

At that time the wind was blowing strong from the southeast. Two hours before, it was blowing 21 miles an hour at New York, and at 1 o'clock it was blowing 31. The tugs, however, continued on past Stony Point without pause, or examination below to see if the weather was fit to proceed, and speedily ran into a heavy wind and sea, on a course nearly southeast, across Haverstraw Bay into Tappan Zee, until by the swamping and sinking of the canal boat Anthony, in the hawser tier, the tow was broken up. The subsequent damage was, I think, the incidental result of that breaking up of the tow, and of the endeavors of the tugs to take care of the boats.

A great deal of testimony has been taken, conflicting as usual, as regards the condition of the weather before and after passing Stony Point. I am satisfied that the tugs had abundant reason, through the cautionary signals that had been displayed, and from the signs of storm from the time the tow arrived at West Point, to require them to examine the state of the weather below Stony Point, before entering Haverstraw Bay. Above Stony Point there was abundant means of anchorage until the storm had subsided.

It is true the storm was one of unusual violence for the summer season; but this had been predicted. The testimony of the captains of the tugs indicates that they were not accustomed to pay attention to cautionary signals. If this is the practice, it must certainly be at their risk. In approaching exposed situations with boats of this character, not able to withstand heavy seas, it has often been shown before me that tugs are accustomed to go out ahead and make examination before taking tows out into an exposed situation (see *The Bordentown*, 40 Fed. 682); and this is required by reasonable prudence (*The Nannie Lamberton* [Dec. 11, 1896] 79 Fed. 121).

I must, therefore, hold the tugs liable on the ground that they did not use the reasonable caution required of them, nor heed the express evidences of a storm before reaching Stony Point, nor regard the previous public notice of a coming violent southeast storm, with which they must stand chargeable. In *re McWilliams* (*The Vandercook*) 65 Fed. 251, affirmed 20 C. C. A. 580, 74 Fed. 648.

The libellant is entitled to a decree, with costs.

THE HELGOLAND.

NEW YORK, N. H. & H. R. CO. v. THE HELGOLAND.

(District Court, S. D. New York. February 13, 1897.)

COLLISION—DAMAGE TO VALUABLE BARGE BY TWISTING—PERMANENT DEPRECIATION.

Where a new and valuable boat has received a permanent twist from a severe collision, and the boat in other respects has been repaired, but without complete straightening, in consequence of the great expense that complete repair would involve, *held*, that \$1,800 for damage or depreciation not covered by the repairs made was a reasonable allowance, and was upheld.

Henry W. Taft, for libelant.
Benedict & Benedict, for claimant.

BROWN, District Judge. Upon examining the testimony, I am of opinion that the allowance of \$1,800 for depreciation in this boat should be affirmed. I thus hold upon the ground that the twist given to the boat remained evident and palpable, notwithstanding all that could be done to correct it. The longitudinal bulkheads remained nearly five inches out of place; the deck resting upon the edges of the bulkheads, which were canted to starboard. Repair so as to make the boat completely straight, and in her former condition, would have been attended with very great expense,—far beyond the sum of \$1,800 allowed by the commissioner. It seems to me manifest from the nature of the case, as well as from the testimony, that a boat thus sprung and twisted has not the endurance, or the life, of a boat not thus strained and out of shape. The qualifications in Mr. Pierce's testimony, reading it all together, show, I think, that what he means is, that for present actual use she has all-sufficient strength to sustain contacts and collisions as before; but that she was built with a considerable surplus of reserve strength, which does not remain in the same degree as before.

In the case of *Petty v. Merrill*, 9 Blatchf. 447, Fed. Cas. No. 11,050 (the case chiefly relied upon by the respondents), Woodruff, J., observes:

"There may be proof of injury, which, though known, cannot be repaired without unreasonable cost, where the party in fault will be benefited by an allowance for actual depreciation, because an attempt to make complete repairs would involve an expense greatly disproportionate to the amount of such depreciation."

That, it seems to me, is precisely the present case. The allowance here is not on the vague notion that she is not as good, or will not sell for as much, simply because she has been in collision, when everything discoverable has been apparently rectified and repaired. Here what remains is palpably not repaired, and could not be, without great expense. This boat was one of the finest of the kind ever built, costing about \$21,000 a few months only before the accident. An allowance of between 8 and 9 per cent. for the inferior value and enduring power of the boat is, it seems to me, a fair and moderate allowance, of which the defendant should not complain.

Report confirmed.

ANDERSON LUMBER CO. v. GREENWICH INS. CO.

(District Court, S. D. New York. February 11, 1897.)

TUG AND TOW—TOP-HEAVY—DUMPING CARGO—INSURERS DISCHARGED.

The barge K., loaded with lumber, while being towed down the narrow channelway from West Duluth, rolled so as to dump her deck cargo partly to starboard and partly to port. On a conflict of testimony, *held*, that the circumstances showed that the barge was top-heavy and not loaded in a safe or seaworthy condition for the contemplated voyage to Tonawanda, and the insurers of the cargo were, therefore, discharged under the terms of the policy.

Hyland & Zabriskie, for libellant.

Butler, Notman, Joline & Mynderse, for respondent.

BROWN, District Judge. The above libel was filed upon a policy of insurance issued by the defendant to recover \$1,441.65 for the loss of a part of the deck load of the barge or schooner Knapp at Duluth, between 3 and 4 o'clock in the afternoon of August 22, 1895. The policy permitted a deck load. There were 220,600 feet of lumber in the hold, and 312,900 feet on deck. The load was about 12 feet high on deck, and she drew 12½ feet of water. She was taken in tow on a hawser by the tug Abbott at the upper dock of Merrill and Ring between 2 and 3 p. m. After going down the narrow channel about half a mile, i. e. about a quarter of a mile after passing the second bend, the barge rolled so as to dump a part of her deck load to starboard, and on recovery rolled to port and dumped another portion on the port side. The captain of the barge returned to Duluth and had an interview with Davis & Hunter, the shippers named in the bill of lading, in reference to saving the lumber that had been dumped overboard; but the cargo being covered by insurance, the shippers, conceiving that they should not meddle, refused to give any instructions, and according to the captain's testimony forbade doing anything. This last statement is, however, denied by the shippers. Notice by telegraph was immediately given to the insurers, who gave instructions for saving the lumber; but before anything could be done it was scattered and lost. The lumber was in fact owned by the libellant, a New Jersey corporation, who had bought it from the Cranberry Lumber Company of Duluth through Davis & Hunter, acting as inspectors or brokers; and who, in accordance with the custom at Duluth, after having measured the lumber, shipped it on board the Knapp, and forwarded to the libellant the bill of lading. In strictness, the duties and the legal authority of Davis & Hunter ended from the moment the shipment was completed. The libel alleges that the loss was by a sea peril within the policy. The evidence on the libellant's part tends to show that the dumping of the deck cargo was in consequence of some lack of care in towing the barge too fast down the narrow channel; causing her to roll by touching the bank first on one side and then on the other, or by touching some obstruction in the channel, as the barge