

mere estimate of the amount of the damage, they would not in this case be allowed, because the duty to repair, rather than abandon, was obvious. The exceptions are overruled, and the report is confirmed.

THE STELVIO.¹

PHELPS v. THE STELVIO.

(District Court, E. D. New York. February 1, 1888.)

1. ADMIRALTY—PRACTICE—COSTS—EXCESSIVE CLAIM.

A libellant who has filed a claim for \$20,000, and recovered only \$500, will not be allowed costs where it appears that by waiting two days he could have ascertained, without risk, that his loss would be less than \$1,000.

2. SAME—EXCESSIVE CLAIM AS PUNISHMENT.

The law does not permit the insertion of an excessive demand in a libel against a ship by way of punishment for previous wrong-doing on the part of the ship's owner.

In Admiralty. On exceptions to commissioners' report. See 30 Fed. Rep. 509.

Ullo, Ruebsamen & Hubbe, for libellant.

E. B. Conwers, for claimant.

BENEDICT, J. I find no occasion to disturb the findings of the commissioner as to the amount of damages recoverable in this case. Upon the question of costs, I remark that it is plain that the claim of \$20,000 put forth in the libel was excessive. The recovery is little over \$500. To the suggestion that when the libel was filed it was not known but that the damages would be in the neighborhood of the sum claimed, the answer is that by delaying the libel from Saturday to Monday the amount of the loss could have been ascertained with reasonable certainty to be less than \$1,000. The delay could have been had without risk of loss to the libellants. To the other suggestion that if the claim of \$20,000 was in excess, it is excused by the unlawful action of the ship's owner in refusing to deliver the oranges on Saturday, it is sufficient to say that the law does not permit the insertion of an excessive and exorbitant demand in a libel against the ship by way of punishment for previous wrong-doing on the part of the ship's owner.

Let the exceptions be overruled, and a decree entered in favor of the amount reported by the commissioner, without costs.

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

OLESON v. THE IDA CAMPBELL.

(District Court, D. Minnesota. March 9, 1888.)

ADMIRALTY—JURISDICTION—TORTS—DEATH BY WRONGFUL ACT.

Gen. St. Minn. p. 825, § 2, providing that, "when death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived," etc., does not confer upon the United States district court jurisdiction of a libel *in rem*, filed by the administratrix of an injured person to enforce a marine tort, as in case of death from such a tort the action does not survive in admiralty.

Edward H. Ozmun, for libelant.

Warren H. Mead, for claimant.

NELSON, J. A libel *in rem* is filed by the administratrix of the deceased to enforce a marine tort. The remedy is prosecuted under the statute of the state of Minnesota, (Gen. St. p. 825, § 2.) It reads as follows:

"When death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action, had he lived, for an injury caused by the same act or omission," etc.

An answer and claim are interposed, and it is insisted that the statute gives this court in admiralty no jurisdiction. It is true that a remedy can be enforced in admiralty for a marine tort, if the injured party survived, but in case of death from such a tort the action does not survive in admiralty. It is therefore a disputed and unsettled question whether or not a state statute, like the one cited, is applicable in such case to authorize an action in admiralty by the representatives. Elaborate views *pro* and *con* have been expressed by eminent judges. Without referring to them *in extenso*, I shall follow the expression of opinion denying the jurisdiction of a court of admiralty to entertain such an action under the statute. Decree ordered dismissing libel.

In the admiralty suit *in personam* of Annie Oleson, Adm'x, etc., v. Peter F. Ritchie, owner of steam-boat Ida Campbell, a decree dismissing libel is also ordered.