett would undoubtedly, if she had not been aided by the McCaldin, have either sunk, or backed upon the rocks at Governor's island. If she had sunk, the damages would probably have been at least from $1,500 to $2,000. Had she not sunk, but only run upon the rocks, the damages would probably have been not half so much. There does not appear to have been any other tug except the libelants' boats that could have rendered her efficient service in time to prevent one or the other of those damages. When she was abandoned it was supposed she would sink at once; and although upon the whole evidence I am inclined to think the probabilities are that she would not have sunk, yet as this is not certain, that contingency should not be wholly excluded in fixing a compensation.

A fair award in the present case will be, I think, (1) $50 to Capt. Barker of the McCaldin for his personal exposure; (2) $350 to the McCaldin; (3) $75 to the Garfield. Of the two latter items two thirds will go to the owners, and the remaining one third to be divided among the master, officers and crew of each boat respectively, according to their wages. Decree accordingly, with costs.

THE BARNEGAT.

THE MONTANA.

MILLARD v. THE BARNEGAT AND THE MONTANA, (two cases.)[1]

(District Court, S. D. New York. April 3, 1893.)

SALVAGE—FIRE—BURNING LIGHTER—PUMPING—FIRE DEPARTMENT.

A tug which first began to play water upon a cotton lighter, on fire in a slip in the harbor of New York, and which assisted the city fire boats in getting to the fire, and which played water upon a side of the cotton which the fire department could not reach, and which continued her service for 12 hours, was *held* entitled to an award of $1,000 on a salvage of $28,000, though the major part of the work of extinguishing the fire was performed by the city fire boats and the land fire department, which arrived at the fire shortly after the tug began her work.

In Admiralty. Libel by Edwin E. Millard against the tugs Barnegat and Montana and their cargoes. Decrees for libelant.

Wilcox, Adams & Green, for libelant.
Robinson, Biddle & Ward, for claimants.

BROWN, District Judge. Considering that of the $30,000, the value of the Barnegat and her cargo at the time when the fire on her broke out, $28,000 was saved, the salvage services were unusually successful for a cotton fire. The major part of the service, however, was performed by the city fire boats Havemeyer, and the New York, and by the land fire department; although the Adelaide probably had her two streams playing upon the fire some two or three minutes before the hose of the land department was played. It was necessary also that the Barnegat should be removed, and that other boats which obstructed the approach of the Havemeyer should be pulled aside, to permit her to come in near where the Barnegat lay. The services of the Adelaide were important, both from her getting into action first, and because she was able to play upon the side of the cotton which the fire department on shore could not reach; also for her prompt assistance in aiding the Havemeyer to come in as soon as possible. These were, doubtless, the most important parts of her special service. After the barge was pulled out into the stream by the Havemeyer, there was in reality a sufficient force without the Adelaide's help. The Adelaide, nevertheless, continued her service along with the very much more powerful fire boats until the arrival at the Erie basin, when she was put in charge by the fire boats, which then left; and the Adelaide remained until about 11 o'clock the following day, making a continual service of nearly 12 hours in all.

The arrival, however, of such abundant means of relief, within 10 or 15 minutes at most after the Adelaide began her work, prevents any very large allowance to the Adelaide. She did not incur any material danger, nor was the service one of any special risk or difficulty to those engaged in it. But the necessity of prompt assist-

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