

the scow in her place, or whether he should get the scow hauled out, so as to enable him to pull the canal-boat back under the scow's stern. It was not the duty of the respondents to have the scow moved out, merely because that would be a little more convenient for the captain; but, even if that was the respondents' duty, it was a duty which could only be exercised lawfully through the men in charge of the scow. The shovelers worked for the respondents by the ton, and were employed for shoveling only. They certainly had no authority to represent the respondents in moving the scow, or to undertake to move the scow on their behalf, or in procuring those in charge of the scow to move her. The shovelers' proposal, therefore, to get the scow moved, must be regarded as a voluntary proffer of aid to the captain of the canal-boat, to save time and trouble to them all, for their own benefit, rather than to wind the canal-boat about, as they might have done, and would otherwise have been obliged to do. The captain of the canal-boat in reality supervised this whole proceeding. He alone was in charge of his own boat, and had sole control of her in moving from one hatch to another. When the scow was pulled away by the shovelers, the captain ordered them where to halt and make fast. He evidently trusted to their competency to make fast properly. Whether the rope's becoming slack two or three hours after sufficiently to permit the suction and rebound of the scow from passing steamers to strike the canal-boat, was owing to the rising tide or to the lines slipping because not securely fastened, is immaterial, so far as concerns the respondents. The shovelers were not their agents in doing this work about the scow, and the risk of their competency, and of the sufficiency of their work, was, I think, clearly upon the captain who accepted and supervised their services in moving her.

The libel must therefore be dismissed, but without costs.

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THE J. T. EASTON.

(*District Court, S. D. New York. May 23, 1885.*)

1. COLLISION—DAMAGES—REPAIRS—DEPRECIATION.

Where a small injury, occasioned by collision, such as the cracking of the gunnel streak, can be repaired by bolts and braces at slight expense, so as to be, for all the practical purposes of use and durability, as good as new, damages should be allowed on that basis only, and not the comparatively large cost of putting in a new beam, especially where during a long interval no repair has been made.

2. SAME—MASTER'S ESTIMATE.

In a conflict of evidence as to depreciation, the low estimate of the master at the time, as shown in his claim then made, with knowledge of all the facts, was adopted.

In Admiralty.

*Hyland & Zabriskie*, for libellant.

*Owen & Gray*, for claimant.

BROWN, J. The libellant claims some three or four hundred dollars for an injury to her canal-boat by collision. Upon the evidence in the case I am satisfied that the actual damage could be repaired by the use of bolts and braces for \$15, so that the canal-boat, for all the practical purposes of use, of convenience, and of strength, would be just as good, and just as durable, as before the injury. Whether, if repaired in that way, her market value would be essentially depreciated is a question upon which the witnesses differ. An owner whose boat is damaged by the negligence of another is entitled to have his boat repaired in a way which will not leave her essentially depreciated in her market value, or inferior for practical use. But where an injury can be perfectly repaired for all practical uses at slight expense, but, as in this case, cannot be placed in exactly the same condition as new, except by taking out and replacing much other good work at a very considerable expense, the court must hesitate in allowing damages on the basis of the latter mode of repair, especially where, as in this case, though a long time has elapsed, no such repair has been made. The court could only be warranted in allowing for new beams upon very plain and certain proof that the market value of the boat will otherwise be materially and certainly lessened. In the conflicting evidence in this case I think the acts of the libellant herself, or rather of her husband, who was the master and manager, must be considered as a sufficient practical guide for the court on the latter point.

A great preponderance of evidence shows clearly that after full examination of this injury by the captain's surveyors, he offered to settle for \$25; while the claimants would give him but \$10. A considerable time has elapsed, yet no kind of repair of the injured beam has been made up to the present time; and on the survey during the trial the alleged break shows even less than when recent; and the fact of the break itself is not altogether beyond doubt. Under these circumstances the court would not be justified in awarding damages upon the basis of a necessity of taking out some 40 feet of the gunwale streak in order to repair this comparatively slight injury. I must regard the estimate made by the captain after his survey as sufficient to cover whatever trifling difference may be made in the value of the boat by a repair in the ordinary inexpensive way; and I award him the sum he then claimed, and which has since been paid into the registry, namely, \$25; for which judgment may be entered, without costs.

HARMAN v. LEWIS and another.<sup>1</sup>

(Circuit Court, E. D. Missouri. June 20, 1885.)

## 1. LIFE INSURANCE—BENEVOLENT SOCIETIES—ASSIGNMENT OF CERTIFICATE.

Where a certificate of membership in a benevolent association insures the beneficiary's life, and provides that no assignment of the certificate "shall be valid, unless approved by the secretary," an assignment without such approval will be invalid.

## 2. SAME.

*Query*, whether such a certificate or policy in a benevolent association, incorporated under the laws of Missouri, and which has for its object to give financial aid and benefit to the widows and heirs at law of deceased members, or to such uses and purposes as the member shall by last will appoint, is assignable.

## Bill of Interpleader.

The dispute in this case is as to the right to receive a fund paid into court by the Masonic Mutual Benefit Association, a benevolent association organized under the laws of the state of Missouri. This fund consists of insurance money due from said association, by the terms of a certificate of membership issued to T. L. Funkheuser, now deceased. M. D. Lewis, the administrator of the assured, claims as such. M. L. Funkheuser claims under an assignment. John P. Harman claims as guardian of Lillian Funkheuser, only child and heir of the deceased, who did not leave a widow. The certificate of membership, or policy, names the assured as his own beneficiary. It contains, among other provisions, the following:

"This certificate is issued by the society and accepted by the holder and beneficiary therein upon the following express conditions and agreements: (1) That the same is issued and accepted subject to the articles of association and by-laws of the society. \* \* \* (4) No assignment of this certificate shall be valid unless approved by the secretary."

The following clause is printed upon the back of the certificate:

"Upon the death of a member of the society, if the certificate has not been assigned or pledged, the benefit will be paid to the beneficiary named in the certificate, or if no person is designated therein as beneficiary, then to the widow; if there be no widow, then to the children of the deceased member in equal parts, or if there be neither widow nor children, then to his executor or administrator."

The by-laws of the society provide that no pledge or assignment of a policy or benefit shall be valid or binding unless approved by the society. They also provide that the object of the society is to give financial aid and benefit to the widows and orphans and heirs at law of deceased members, or to such uses or purposes as said deceased members shall by last will and testament appoint.

The assignment in question was never approved by the secretary. Said guardian claims that even if the assignment had been approved

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.