

sion as to them, only after careful consideration of the peculiar facts of the case.

Mr. Addicks bought this yacht from these libelants. He personally paid for it, and gave it to his wife. As is stated in the opinion of the court below, "he was reputed to be a rich man, able to pay his debts, and there was no thought on the part of the libelants that they would require a lien on the vessel to secure payment for their work." The previous repairs had been made upon his credit, not upon that of the vessel; and the only inference which can fairly be drawn from the evidence is that the libelants relied solely upon him for payment of all their claims. They presented both of these charges, finally, in the same bill; and in no manner did they ever distinguish between them as to the credit given. It is scarcely conceivable that, being content with the personal sufficiency of Mr. Addicks for the larger amount, they intended to hold the vessel for the comparatively insignificant sum of \$97.10; and therefore, although as to this item the materials were not supplied, as in the instance of the boiler repairs, upon the direct order of Mr. Addicks, we think the reasonable deduction from the proofs is that they also were furnished upon his credit. The decree is affirmed.

THE BEECHE DENE.

J. T. LUNN CO., Limited, et al. v. CAMERON et al.
(Circuit Court of Appeals, Fifth Circuit. January 16, 1893.)

No. 42.

SHIPPING—INJURIES TO GOODS—LIABILITY—EVIDENCE.

Where the fact of damage to goods on the voyage, and the extent of such damage, are shown, the burden is on the carrier to show that it was occasioned either by inherent defects in the goods or by sweat of the ship, and hence within the exceptions of the bill of lading.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

In Admiralty. Libel by William Cameron and J. W. Castles, trading as Cameron & Castles, against the steamship Beeche Dene, her tackle, etc., (the J. T. Lunn Company, Limited, claimant,) for damages to a cargo of sugar. The vessel was released on claimant's bond, Richard Milliken, surety. The district court entered a decree for libelants, from which the claimant and its surety appealed. Affirmed.

Joseph P. Hornor and Guy M. Hornor, for appellants.
Richard De Gray, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

McCORMICK, Circuit Judge. The appellants claim that the damage to the cargo was occasioned either by inherent defects in the goods or by sweat of the ship, and within the exceptions in the

bill of lading. The burden of proof was on them to show this, as the fact of damage and its extent were fully shown. A careful examination and consideration of the proof fails to satisfy us that such was the case, and our conclusion, therefore, is that the judgment of the district court should be affirmed at appellants' cost, and it is so ordered.

THE BEECHE DENE.

J. T. LUNN CO., Limited, et al. v. CAMERON et al.
(Circuit Court of Appeals, Fifth Circuit. March 6, 1893.)

No. 42.

ADMIRALTY—APPEAL—EVIDENCE.

Under rule 8 of the circuit court of appeals for the fifth circuit, the practice in admiralty appeals is not like that formerly existing in the circuit courts under admiralty rule 49, but like the supreme court practice, and new evidence cannot be taken by deposition *de bene esse*, but only by a commission under supreme court rule 12, (3 Sup. Ct. Rep. ix.) which should not issue of course, but only when it appears that the testimony is material, and a good excuse for not offering it in the trial court is given.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

In Admiralty. Libel by William Cameron and J. W. Castles, trading as Cameron & Castles, against the steamship Beeche Dene, her tackle, etc., (the J. T. Lunn Company, Limited, claimant,) for damage to a cargo of sugar. The vessel was released on claimant's bond with Richard Milliken as surety. A decree was entered for libelants, and affirmed by this court on appeal taken by respondents. 55 Fed. Rep. 525. Pending the appeal, the libelants took new evidence. Heard on respondents' motion to retax the costs. Granted.

Joseph P. Hornor and Guy M. Hornor, for appellants.

Richard De Gray, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

McCORMICK, Circuit Judge. This case is an appeal in admiralty. Our judgment was that the judgment below be affirmed at appellants' cost. Pending the appeal, the appellees took new evidence, without obtaining an order of this court for the taking of additional testimony. They proceeded under admiralty rule 49, promulgated by the supreme court in 1851, for taking further proof in a circuit court upon an admiralty appeal. Notice was given to the adverse party, who appeared, and duly objected to the proceeding as unwarranted. In taking and printing this additional evidence, costs to the amount of \$41 were incurred, which have been taxed against the appellants, to correct which this motion is made to retax the costs so as to relieve appellants of the \$41 above mentioned, urging, with other grounds not deemed necessary to notice, that said additional evidence was taken without any or-