

as a wrapper for tobacco, or its use in connection with a sheet of paper, or its use when pasted to a sheet of paper. All this appears from the specification. It can hardly be said that he was the first to discover that it is more economical to use a small amount of paste than a large amount or that paper covered with paste is liable to become damp; although the extravagant use of paste by former operators and the evils which follow from the humidity thus occasioned are some of the "difficulties" pointed out in the specification as having been "overcome" by the patentee when his mind finally and securely grasped the idea of using less paste. The first form of wrapper described in the specification showed the patentee how to avoid the wrinkled, stiff appearance which he deemed disadvantageous, the second form showed him how to avoid the difficulties occasioned by handling the sheets of tin foil and paper separately. He simply utilized what was plainly shown in the structures which he describes. Every advantage pointed out by him is found in one or the other of the prior wrappers. It cannot be that where two sheets have been used to produce a given result, both when pasted together and when not so pasted, a valid patent can issue to one who produces the same result with the identical sheets, simply because he uses less paste or applies it in a different manner or to a smaller surface. The wrapper of the patent is used in all respects as were the old wrappers. The alleged advantages are due to the method of applying the paste and that method is so old and simple that nothing but ordinary common sense was needed to apply it. It is safe to assert that there is not in the land a lawyer, editor or bookbinder of mature age who has not pasted papers together with mucilage applied in zones and spots. This method is probably as old as the use of paper and paste; certainly it was venerable in 1893 when the application in question was filed. The demurrer is allowed.

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THE LAURA.

NORIEA et al. v. CASTELLANO.

(Circuit Court of Appeals, Fifth Circuit. June 1, 1897.)

No. 573.

**SALVAGE COMPENSATION.**

An award of \$400 for the services of a tug, consuming 16 hours, in pulling a bark from the mud at the mouth of one of the passes of the Mississippi river, said amount to go, five-eighths to the tug's owners, and the remainder to the crew, in proportion to their wages, *held*, on appeal, to have been proper both as to the amount and its distribution.

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

This was a libel in admiralty by Nicholas Noriea and others, members of the crew of the towboat Elmer E. Wood, against the Italian bark Laura and her cargo, to recover compensation for alleged salvage services. Subsequently the Gulf Towing Company, a corporation owning the towboat Elmer E. Wood, filed an intervening libel also set-

ting up a claim of salvage against the bark in respect to the same transaction. The services in question consisted of a trip by the tug from Port Eads to where the bark was ashore in the mud of Pass L'Outre, and pulling that vessel off, and towing her from there to Port Eads; the time consumed being 16 hours. The claimants of the bark set up an alleged agreement whereby the tug was to receive \$25 an hour if successful. The time consumed in the operation was 16 hours, and the district court gave a decree for the sum of \$400, of which five-eighths, or \$250, was awarded to the owner, and the remaining \$150 was divided among the crew in proportion to their salaries or wages. From this decree several of the original libelants appealed, an order of severance having been granted in respect to the others and to the intervening libelant.

John D. Grace, for appellants.

Girault Farrar, Hunter C. Leake, and Gustave Lemle, for appellee.

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

**PER CURIAM.** The errors assigned relate wholly to the proper exercise of the judgment and discretion of the trial judge in determining the amount of salvage and the apportionment of the same between salvaging vessel and crew. As we are not prepared to say that in regard to either there was any violation of well-recognized admiralty rules and principles, the decree appealed from is affirmed.

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### THE BULGARIA.

(District Court, N. D. New York. February 20, 1897.)

**1. COLLISION—ELEMENTS OF DAMAGE—TOWAGE.**

The expense of towing a vessel injured by collision to a place where it was necessary to take her in order to repair her injuries, is recoverable as part of the damages.

**2. SAME—COST OF SURVEY.**

The expense of a survey of a vessel injured by collision is recoverable as part of the damages against the vessel in fault.

**3. SAME—DEMURRAGE—DETENTION DURING REPAIRS.**

A vessel injured by the fault of another is entitled as part of her damages to recover, as demurrage, the amount she would have earned during the period necessarily occupied in repairs, less the expense of earning it. In ascertaining this amount, where there is no charter party or market price, it is proper to take as a basis the average net profits during the trip of the collision and the trips immediately preceding and succeeding it.

**4. SAME—INTEREST.**

Interest is allowable on the various items of damage recoverable in a collision case.

**5. ADMIRALTY—EXCEPTIONS TO COMMISSIONER'S REPORT—OBJECTIONS TO EVIDENCE.**

Where a witness having charge of a vessel's books, testifies before a commissioner as to facts which might be shown by the books themselves, and such evidence is objected to only on the grounds that it is irrelevant and immaterial, the court, on the hearing of exceptions to the report, will not exclude the evidence as incompetent because the books were not produced.