

- quired. \* \* \* A reasonable compensation should be allowed, although nothing that can be considered as a bonus or gratuity can be reached." Amount salvaged, \$155,000. Award, \$37,114 (about 24 per cent.). A material reduction of the award for salvaging the ship was made on appeal. 13 C. C. A. 647, 66 Fed. 593.
1895. The *Dania*, 70 Fed. 398. Steamer utterly helpless from broken shaft about 360 miles from New York. Towed into that port by another steamer in two days and two hours, without any difficulty, during weather which was fine, excepting a dense fog about half the time. Amount salvaged, \$426,000. Award, \$17,500 (about 4 per cent.).
1895. The *North Erin*, 71 Fed. 430. A tug, upon telegraphic request, went 80 miles to a steamer pounding on Long Island coast, in a position of some danger, with a cargo largely perishable, and succeeded after three hours in getting her off. A Coast Wrecking Company's steamer would have reached the steamer the next day. Value of tug, \$50,000. Amount salvaged, \$100,000. Award, 10 per cent.
1896. *La Hesbaye*, 71 Fed. 743. A steamship, with her rudder lost, was brought in, by the help of another steamer, to New York (1,100 miles). Service lasted nine days, and was difficult. Salvor lost four days. Amount salvaged, \$100,000. Award, \$8,000.
1896. The *Alamo*, 21 C. C. A. 451, 75 Fed. 602. A large steamer ashore on a Florida reef in a position of peril. A tug and sailing vessels got her off, and piloted her into port uninjured. Time, 24 hours. Amount salvaged, \$500,000. Award, \$15,000 (3 per cent.).
1896. The *Elfrida*, 23 C. C. A. 527, 77 Fed. 754. A steamer aground at Velasco, Tex., in a position of little danger, at a season when weather is nearly always mild and wind light. Service required but 15 or 16 men, a tug, barge, and small schooner, with anchors and cables. Time, 3 days. No danger to life or property, and no application of unusual skill. Amount salvaged, \$70,000. An agreement for \$22,000 was reduced to \$10,000, which is about 14 per cent.

---

THE JOHN R. PENROSE.

THE WM. J. LIPSETT.

SMITH et al. v. THE WM. J. LIPSETT.

(District Court, E. D. Pennsylvania. April 22, 1898.)

**COLLISION—COST OF REPAIRS—ROTTENNESS OF INJURED PART.**

The rule that, in collision cases, the respondents must pay the cost of repairs rendered necessary by their carelessness, does not apply where the part injured was rotten and unfit for use, and the injury was as justly attributed to that fact as to the collision. In such case, only half damages will be allowed.

This was a libel in admiralty by the owners of the schooner John R. Penrose against the schooner William J. Lipsett to recover damages resulting from a collision of the two vessels in Delaware Bay. The Lipsett was heretofore held to be solely in fault (81 Fed. 623), and the cause is now heard on the commissioner's report on the question of damages.

Horace L. Cheyney and John T. Lewis, for libelant.  
Curtis Tilton, for respondent.

**BUTLER**, District Judge. With much reluctance, and only because he believed the authorities required it, the commissioner allowed the entire cost of the new bowsprit. I agree with him that the allowance

is inequitable; and do not feel constrained by the authorities to acquiesce in it. The rule is well settled in collision cases that respondents must pay the cost of repairs rendered necessary by their carelessness, notwithstanding the value of the vessel may be increased thereby. The rule sometimes works apparent injustice, and is not enforced against insurers. Where, however, the injuries may as justly be attributed to the worn-out or rotten condition of the vessel as to the collision, the rule should not be applied. The cases are not entirely clear respecting this, but I think the exception is fully recognized. *Sturgis v. Clough*, 1 Wall. 269, 272; *The N. B. Starbuck*, 29 Fed. 798; *The Reba*, 22 Fed. 546; *The Syracuse*, 18 Fed. 830. Here the bowsprit was rotten and unfit for use. The vessel was unseaworthy in this respect, and should not have gone out until repaired. The commissioner virtually so finds; and the testimony leaves no doubt of the fact. Her master substantially admits it. She might possibly have been used in this condition for a short time, but not without risk. She was in fault therefore in going out in such condition. To compel the respondent to pay the entire cost of a new bowsprit, which the libelant should have put in before starting, would be clearly unjust. Under the circumstances I will treat both parties as in fault to this extent, and will allow the libelant one-half the cost, which appears to be \$85, reducing the balance against the respondent to \$665.72; and for this sum a decree may be entered. I do not find anything in the evidence that would justify further interference with the commissioner's report.

---

THE H. M. WHITNEY.

HARRIS v. METROPOLITAN S. S. CO.

METROPOLITAN S. S. CO. v. HARRIS et al.

(Circuit Court of Appeals, Second Circuit. March 2, 1893.)

Nos. 75 and 76.

**1. COLLISION—LIBEL—VARIANCE BETWEEN ALLEGATIONS AND PROOF.**

Under a libel charging that a vessel was towed in a fog too rapidly, the admission of evidence on the theory that she should have anchored is not sufficient ground for reversal, where the respondent was not surprised, and was given opportunity to, and did, answer the evidence.

**2. SAME—LONG TOWS—EXTREME CARE REQUIRED.**

However great a menace to navigation the use of public waterways by long tows may be, the courts will not forbid it as long as it is allowed by the authorities who regulate navigation; yet they will hold those who do so to a degree of care commensurate with the increased risk.

**3. SAME.**

During a dense fog, a tug towing two barges on hawsers of 70 to 80 fathoms each, making a fleet extending more than a quarter of a mile, started through Vineyard Sound, and was about to enter Pollock Rip Slew, a dangerous place, by reason of its shoals, tides, narrowness of channel, and changes in its course. As she was about to enter the slew, she passed a steamer which could be dimly seen through the fog. The steamer had stopped her engines, but started again as soon as the tug and first barge passed, and hove her wheel to port, so as to converge on the course over which the tug and first tow had passed, and ran into the second barge, about 450 feet behind the first. It was the general practice of those towing over that