

timony in other respects. The explanation of the collision given by the libelant's witnesses is that the steamer was started before the bowline was cast off, and that her head was accordingly jerked towards the libelant's vessel. It is denied by the steamer's witnesses that she had started before the line was cast off. The sloop, however, was not wrongfully where she was, and, as she was struck by a vessel in motion, the burden of proof is upon the latter to show herself without fault. Considering all the evidence, I do not think that this burden is sustained, and the City of Augusta must therefore be held liable.

The sloop, however, was 26 years old. She has not been repaired since the accident. She was used more or less for a considerable time without repair after the accident, and was subsequently sold for \$300, under attachment. These circumstances are so peculiar, suspicion of the infirmity of the vessel is so strong, and the testimony of the libelant himself was accompanied by so singular mistakes, that I do not feel warranted in giving him the benefit of full repair, as of a vessel probably able to withstand ordinary contacts. If the vessel was weak, as well as old, as I very strongly suspect, I think the captain should have got out of the way, according to the previous notice given him, or have taken care that the person who suggested to him to remain was either the superintendent or some proper representative of the steamer, neither of which is proved. Under the circumstances, therefore, I allow him half of his damages, as against the City of Augusta, and estimate this half at \$300, for which sum the libelant may take a decree; or, if desired, a reference may be taken by either party to compute the damages, at the risk of costs to the party demanding it, if a more favorable award is not given.

THE SILICA v. THE LORD WARDEN and another.¹

THE LORD WARDEN v. THE SILICA and another.

(Circuit Court, E. D. Pennsylvania. March 1, 1887.)

COLLISION—DAMAGES—DEMURRAGE.

In cases of collision, the rate of demurrage provided for in the charter-party of the injured vessel will, in all save exceptional cases, be adhered to in the determination of the damage suffered by the delay of the injured vessel while undergoing repairs.

In Admiralty. *Sur* exceptions to commissioner's report.

The bark *Silica* sailed from London for Philadelphia, on August 11, 1884, and arrived at the latter port on the seventh of October. There she was chartered for a voyage from Philadelphia to Fiume. She proceeded on her voyage in the tow of the tug *Protector*, and, owing to the

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

negligent handling of the tug, and the faulty position of the Lord Warden, collided with the latter. The commissioner appointed to ascertain the damage suffered by the Silica allowed demurrage at the rate of \$92 a day, the amount stipulated in the Silica's charter-party, for time lost while undergoing repairs. To this counsel for the Protector excepted, on the ground that the Silica was not entitled to more than the actual damage suffered; that the voyage must be considered as begun when the bark left London; and that the earnings of the bark must be apportioned over all the time that intervened between her departure from London and her arrival at Fiume, in order to ascertain the *per diem* loss.

Charles Gibbons, Jr., for the Silica.

H. R. Edmunds, for the Lord Warden.

Driver & Coulston, for the Protector.

BUTLER, J. The exceptions must be dismissed. The rule adopted by the commissioner for ascertaining damages from delay is, under the circumstances, the proper one. Under ordinary circumstances, it is always so. In exceptional cases, such as *The Potomac*, 105 U. S. 630, the rule invoked by the exceptor is applicable. Here the other is safer; and it gives the libellant less than he would take under the rule invoked against him; unless, indeed, we adopt the exceptor's method of ascertaining profits; that is, by including the profitless passage from London, in the voyage, though the vessel was not chartered until she came to Philadelphia. This we could not do.

THE WISCONSIN.¹

BEEBE v. THE WISCONSIN.

(District Court, E. D. New York. May 6, 1887.)

1. SALVAGE—SERVICES—PILOT AS SALVOR—AWARD.

Libellant, a pilot, was on board the steamship *W.*, but had not taken charge, when the vessel ran ashore. Thereafter he rendered assistance by suggestions as to getting her off, and by taking charge of her when she was floated in a rudderless condition. He incurred no risk; and was not called upon for any extraordinary exertion. *Held*, that he should recover \$1,000 salvage.

2. SAME—WHEN PILOT MAY BE SALVOR.

A pilot may be a salvor, although aboard the vessel, if he has not yet assumed the relation of pilot to her.

3. SAME—NEW JERSEY STATUTE—EXTRAORDINARY PILOTAGE SERVICES.

The statute of New Jersey (section 16 of the issue of 1846) relates to extraordinary pilotage services. A case of pilotage services necessarily presupposes the vessel capable of being navigated. So a pilot, rendering aid to an unnavigable vessel, is not bound by the above statute, and his services may be not those of a pilot, but of a salvor.

¹Reported by Edward G. Benedict, Esq., of the New York bar.