

make the impression on the slip substantially as set forth." If construed to cover a key which does not turn, and which carries type only on the end of its stem, it would be anticipated by the key in Lane & Hill. It must be limited to the key described, and, as thus limited, defendant does not infringe.

The decree must be reversed as to the third and fourth claims of the Bundy patent, and remanded, with directions to enter a decree finding defendant guilty of infringement of those claims, and for an injunction and an account. Appellee will pay the costs of this appeal.

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THE EDWARD LUCKENBACK,

(District Court, S. D. New York. May 5, 1899.)

**COSTS IN ADMIRALTY—ACTION FOR COLLISION—BOTH VESSELS IN FAULT.**

Where, on a libel for collision, both vessels are held in fault, and libelant's vessel alone having been injured, no cross libel is filed, and libelant recovers half his damages, each side will be allowed one-half its taxable costs.

**In Admiralty.** On application for taxation of costs.

Carpenter & Park, for libelant.

James J. Macklin, for respondent.

**BROWN**, District Judge. In this case the libelant's vessel and the claimants' vessel being both held in fault, the damages were directed to be divided. The claimants' vessel was not injured by the collision, so that there was no cross libel, nor any damages set up in the answer. The libelant claims an allowance of half his costs, without taking into consideration the costs of the respondent. The latter contends that the practice in this district, in cases of mutual fault, is that the costs of both sides shall be divided as well as the damages,—the same as if a cross libel had been filed for the recovery of damages to respondent's vessel.

The general subject was carefully reviewed by Blatchford, J., in *Vanderbilt v. Reynolds*, 16 Blatchf. 80, Fed. Cas. No. 16,839, from which it appears that in cases like the present, costs for the most part have been either refused to each side, or else the costs of both have been apportioned between them. The precise point afterwards arose before him on appeal in the case of *The Warren*, 25 Fed. 783, 784, where the libelant's vessel alone was damaged, but both being held in fault, the libelant recovered half damages; and on consideration it was held that "the costs of both parties should have been equally apportioned," and both having appealed the same rule was also applied to the costs of the appeal. It is noticeable, moreover, that in that decision, Mr. Justice Blatchford construed the case of *The America*, 92 U. S. 432, 438, as requiring the costs of both sides to be apportioned, and not the costs of the libelant alone in cases like the present. The case of *The Warren* was decided by Mr. Justice Blatchford in July, 1885, and the practice in this court has since then been in accordance with that decision. It was applied in the case of *The Max Morris*, 24 Fed. 860, where each side taxed one-half its costs, as appears on the face of the

decree, and the decree on both appeals was affirmed. *Id.*, 28 Fed. 881; *Id.*, 137 U. S. 1, 11 Sup. Ct. 29. The same disposition of costs was made in the case of *The Non Pareille*, 33 Fed. 524.

In the present case each side will be allowed one-half its taxable costs.

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THE SAPHO.

(Circuit Court of Appeals, Fourth Circuit. May 2, 1899.)

No. 291.

1. APPEAL IN ADMIRALTY—REVIEW OF QUESTIONS OF FACT.

Where the evidence in a suit in admiralty is taken before an examiner, the decision of the trial court on questions of fact is not entitled to the same controlling weight as where the judge saw and heard the witnesses testify, and will be more readily reviewed by an appellate court.

2. CONTRACT FOR REPAIR OF VESSEL—EXTRA WORK—WAIVER OF WRITTEN CONTRACT.

A provision of a written contract for the repair of a vessel, that no extra work should be done unless an estimate in writing was first made and submitted to and signed by an officer of the company owning the vessel, may be waived; and where, after the vessel was stripped to begin the work, it was found to be impossible to make the repairs specified in the contract without to a large extent rebuilding the hull, and after consultation with the officers of the company the contractor was told by the president to go on with the work, which he did, and under the direction of a superintendent employed by the company, and with the knowledge of its officers and directors, replaced all the rotten parts of the hull, and made the vessel sound and seaworthy, the company, having accepted the vessel, must be considered as having waived the written contract, and cannot invoke its provisions to defeat recovery for all work done not specified therein.

3. SAME—WAIVER BY CORPORATION.

The fact that the owner of the vessel was a corporation, and took no formal action in the matter by its board of directors, would not prevent its being bound by the action of its officers, and the acceptance of the benefit of the contractor's work without objection.

Appeal from the District Court of the United States for the District of South Carolina.

J. P. K. Bryan, for appellants.

J. N. Nathans and Henry Buist, for appellees.

Before GOFF, Circuit Judge, and MORRIS and WADDILL, District Judges.

WADDILL, District Judge. These are two libels in rem against the steamer *Sappho*, her tackle, apparel, etc., owned by the respondent company, the Mt. Pleasant & Sullivan's Island Ferry Company, a corporation of South Carolina, conducting a ferry between the city of Charleston, Mt. Pleasant, and Sullivan's Island, in said state, the said steamer being employed in that service. The controversy arose out of a contract for repairs to be made upon the said steamer. The claim of Samuel J. Pregnall, libelant, contractor and shipwright, is for a balance due on account for repairs, labor, and supplies in the sum of \$2,230.82. The claim of William M. Bird & Co., libelants, merchants, is for \$867.43 for materials furnished for the steamer in mak-