

BUTLER, District Judge. This case arises out of the facts stated in the suit by Neal v. The Elena G., 61 Fed. 519. A repetition of the statement made in that case is unnecessary.

It is not denied that the libelant rendered salvage services, and should be compensated accordingly.

The only dispute respects the amount justly due. After full consideration of all the circumstances I believe the payment of \$1,000 will be a fair compensation. The Iodine and the bark Munch were lying side by side, and were removed together. For the services to the latter \$500 were tendered and received.

The former is a much larger vessel, and was somewhat differently situated. I think double the sum paid by the Munch is sufficient for the services rendered the Iodine; and a decree may be prepared accordingly, with costs.

THE CITY OF HAVERHILL.

KNICKERBOCKER STEAM-TOWAGE CO. v. THE CITY OF HAVERHILL.

WATROUS v. THE ICE KING.

(District Court, S. D. New York. March 1, 1895.)

SALVAGE—TUG AND TOW—DANGEROUS LEAK—DEVIATION.

The City of H., a flat-bottomed river boat, while in tow from Boston to New York, with other barges, in December, sprang a dangerous leak not far from Gay's Head, in weather not unusual for the season, and without any fault of the tug. The tug was obliged to anchor the rest of her tow, and take the H. into Newport; and she preserved the latter from sinking by the use of the tug's pumps: *Held*, that the service of the tug in the rescue of the H. was outside of the contract of towage, and entitled the tug to extra compensation on salvage principles, but upon a lower basis of compensation than might be awarded to an independent tug, and \$800 was allowed.

This was a libel in rem by the Knickerbocker Steam-Towage Company, owners of the tug Ice King, against the steamship City of Haverhill, to enforce a claim for salvage. A cross libel was filed by Warren P. Watrous, owner of the City of Haverhill, alleging fault on the part of the tug which contributed to the injuries sustained by the salvaged vessel, and rendered her liable therefor under the contract of towage.

Wing, Putnam & Burlingham, for Knickerbocker S. T. Co. and the Ice King.

Goodrich, Deady & Goodrich, for the City of Haverhill and Warren P. Watrous.

BROWN, District Judge. 1. I do not find sufficient evidence to support the claim in the cross libel that the hawser was fastened in an improper manner, or that the mode of fastening caused any damage, or contributed to produce the leak; or that there was any

negligence by the Ice King when she ran alongside of the City of Haverhill to rescue her from sinking. In the circumstances of a choppy sea, the nighttime, and the City of Haverhill being a light flat-bottomed boat, and tossing almost like a chip upon the waves, the slight damage done in necessarily going alongside, in the absence of evidence of any specific acts of negligence or lack of care and reasonable nautical skill, should be set down to sea perils in a difficult situation, rather than to any presumptive negligence in the Ice King.

2. The service of the Ice King in deviating from the usual course of towage on a trip from Boston to New York by putting in to Newport with the City of Haverhill, and keeping her afloat by her pumps, was a service wholly outside of the contemplation of the parties in making the towage contract. The deviation was made necessary because the City of Haverhill sprung a dangerous leak, under circumstances not at all extraordinary at that season, but only such as were to be expected in December, when the trip was undertaken. The leak, I find, occurred through no fault of the Ice King, or lack of reasonable care on her part, but, as her captain says, from striking a heavy sea, in the roll from the southward. She was a flat-bottomed river steamer, not designed for service at sea. The contract of the parties for towage to New York imported that the owner of the City of Haverhill should bear all risks, save those caused by the fault of the tug. On plunging in the southerly roll some seams were opened, and she was saved from sinking through the Ice King's superior pumps, which were sufficient to keep her afloat until she was towed by the Ice King into Newport, where the open seams on her port side, some 20 feet aft of the stem, were temporarily filled in, sufficiently to enable the towage to be completed after the loss of a day's time. This was an extraordinary service, because not within the scope or contemplation of the contract. It should, therefore, be compensated for on salvage principles. But the equitable relation of the parties in such cases, where the tow is all the time in charge of the tug, requires, I think, the allowance of a much less compensation than would be proper to be given to an independent tug. Some of the important considerations in salvage awards are absent; and here there was no actual danger incurred by the tug.

The great differences in the estimates of the value of the City of Haverhill, viz., from \$2,500 to \$10,000, are embarrassing, so far as that element is to be considered in fixing the award. On the whole evidence, I think \$800 will be a proper award, with costs, and with a dismissal of the cross libel, without costs.

Decrees accordingly.

LUCKER v. PHOENIX ASSUR. CO. OF LONDON.

(Circuit Court, D. South Carolina. March 5, 1895.)

1. REMOVAL OF CAUSES—TIME OF FILING TRANSCRIPT.

While, upon removal of a cause from a state to a federal court, security is required that the transcript shall be filed on the first day of the next succeeding term, the federal court is not to be deprived of jurisdiction if the transcript is filed at a later day in the term, but, for good cause, may permit it to be filed at such later day.

2. DISTRICT OF SOUTH CAROLINA—DIVISION.

The district of South Carolina, though divided into Eastern and Western divisions, is one district, and the terms of the circuit court, though held at different places, in different parts of the state, are all held for the entire district.

This was an action by Minnie Lucker against the Phoenix Assurance Company of London, a corporation created by and under the laws of Great Britain. The action was brought in a court of the state of South Carolina, and was removed by defendant to the United States circuit court. Plaintiff moved to remand to the state court.

Bryan & Bryan, for the motion.
Trenholm, Rhett & Miller, contra.

SIMONTON, Circuit Judge. This is a motion to remand. The plaintiff began an action against the defendant in the court of common pleas for Charleston county, S. C., on 10th January, 1895. The defendant, a few days before the time for answering had expired, filed in the office of the clerk of the state court its petition and bond for removal into this court, upon the ground of diversity of citizenship. No term of the state court was then being held, nor has any been held since that time, to which the petition and bond could be presented. An order for removal has been passed by a circuit judge of the state at chambers, but this is clearly irregular. When the petition, with bond, was filed the November term of this court was current. This term ended 2d of February, 1895, and the Greenville term began on first Monday (4th) of February thereafter. No steps having been taken by the defendant to transmit the record to this court on the first day of the session thereof next after the filing of the petition for removal, the plaintiff on 28th of February last filed with the clerk of this court a certified copy of said record, and now moves to remand the cause for this default of the defendant. The defendant appeared to this motion, and stated orally in argument his reason for the default. The proper practice, when a motion to remand is made, is that the moving party should file a petition in writing setting forth the grounds for the remand, and the petition should be traversed or otherwise pleaded to by the resisting party. The present case will be treated as a demurrer to the facts set out in the motion of the plaintiff. The ground upon which the defendant resists the motion is that the bond for removal provides for filing the record in this court on the