

3 Asp. 1, 4, 33 Law T. (N. S.) 233, 235. A flash-light, or the globe-light which she had at hand, manifestly ought to have been exhibited to the steamer as early as the time of the schooner's last tacking, and continued at least until her own red light should be clearly shown to the steamer. Had this been done, there can be no doubt the light would have been seen on the steamer, and the collision avoided. The omission of the light or any other timely signal was therefore a fault contributing to the collision. The fault of the schooner did not, however, excuse the steamer for the inattention of the lookout, in the special circumstances above noted. The damages must therefore be divided.

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THE JOSÉ E. MORÉ.

KERR v. THE JOSÉ E. MORÉ.

(Circuit Court, E. D. New York. December 1, 1888.)

1. COLLISION—EXTENT OF LIABILITY.

The liability of the owners of a vessel for damages resulting from a collision, in which she was at fault, is limited to the amount of their risk in the voyage, which is (1) the value of the ship; (2) the expenses of the voyage, including ship-stores, loading charges, and pay of crew; and (3) the actual gain of the voyage, estimated by deducting from the freight earned the amount of the voyage expenses and such additional expense as is incurred in earning the freight after the collision.

2. SAME—INTEREST ON AWARD.

Interest on the amount awarded against the owner of a vessel causing a maritime collision is chargeable only from the date of the decree. Following *The Manitoba*, 7 Sup. Ct. Rep. 1158.

In Admiralty. On report of commissioner.

On December 6, 1885, a collision occurred between the steam-ship Pomona and the barkentine José E. Moré, off Barnegat, N. J. Cross-libels were filed, and this court, affirming the district court, has held the barkentine solely at fault, and adjudged that libellant's damages amount to the sum of \$14,002.51. 35 Fed. Rep. 921. The claimants of the barkentine then paid libellant the sum of \$6,105 on account, and this court ordered a reference to report the value of the interest of the claimants in the José E. Moré and her freight moneys as of the date of the collision, for the purpose of limiting the liability of the claimants. The commissioner has reported all the proofs taken before him. The barkentine, which completed her voyage, and arrived at this port the day after collision, was appraised soon after the filing of the libel, and her value was ascertained to be \$6,000. This valuation has been mutually accepted. Two questions are now raised: *First*, whether claimants are bound to pay interest from the date of collision or from the date of decree; *second*, whether they are bound to pay anything more than net freight, and what charges are to be deducted from the gross freight to ascertain what is net freight.

*Jas. K. Hill, Wing & Shoudy, and Harrington Putnam*, for libelant, cited:

To the question of freight: *The Scotland*, 105 U. S. 24; *The City of Norwich*, 118 U. S. 492, 6 Sup. Ct. Rep. 1150; Laws U. S. 1884, c. 121, § 18; *The Linda Flor*, Swab. 309; *The Maria and Elizabeth*, 12 Fed. Rep. 627; *The Abbie C. Stubbs*, 28 Fed. Rep. 719; *In re Wright*, 10 Ben. 14; *Allen v. Mackay*, 1 Spr. 219; *The Benares*, 14 Jur. 581; *Wilson v. Dickson*, 2 Barn. & Ald. 2; *The Jersey Tar*, 8 Ir. Jur. 317; Lown. Av. (Lond. Ed. 1888) 324. To the question of interest: *The Dundee*, 2 Hagg. Adm. 143; *The Amalia*, 34 Law J. Pr. 21; *The Northumbria*, L. R. 3 Adm. & Ecc. 6, 12; *Ex parte Rayne*, 1 Gale & D. 374; *Straker v. Hartland*, 34 Law J. Ch. 123; *Smith v. Kirby*, 1 Q. B. Div. 131; *The Wanata*, 95 U. S. 600; *The Favorite*, 12 Fed. Rep. 213; *The Vernon*, 36 Fed. Rep. 113; *The Scotland*, 105 U. S. 24.

*Owen & Gray and Edward L. Gray*, for claimants, cited:

*The Manitoba*, 122 U. S. 97, 7 Sup. Ct. Rep. 1158; *Sumner v. Caswell*, 20 Fed. Rep. 249; *In re Wright*, 10 Ben. 14; *Williamson v. Barrett*, 13 How. 111; *The Heroine*, 1 Ben. 227.

