

Case No. 4,473.
[2 Ben. 178.]¹

THE EMPIRE STATE.

District Court, E. D. New York.

Feb., 1869.

COLLISION—DAMAGES.

1. Where a vessel injured by collision, was sold at auction, and afterwards repaired by the buyers: *Held*, that the damages to be allowed in an action for the collision were to be arrived at by a reference to the cost of those repairs, instead of the result of the sale.
2. That interest was to be allowed on the value of the cargo and freight and on the repairs.

This case came up on exceptions to the report of a commissioner to whom it had been referred, to ascertain the damages occasioned to the schooner *Goldfish* by a collision with the *Empire State*. [Case No. 17,586.] The vessel, after the collision, was raised, and was then found to be greatly injured, both by the blow and by a fire which was caused by the burning of the lime with which she was laden, and she was thereupon sold at public auction in her damaged condition. She was afterward repaired by the buyers at a cost of \$6,282.86. This included, however, replacing rigging, sails, anchors, and boat, which it appeared were not injured, and were not sold at auction with the vessel. The commissioner allowed the full cost of the repairs and interest, with the value of the cargo lost, and the freight, but excluded the sum of \$300, proved to have been the value of the time of the purchaser, who superintended the repairs himself, and excluded interest on the cargo and freight

BENEDICT, District Judge. Under the decision of the supreme court in the case of *The Catharine*, 17 How. [58 U. S.] 170, the rule adopted by the commissioner of ascertaining the damage by a reference to the cost of repair, instead of the result of the sale of the vessel before repairs, was correct. But from the cost of repairs should be deducted the value of anchors, sails, rigging, boat, &c, which were not injured or sold, and which are included in the amount reported; while, on the other hand, there should be added the sum of \$300, that being the proved value of the time of the person engaged in superintending the repairs. Aside from these items, the report appears to me to be correct, under the rule given by the case of *The Catharine*, which is there laid down as a positive rule, without exception. As to interest, it would seem that it must be allowed upon the value of the cargo and freight.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]