

not limited to a specific improvement upon a pneumatic drilling tool, but can be fairly construed to be a broad claim, without limitation in regard to details, for a new part of an engine for general use. If the premise is true, the conclusion would follow that the supposed invention of the claim had closely-related predecessors. But in our opinion the defendant's construction is erroneous.

Upon the question of infringement, the Bates cylinder is surrounded by a case, and the air channels were entirely formed upon the outer surface of the cylinder. In the defendant's tool, the cylinder has no case, so far as the part which covers the piston is concerned, but has a casing upon the part which covers the valve chamber. In the part which contains the piston chamber, the air channels extend through the solid sides. This modification is immaterial upon the question of infringement. The decree of the circuit court is affirmed, with costs.

THE FLORENCE.

THOMAS v. THE FLORENCE.

(Circuit Court of Appeals, Second Circuit. January 8, 1896.)

ADMIRALTY APPEALS—SALVAGE AWARDS.

The amount of a salvage award will not be changed by an appellate court, except in an exceedingly strong case of abuse or palpable mistake in the exercise of discretion.

Appeal from the District Court of the United States for the Southern District of New York.

This was a libel in rem by William Thomas, master of the steamship Parkmore, for himself and others, against the steamship Florence, to recover compensation for salvage services. The district court made a salvage award of \$8,500, with an additional sum for expenses. See 65 Fed. 248, where the facts will be found stated at length in the opinion rendered by Brown, District Judge. From this decree the libellant appeals, claiming that the award was not sufficient in amount.

Evarts, Choate & Beaman (Treadwell Cleveland, advocate), for appellant.

Wing, Putnam & Burlingham (Harrington Putnam, advocate), for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We should have been better satisfied with a somewhat larger award in this case than was allowed by the court below, but cannot find that it was so manifestly inadequate as to justify its revision by an appellate court. It did not proceed upon wrong principle or any misapprehension of the facts, and different minds could reasonably reach a different conclusion upon the matter. We cannot interfere with it without violating the salutary rule

not to change the decree of the court below in salvage causes unless there is an exceedingly strong case made out of abuse or palpable mistake in the exercise of its discretion. It was considerably more liberal to the salvor than the decrees in two recent cases in the English courts presenting a striking similarity to this in all the elements which constitute the basis of an award. The *Ulysses*, London Shipp. Gaz. Lloyd's List, July 19, 1895; The *Julio*, Id., March 22, 1895.

The decree is affirmed, but without costs.

THE AGATHE.

MARTIN v. THE AGATHE.

(District Court, S. D. Alabama. January 10, 1895.)

No. 685.

VOLUNTARY PAYMENTS—SHIPPING—GENERAL AVERAGE CLAIM.

Money paid by the consignees of the cargo to the master upon a wrongful claim for general average, and reimbursed to the consignees by the consignor, cannot be recovered by the latter from the ship, if the payment by the consignees was voluntary. But it may be recovered if the payment was made for the purpose of getting possession of the cargo.

This was a libel by William H. Martin against the bark *Agathe* to recover money alleged to have been illegally exacted from libellant's consignees upon a wrongful claim for general average, and for which he had reimbursed them.

Gregory L. & H. T. Smith, for claimant.
Pillans, Torrey & Hanaw, for libellant.

TOULMIN, District Judge. It appears from the libel that it is filed to recover damages for breach of contract; the contract being a charter party and bill of lading thereunder, made by the owners and master of the vessel, in which contract it was stipulated and agreed that the vessel was to transport and deliver the cargo provided for to the consignees, at Dundee, Scotland, on payment of freight. The breach alleged is that the master of the vessel failed to faithfully perform his part of the said contract, in that he wrongfully extorted from the consignees a large sum of money upon a claim of general average. It is alleged that the cargo was sold to the consignees at Dundee, and that the burden of paying all costs and charges of its carriage and delivery rested upon the libellant, and that the master of the vessel was informed of this before he sailed from the port of Mobile,—the port of loading. It is further alleged that the claim of general average was unjust and wrongful, and the circumstances under which said claim arose are shown, whereby it appears to have been unjust and wrongful. It also appears from the libel that at the time the cargo was delivered to the