LACOMBE, J., (*after stating the facts as above.*) The question as to interest has been settled by the supreme court in the case of *The Manitoba*, 122 U. S. 97, 7 Sup. Ct. Rep. 1158. It is chargeable only from the date of the decree of the district court.

At the date of the collision the claimants had at risk in their maritime adventure the value of the vessel, \$6,000; the investment they had made by way of loading charges, etc., \$231.87; the investment they had made by purchasing ship-stores and hiring master and mariners, \$461.25; and whatever actual gain there might be by way of freight over the amount of these last two investments. At that time the apparent gain was \$398.38, less whatever additional it might cost to earn it. Had the barkentine sunk in mid-ocean, the sum of all these items would have been lost to the owner, and would have been the limit of his loss. The apparent gain by way of freight, \$398.38, was in fact saved by means of expenditures subsequent to the collision amounting to \$386.60, thus leaving \$11.78 as the actual gain which stood at risk at the date of collision. The aggregate of all these sums thus at risk is \$6,704.90, which is the value the vessel, \$6,000, plus the gross freight earned, less expenses after collision, (\$1,091.50—\$386.60=\$704.90.) There is no reason, on principle, why these investments, which the owners had up to the date of the collision exposed to the risks of their maritime adventure, should not respond for all loss incurred; and the latest authority cited apparently sustains this view. *The Abbie C. Stubbs*, 28 Fed. Rep. 719. The value of the claimants interest in the José E. Moré and its freight moneys as of December 6, 1885, is adjudged to be the sum of \$6,704.90. The wages and board of master and mariners for the day succeeding the accident and in which voyage was completed are also to be deducted from freight. Decree accordingly.

HULL v. A CARGO OF PIG-IRON, etc.<sup>1</sup>

(District Court, S. D. New York. December 11, 1888.)

## DEMURRAGE—DEMURRAGE DAYS—COMPUTATION—CHARTER-PARTY—WORKING HOURS.

A steam-ship's charter provided as follows: "To be discharged as fast as steamer can deliver during ordinary working hours, all time on demurrage over and above the said lying days at 20 shillings per hour to be paid by charterers for any time expended over and above the said hours for loading and delivery." The vessel having been detained 2 days and 8 hours, or 51 hours after sufficient time to unload at the usual rate of 10 working hours per day had elapsed, *held*, that the demurrage days counted 24 hours per day, and not 10 hours only, and that the vessel was entitled to 51 hours' demurrage.

## In Admiralty.

Action against the cargo of the steam-ship Hartington for demurrage.  
*Builer, Stillman & Hubbard* and *Wilhelmus Mynderse*, for libellant.  
*Knox & Woodward*, for claimant.

BROWN, J. The libel was filed to recover demurrage for the detention of the steamer Hartington at New York, in the discharge of a cargo of pig-iron, in July, 1887. The libellant claimed for 67 hours' detention at the rate of 20 shillings British sterling per hour. The charter provided as follows:

"The cargo to be loaded and discharged as fast as the steamer can load and deliver during ordinary working hours, according to the custom of the respective ports of loading and discharge, except in case of riot, or any hands striking work, or accident to the machinery which may impede the ordinary loading and discharging of the vessel. And all time on demurrage over and above the said lying days at 20/ per hour to be paid by the charterers for any time expended over and above the said hours for loading and delivery."

In the original charter the words "20/ per hour" are written in place of an erasure of "— Pounds per day." The principal facts were admitted; it being stipulated that the vessel was ready to discharge after due notice at noon on the 12th of July; that afterwards, on the 13th, she went to Constable Hook on the charterer's request; that on the 14th only three hours were employed in discharging; that she began again at 8 o'clock on the 15th, when her discharge proceeded regularly until it was finished, as shown by the log, at 11 o'clock on the 22d; and that the "ordinary working hours, according to the custom of this port," in the discharge of vessels, is 10 hours per day, viz., from 7 to 12 in the forenoon, and from 1 to 6 in the afternoon. The litigation related solely to the construction of the above clause of the charter, and whether during the days that the vessel was detained, demurrage was to be charged for only 10 hours per day, or for 24 hours.

The actual time occupied in discharging was 66 hours. Had the discharge commenced when the vessel was ready after due notice, namely,

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.